
(proposed) Deed of Lease:
Part Chisholm Park Recreation Reserve

Made between

The Dunedin City Council

-and-

Tainui Croquet Club Incorporated

SAMPLE

THIS DEED dated the XXXX th day of XXXX 2027

BETWEEN

- (1) **The Dunedin City Council** as Lessor (called the "Council")
- (2) **XXXX XX Incorporated** a registered Incorporated Society registered under number XXXX (called the "Lessee")

BACKGROUND

- (1) The lease is granted to the Lessee for the occupation of part of Chisholm Park Recreation Reserve situated at 24 Tahuna Road, Dunedin for the purpose of the Sport of Croquet including clubhouse, outdoor lawns and associated facilities for the XXXX XXX Incorporated.
- (2) The XXXX XXX Incorporated is located on land administered by the Dunedin City Council as part Chisholm Park Recreation Reserve contained in Record of Title OT281/188.

The Council's authority to grant the lease is under Sections 54(1)(b) and (1)(c) of the Reserves Act 1977.

WITNESSES AS FOLLOWS:

In consideration of the covenants contained in this lease (including the payment of rent), the Council leases the Premises to the Lessee and the Lessee takes the Premises on lease at the Annual Rent, for the Term and for the Purpose upon the terms, conditions, restrictions, and covenants in this lease.

The schedules to this lease shall have the same effect as if set out in the body of this lease.

In granting this lease, the Council is exercising the powers of general competence under the Local Government Act 2002 and the powers contained in the Reserves Act 1977.

SIGNED on behalf of **THE DUNEDIN CITY COUNCIL** under delegated authority by:

Asset and Commercial Manager
Parks and Recreation Services

THE COMMON SEAL of the **XXXX XXX INCORPORATED** was hereto affixed in the presence of:

Authorised Signatory

Authorised Signatory

SCHEDULE 1

For the purposes of this Lease the following Terms shall have the following meanings:

Premises: means the land as outlined on the attached photograph being part of Chisholm Park Recreation Reserve situated at 24 Tahuna Road, Dunedin comprising 3,490m² more or less described as Part Section 28, Block VII Otago Peninsula Survey District shown on Deposited Plan 4686 and held in Record of Title OT281/188.

Ownership the Lessee owns the clubhouse and associated built facilities on the premises.

For the purposes of this Lease the following Terms shall have the following meanings:

Purpose	The Sport of Croquet including clubhouse, outdoor lawns and associated facilities
Term:	Ten (10) years
Commencement Date:	1 March 2027 (or such other date as is agreed)
Final Expiry Date:	28 February 2037
Annual Rent:	\$XXX.XX (plus GST) as at 1 July 2026
Rent Payment Dates:	Half yearly in equal instalments on the first day of September and March in each year (or as otherwise agreed by the parties)
Rent Review Dates:	Yearly, in line with the percentage increase or decrease of the Dunedin City Council annual general and community rates.
Total Area	3,490m ²
Park Status:	Recreation Reserve
Operative Provisions:	Section 54 of the Reserves Act 1977 and Section 12 of the Local Government Act 2002.
Address for Service:	
Council:	50 The Octagon, Dunedin 9016 or email par.admin@dcc.govt.nz with the subject line of Attention: Leasing and Land Advisor – Parks and Recreation
Authorised Person:	Senior Leasing and Land Advisor – Parks and Recreation
Lessee:	XXXXXX email <u>XXXX</u>
Authorised Person:	The Secretary/Manager

OUTGOINGS

- 1 All rates, charges, levies, assessments, duties, impositions and fees from time to time payable by the Council to any Authority relating to the Premises irrespective of its ownership.
- 2 All charges for and costs relating to the supply of electricity, telephones, gas, water, sewage, drainage, rubbish collection and other utilities and services supplied to the Premises.
- 3 All premiums, valuation fees and other sums payable by the Council for all insurance policies on the Premises.
- 4 All costs incurred in complying with the requirements contained in any Compliance Schedule relating to systems and facilities provided in the building on the Premises and in obtaining an annual Warrant of Fitness for any building on or forming part of the Premises.

- 5 All costs of maintaining and servicing fire detection and firefighting equipment.
- 6 All costs of painting, repairing, and maintaining the interior and exterior of any building on or at the Premises.
- 7 All costs of repairing and maintaining any gardens, yards, driveways, parking areas and other sealed areas at the Premises.
- 8 All costs of providing consumable supplies for toilets and other common facilities. (if any).

