

MINUTE EXTRACT FROM THE NON-PUBLIC COUNCIL MEETING HELD ON 26 MARCH 2019

C6 TAIERI AIRPORT - OTAGO AERO CLUB

A report from Legal sought Council approval of a proposed Amendment to the Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated.

The Amendment:

- a) Removed an obligation on the Council to act as The Taieri Airport Trust's agent in selling or leasing part of Taieri Airport; and
- b) Varied the lease between The Taieri Airport Trust and the Otago Aero Club Incorporated so that the land that was to be developed was instead leased to the Otago Aero Club Incorporated.

Karilyn Canton (Senior In-House Legal Counsel) spoke to the report and provided background information on the history of the ownership of the land, the agreement and reasons in support of the amendment. Mrs Canton then responded to questions.

During discussion Cr Kate Wilson left the meeting at 02:36 pm.

Moved (Cr David Benson-Pope/Cr Christine Garey):

That the Council:

- a) **Approves** an Amendment to the Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated so that:
 - i) Council is no longer required to act as an agent for The Taieri Airport Trust in developing part of Taieri Airport; and
 - ii) the land that was to be developed is instead leased by The Taieri Airport Trust to the Otago Aero Club Incorporated upon the terms and conditions outlined in this report.
- b) **Delegates** to the Council's Chief Executive Officer, the authority to:
 - i) sign the Amendment on behalf of Council; and
 - ii) release information regarding the transfer of Taieri Airport at such time as the Chief Executive Officer considers appropriate.

Division

The Council voted by division:

For: Crs David Benson-Pope, Rachel Elder, Christine Garey, Aaron Hawkins, Marie Laufiso, Mike Lord, Jim O'Malley, Chris Staynes, Conrad Stedman and Andrew Whiley (10)

Against: Crs Doug Hall and Lee Vandervis (2).

The division was declared CARRIED by 10 votes to 2

TAIERI AIRPORT - OTAGO AERO CLUB

Department: Legal

REASONS FOR CONFIDENTIALITY

Grounds:	S48(1)(a) - The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.
Reason:	S7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege. S7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
In particular:	This report is confidential because it contains legal advice and relates to potential commercial negotiations.

EXECUTIVE SUMMARY

- 1 This report seeks Council's approval of a proposed Amendment to the Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated.
- 2 The Amendment:
 - a) Removes an obligation on the Council to act as The Taieri Airport Trust's agent in selling or leasing part of Taieri Airport; and
 - b) Varies the lease between The Taieri Airport Trust and the Otago Aero Club Incorporated so that the land that was to be developed is instead leased to the Otago Aero Club Incorporated.

RECOMMENDATIONS

That the Council:

- a) **Approves** an Amendment to the Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated so that:
 - i) Council is no longer required to act as an agent for The Taieri Airport Trust in developing part of Taieri Airport; and
 - ii) the land that was to be developed is instead leased by The Taieri Airport Trust to the Otago Aero Club Incorporated upon the terms and conditions outlined in this report.
- b) **Delegates** to the Council's Chief Executive Officer, the authority to:
 - i) sign the Amendment on behalf of Council; and
 - ii) release information regarding the transfer of Taieri Airport at such time as the Chief Executive Officer considers appropriate.

BACKGROUND

- 3 There was a report to Council on 1 August 2017 regarding Taieri Airport. A copy of that report is attached as Attachment A, and the Minute Extract is attached as Attachment B.
- 4 The report of 1 August 2017 set out the details of an Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated ("2004 Agreement"). A copy of the 2004 Agreement is attached as Attachment C.
- 5 The 2004 Agreement, among other things, requires the Council to:
 - a) Transfer Taieri Airport to The Taieri Airport Trust ("Trust"); and
 - b) Act as the Trust's agent in selling or leasing that part of Taieri Airport shown in green on Attachment D ("Development Land").
- 6 The report of 1 August 2017 foreshadowed that:
 - a) There would be further discussions between the Council, The Trust and the Otago Aero Club Incorporated ("Aero Club") regarding the Development Land; and
 - b) A report back to Council following those discussions.
- 7 This report sets out the discussions with the Trust and the Aero Club regarding the Development Land.
- 8 All other matters required to complete the transfer of Taieri Airport from the Council to the Trust have been completed. This includes having the Council's infrastructure within Taieri Airport surveyed so that it will be protected by easements upon transfer, amending the Taieri Airport Trust Deed so that the Trust is no longer a Council Controlled Organisation and completing the conveyancing documents.