Utilities: means all or any Utility.

SAMPLE

SCHEDULE 2

COVENANTS RELATING TO LAND

1 Rent

- 1.1 The Lessee will pay the rent together with any Goods and Services Tax (including all replacement or subsequent tax) that may be payable to the Council without deduction in advance by equal instalments on the Rent Payment Dates.
- 1.2 Council fees and charges for lease facilities are currently being reviewed and the annual rental charged is subject to any future change in the Council fees and charges. Council will advise the Lessee on any change in rental resulting from the fees and charges review.

2 Rent Review

- 2.1 The parties acknowledge hereto that the initial rent set out in Schedule 1 is an agreed amount as from 1 March 2027.
- 2.2 It is agreed between the parties that the annual rental shall be altered with effect from the 1st day of July in each year of the term by the application of the same percentage increase or decrease as the percentage increase or decrease in the general and community services rates struck by the Council for that rating year compared with that of the previous rating year and the new rent so fixed shall be substituted for that of the previous year. Until the rates are struck for the new rating year the rent shall continue to be paid at the same rate as in the previous year and when the rates are struck an adjustment will be made for the balance of rent owing by or the refund of rent due to the Lessee.
- 2.3 If the Lessee shall with the consent of the Council change the use to which any part of the Premises is put, then the Council shall have the right to review the rent by application of the formula set out in Schedule 1 having regard to the various uses to which the Premises are then put.
- 2.4 In the event that the Council no longer strikes rates then the parties hereto shall within three months meet for the purpose of agreeing to an alternative basis on which the rent is to be reviewed and failing agreement such basis shall be determined by arbitration pursuant to Clause 21.

3 Outgoings

- 3.1 The Lessee must pay all Outgoings associated with the Premises.
- 3.2 The Lessee must promptly pay to the relevant Authority or supplier all charges for Utilities which are separately metered or charged to the Premises.

4 Development of Facilities

- 4.1 The Council and the Lessee acknowledge that prior to the Commencement Date the Lessee was in occupation of the Premises under a Memorandum of Co-operation and Understanding entered into with the Council dated XXX XX ("Memorandum"). The parties acknowledge that the Lessee remained in occupation of the Premises under the Memorandum during the development of the Lessee's improvements located on the Premises and that as at the date of entering into this Lease, the Lessee owns all improvements located on the Premises including the buildings, perimeter fences and outdoor bowls greens located on the Premises.
- 4.2 **Holding Over:** If the Council permits the Lessee to remain in occupation of the Premises after the expiry or earlier termination of the Term, the Lessee will occupy the Premises pursuant to a periodic tenancy that may be terminated in accordance with section 210 of the Property Law Act 2007 and any amendment thereto. In so far as they are applicable to periodic tenancies all other matters set out herein and implied by law will continue to apply between the parties.

5 Maintenance

- 5.1 The Lessee will throughout the said term keep all buildings and improvements, including (but not limited to) any fences and gates and buildings on the Premises in good repair, order, and condition (fair wear and tear and damage by fire flood earthquake and other inevitable accident excepted.)
- 5.2 The Lessee will keep the land clean and tidy and will keep any garden plantings and hedges trimmed and grassed areas mowed to the satisfaction of the Council.
- 5.3 The Lessee shall maintain the interior and exterior of all buildings and shall ensure that the buildings on the Premises remain maintained to a standard that is at all times compliant with the requirements of all statutory agencies in relation to all matters including but not limited to health and safety and building safety compliance.
- 5.4 The Lessee acknowledges it is liable to reimburse the Council for the cost of repair, maintenance, or replacement where it is stated as an Outgoing in the First Schedule.

6 No Alterations or Building

- 6.1 The Lessee will not make any alterations to any building or fences on the Premises or build any new structures or buildings or locate storage containers on the Premises, without the prior written consent of the Council, subject to such conditions as may be set by the Council.

7. No-liability for Building

- 7.1 The Council has no liability to the Lessee in respect of the condition of any buildings, containers, or fences on the Premises or in respect of any effect on the building of any alterations to the building even though the Council as the Territorial Local Authority may have consented to same under the preceding clause 6 of Schedule 2.

8 Assignment and Subletting

- 8.1 The Lessee will not assign this lease or sublet or part with possession of the Premises or any part thereof without the consent of the Council which consent shall not to be unreasonably withheld or delayed provided such use is consistent with the reserve purpose set out in the Reserves Act 1977.

9 No right to Mortgage

- 9.1 The Lessee shall not mortgage or otherwise encumber this Lease.

10 Signage

- 10.1 The Lessee shall not affix paint or exhibit or permit to be affixed painted or exhibited any name sign name-plate signboard or advertisement of any description on the Premises or any improvements at the Premises, without the prior consent of the Council having been obtained in writing, subject to such conditions as may be set by the Council. All signage duly permitted must be removed at the end of the term or sooner determination of the Term and any damage caused to be made good at the Lessee's expense.

11 Compliance with Statutes, Regulations and Bylaws

- 11.1 The Lessee shall comply with all statutes, regulations and by-laws relating to the Premises and the Lessee's use of it and the Lessee will not do or permit to be done any act or omission that contravenes them, or which may become a nuisance or annoyance to the Council or to users of the Councils adjoining property or to the owners or occupiers of adjoining land and buildings.

12 Health and Safety at Work Act 2015

- 12.1 The Council and Lessee and the Lessee's contractors and subcontractors are persons conducting a business or undertaking ('PCBUs'), as defined in section 17 of the Health and Safety at Work Act 2015 and, must comply at all times with that Act and its regulations.

Nothing in this Lease shall be taken to limit any of the duties owed by either party under the Health and Safety at Work Act 2015.

- 12.2 Where the Council and Lessee each have a duty in relation to the same matter imposed by or under the Health and Safety at Work Act 2015, they must, so far as is reasonably practicable, consult, cooperate and coordinate activities with each other.

13 Right of Inspection and Access to Repair

- 13.1 The Lessee will permit the Council or its agent with or without workmen and others at all reasonable times (on reasonable prior notice) to enter upon the Premises for the purpose of reviewing the condition and state of repair of the Premises and further at the Lessee's expense to make good all defects which the Lessee is required to make good and remaining after one calendar months' notice in writing requiring the Lessee to remedy such defects as aforesaid shall have been given to the Lessee and the Lessee has failed to remedy the defects within a reasonable time.

14 Use and termination for improper use

- 14.1 The Lessee will use the Premises solely for the Purpose or other use permitted by the Council from time to time.
- 14.2 If at any time the Council is of the opinion that the Premises is not being used or is not being used sufficiently for the Purpose then the Council may after making such enquiries, as the Council thinks fit and giving the Lessee an opportunity of explaining the usage of the Premises determine that the Premises are not being used or not being sufficiently used for the Purpose permitted by this Lease and shall terminate this Lease (in writing) on such terms and conditions as the Council deems fit.
- 14.3 Whilst carrying out the Purpose at the Premises the Lessee shall not carry on any noxious, noisy or offensive business or activity in or about the Premises or do anything which is or may become a nuisance or annoyance to any person, but the carrying on of the Purpose by the Lessee in a reasonable manner will not of itself be a breach of this sub-clause. Nor shall the Lessee do or permit to be done anything which is or may become a breach of any duty imposed on any person by the Resource Management Act 1991 or anything which is or may become a breach of any duty imposed on any person by the Health and Safety at Work Act 2015.

15 Cancellation

- 15.1 If the Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions or restrictions herein contained or implied and on its part to be performed or observed or if the Lessee shall be wound up or shall cease to operate in the same or substantially the same manner as at the commencement of this Lease, or shall make or enter into or endeavour to make or enter into any composition assignment or other arrangement with or for the benefit of the Lessee's creditors, or in the event of the insolvency, bankruptcy, statutory management, voluntary administration, receivership or liquidation of the Lessee or if any lender of moneys to the Lessee shall call upon the Council under the guarantee given by the Council (if any) to such lender of such loan moneys then and in any such case it shall be lawful for the Council or any person or persons authorised by it in that behalf to re-enter the Premises and peaceably to hold and enjoy thenceforth as if these presents had not been made but without prejudice to any right of action or remedy of the Council in respect of any antecedent breach of any of the covenants conditions or restrictions by the Lessee herein contained or implied.

16 Termination and Improvements

- 16.1 Upon termination of this Lease by effluxion of time or surrender or re-entry or breach of conditions or earlier termination as provided for above (or otherwise) the Premises with all improvements thereon shall revert to the Council without compensation payable to the Lessee or otherwise.

- 16.2 Notwithstanding the provisions of clause 16.1 above on the termination of this Lease by effluxion of time then the following provisions shall apply:
- 16.3 Provided that the Lessee shall not be in breach of the conditions of this Lease the Lessee may by the date on which the Lease expires remove all or any of its improvements from the Premises subject to the Lessee making good any damage caused and removal of all and any foundations and drains and shall leave the Premises in a clean and tidy condition.
- 16.4 The Council may on or about the expiry of the Lease require the Lessee to remove all or any of its improvements (including but not limited to drains, fencing and buildings) within a period of three months by giving the Lessee written notice to do so. If such notice shall be given the Lessee shall remove its improvements making good any damage caused and leaving the Premises in a clean and tidy condition. If the Lessee shall not have removed the improvements by the expiry of such notice, then the Council (at the sole expense of the Lessee) will carry out and complete such removal.

17 Insurance

- 17.1 The Lessee must at all times during the Term insure and keep the buildings and improvements located on the Premises insured to their full insurable value in the joint names of the Council and the Lessee against the Insured Risks and pay the premium for the insurance taken out when due. The Council is to be noted as an interested party on the Insurance Policy.

GENERAL TERMS

- 18 The express covenants provisions and powers herein contained shall supersede those referring to the same subjects and those only implied in Leases by the Property Law Act 2007.
- 19 The Lessee shall have no right to freehold the land hereby leased or to a registered Memorandum of Lease.
- 20 This Lease shall be subject to the Operative Provisions.
- 21 All disputes and differences between the parties in relation to this lease or in relation to the parties' rights or obligations under this lease shall be referred to arbitration in accordance with the Arbitration Act 1996.
- 22 The Lessee shall bear all costs associated with the preparation of this Lease.

23 Essential Terms

- 23.1 The Lessee's failure to pay the rent or any other money payable by the Lessee under this lease is a breach of an essential term of this lease. The Lessee must compensate the Council for that breach. The Council may recover damages from the Lessee for that breach. The Council's entitlement to compensation under this clause is in addition to the Council's other remedies or entitlements (including the right to terminate this lease).
- 23.2 The Council's acceptance of any arrears of rent or other money payable under this lease is not a waiver of the essential obligation to pay any other rent or money payable under this lease.

24 Damages

- 24.1 If any act or omission of the Lessee:
- 24.1.1 Is a repudiation of this lease or of the Lessee's obligations under this lease; or
- 24.1.2 Is a breach of any of the Lessee's obligations under this lease.
- 24.1.3 The Council may recover damages for the loss or damage suffered by reason of the repudiation or breach during the whole of the Term.

- 24.2 The Council's entitlement to recover damages will not be affected or limited by the termination of this lease; and is in addition to any other remedy or entitlement of the Council.
- 24.3 The Council's waiver or failure to act in response to the Lessee's breach of any of the Lessee's obligations in this lease will not operate as a waiver of the same breach on any later occasion; or any other obligations in this lease.
- 24.4 If from any cause whatsoever the Premises are destroyed or so damaged as to be untenable then the term hereby granted shall at once cease and determine.

25 Indemnity

- 25.1 The Lessee indemnifies the Council against all actions, proceedings, calls, claims, demands, losses, damages, costs, expenses or liabilities of any kind suffered or incurred by the Council resulting from the Lessee's act or omission, except where section 268 Property Law Act 2007 applies.
- 25.2 Where section 268 Property Law Act 2007 applies, the Council indemnifies the Lessee against the cost of carrying out any works to make good the destruction or damage if the Lessee is obliged to make good such destruction or damage, provided that:
- 25.2.1 The destruction or damage was not intentionally done or caused by the Lessee or the Lessee's agent; or
- 25.2.2 The destruction or damage was not the result of an act or omission by the Lessee or the Lessee's agent that:
- (i) Occurred on or about the Premises or on or about the whole or any part of the land on which the Premises are situated; and
 - (ii) Constitutes an indictable offence within the meaning of the Summary Proceedings Act 1957; or
 - (iii) Any insurance moneys that would otherwise have been payable to the Lessor for the destruction or damage are irrecoverable because of an act or omission of the Lessee or the Lessee's agent.

26 Notices

- 26.1 Any notice or document required or authorised to be delivered or served under this lease may be delivered or served to the Authorised Person at the specified Address for Service.

27 Council's Consent

- 27.1 The Council's consent under this lease is required for each occasion even if the Council has given consent for the same or similar purpose on an earlier occasion.

28 Council not acting in Regulatory Capacity

- 28.1 The Lessee acknowledges that the Council enters into this lease in its capacity as leasing authority only and not in any regulatory capacity and no consent or waiver by the Council in terms of this lease shall be construed in any way to operate as a consent, waiver, permission or the like by The Dunedin City Council as a regulatory body in such matters as (by way of example only) resource/planning, consents, building consents, health/food certifications or building regulation matters.

SCHEDULE 3

1 Specific Covenants

- 1.1 If there is any conflict between the specific covenants contained in this Schedule 3 and any other provision within this lease, the covenants in this Schedule 3 shall prevail.

2 Carparking

- 2.1 Where the Lessee may use any part of the Premises or adjacent reserve for the purposes of temporary vehicle parking for members and/or guest's carparking including trailers, the Lessee agrees:

- (a) the Council shall not be responsible for damage or theft of property (including but not limited to bikes, cars, trailer, boats, or items located within any one of them) in the carpark area (whether such property is the Lessee's, its contractor's, or invitee's).
- (b) if required to do so by notice from the Council, the Lessee shall repair/remediate any damage caused to the Premises or adjacent reserve, to the satisfaction of the Council. If the Lessee shall not have completed the repair/remedial works by the expiry of such notice, then the Council (at the sole expense of the Lessee) will carry out and complete the work required.

3. No Build area and Wastewater pipeline.

- 3.1 The Lessee acknowledges that a private sewer pipeline runs underground through the 'No build' area as shown on the aerial photo attached to this Agreement at Schedule 4. No structures including fences or earthwork activities shall be located or undertaken on the 'No build area.
- 3.2 In addition to the above, the Lessee shall permit the Dunedin Indoor Bowls Stadium Inc. (Bowls Stadium) which owns the sewer pipeline or its workmen, contractors or agents to have full rights of access to the sewer pipeline for maintenance and repair and renewal works in the future, subject to it receiving not less than five (5) working days prior written notice from the Bowls Stadium, except in an emergency situation, where time is of the essence.

4. Leases on Coastal Reserves

- 4.1 Should the Dunedin City Council or other statutory body require the land and premises for purposes related to coastal protection and management (whether the premises are directly affected by such works or not) as determined by the Council and vacant possession is necessary for those purposes, then the Council may, by written notice to the Lessee, terminate this Lease either immediately (should it be determined at Council's sole discretion that there is significant threat and/or risk to life or property OR by specifying a date of termination to be effective not less than three (3) months after the date of service of such notice on the Lessee or such sooner date as the parties may agree.
- 4.2 On service of the termination notice requiring the land and premises for the purposes of coastal protection and management, the Council may require the Lessee to remove all or any of its improvements (including but not limited to irrigation, drains, fencing and buildings) within the notice period by giving the Lessee written notice to do so. If such notice shall be given the Lessee shall remove its improvements making good any damage caused and leaving the Premises in a clean and tidy condition. If the Lessee shall not have removed the improvements from the Premises by the expiry of such notice, then all improvements thereon shall revert to the Council without compensation payable to the Lessee or otherwise.
- 4.3 Upon the expiration of such notice this Lease shall determine, but without prejudice to the rights of either party in relation to any prior breach of this Lease, and the rental and outgoings payable by the Lessee shall cease to accrue from the date of termination.
- 4.4 No account shall be taken of the termination rights contained in or other contents of this clause on any determination of rental on either rent reviews or extensions or renewals of this Lease.

- 4.5 If from any cause whatsoever the land or Premises are destroyed or so damaged as to be untenable then the lease hereby granted shall cease immediately and determine.

SAMPLE

SCHEDULE 4

MAP OF OCCUPATION

Aerial photo showing proposed Tainui Croquet Club Inc. leased area and clubhouse site outlined in red.

'No build' area is shown outlined and hatched blue and contains the wastewater pipeline (lime line) from the shared toilets.