DISCUSSION

- 9 The 2004 Agreement specifies that the Council will transfer Taieri Airport to the Trust and, following transfer;
 - a) There will be a subdivision of Taieri Airport so that the Development Land has its own title;
 - b) The Trust will lease Taieri Airport, excluding the Development Land, to the Aero Club for \$1 plus GST per annum.
 - c) The Trust will appoint the Council as its agent to lease or sell the Development Land for the purpose of obtaining for the Trust "the maximum potential income or value of that land consistent with retaining the necessary operational and safety margins applying in respect of airfields."
 - d) The Council will pay the nett proceeds of the sale or lease of the Development Land to the Trust.
 - e) The Council will use the Council's Air Development Capital Reserve Fund to pay for the costs associated with the sale or lease of the Development Land.
- 10 Since 2004, there have been significant changes affecting the Development Land. The two key changes are:
 - a) The Reserves and Other Lands Disposal Act 2015 specifies that if the Trust sells all or any part of Taieri Airport then half of the proceeds must be paid to the Crown; and
 - b) The zoning around Taieri Airport has freed up industrial land in the area, which means that there is no longer the same need for the Development Land to be developed for industrial purposes.
- 11 Given the changes since 2004, the Trust no longer wants to sell the Development Land. It would prefer to lease the Development Land to the Aero Club on the basis that the Aero Club will meet the Trust's operational costs. The Aero Club wants to have a lease of all of Taieri Airport (including the Development Land) and is agreeable to paying the Trust's operational costs as rent.
- 12 The Trust and the Aero Club propose that:
 - a) The Council be released from its obligation to act as the Trust's agent in selling or leasing the Development Land; and
 - b) The lease from the Trust to the Aero Club be varied to include the Development Land and to record that the Aero Club will pay the Trust's annual operating costs as its annual rent for Taieri Airport.
- 13 A copy of the proposed Amendment to the 2004 Agreement is attached as Attachment E.
- 14 Council officers support the proposed Amendment as:
 - a) The Amendment releases the Council from acting as the Trust's agent in the sale or lease of the Development Land. The agency obligations would require staff resources and there are risks associated with being an agent, particularly when selling or leasing land.

- b) There is no longer the same need for the Development Land to be developed for industrial purposes.
 - c) The Trust would receive its operating costs from the Aero Club, and would therefore not be reliant on Council.
- 15 This proposal will also allow the Council to wind up the Council's Air Development Capital Reserve Fund ("Fund"). As set out above, the Fund was to be used for the costs associated with selling or leasing the Development Land.
- 16 There is approximately \$365,000 in the Fund.
- 17 It appears that the Fund was established around the time when Momona Airport was being developed. The Council sold various parcels of land that were previously part of Taieri Airport to help fund the costs of acquisition and development of Momona Airport. The Fund was used to pay the costs associated with the subdivision, development and sale of that land.
- 18 The Reserves and Other Lands Disposal Act 1973 specifies that the Fund can be used for the payment of certain costs associated with subdividing, leasing or selling all or part of Taieri Airport.
- 19 The 2004 Agreement specifies that the Council will apply the Air Development Capital Reserve Fund in accordance with the Reserves and Other Lands Disposal Act 1973, with any balance being paid to The Taieri Airport Trust.
- 20 Under the Reserves and Other Lands Disposal Act 1973, Council will need to apply the Fund as follows:
- a) Firstly, towards costs and expenses associated with the transfer of Taieri Airport from Council to the Trust; and
 - b) Secondly, by dividing the balance of the Fund so that half is paid to the Crown and half is used by Council to reduce any loans raised by Council in connection with the acquisition and development of Momona Airport, with any excess applied for Council purposes. (Note: The 2004 Agreement records that any excess would be paid to the Trust).
- 21 If the Council approves the proposed Amendment to the 2004 Agreement, Council Officers will proceed to wind up the Fund and apply the monies as required by the Reserves and Other Lands Disposal Act 1973 and the 2004 Agreement.

OPTIONS

Option One – Recommended Option – Approve Amendment to the 2004 Agreement

- 22 Under this Option, the Council would:
- a) Approve an amendment to the Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated so that:
 - i) Council is no longer required to act as an agent for The Taieri Airport Trust in developing part of Taieri Airport; and
 - ii) the land that was to be developed is instead leased by The Taieri Airport Trust to the Otago Aero Club Incorporated upon the terms and conditions outlined in this report.

- b) Delegate to the Council's Chief Executive Officer, the authority to:
- i) Sign the Amendment on behalf of Council; and
 - ii) release information regarding the transfer of Taieri Airport at such time as the Chief Executive Officer considers appropriate.

Advantages

- Releases the Council from the obligation to act as The Taieri Airport Trust's agent in selling and leasing Development Land;
- Removes the legal risks associated with being an agent;
- The need for Development Land has been addressed by changes of zoning at and around Taieri Airport. The requirement to develop the Development Land is therefore somewhat superfluous.
- The Taieri Airport Trust and the Club both want the Council to proceed with this Option.
- The Club gets to lease the whole of Taieri Airport, so can therefore better plan for use of the Taieri Airport.
- The Taieri Airport Trust has a revenue stream through the Club's agreement to meet the Trust's operational costs.
- The Council's Air Development Capital Reserve Fund can be wound up and distributed. The distribution would be in accordance with the Reserves and Other Lands Disposal Act 1973.

Disadvantage

- None identified.

Option Two – Status Quo – Remaining with the terms of the 2004 Agreement

- 23 Under this Option, the status quo would stand. This means that Council would be required to transfer Taieri Airport to The Taieri Airport Trust and then act as The Taieri Airport Trust's agent in selling or leasing the Development Land.

Advantages

- This Option has the potential to generate more money for The Taieri Airport Trust. It is noted however that The Taieri Airport Trust is happy to lease the Development Land to the Aero Club on the basis that the Aero Club will meet The Taieri Airport Trust's operational costs.

Disadvantages

- This Option would require Council staff resources, with no financial gain for the Council.
- The Council is exposed to the risks associated with being an agent.
- The perceived need for development has been addressed through zone changes in and around Taieri Airport. Developing the Development Land does not therefore achieve a significant planning benefit.

NEXT STEPS

24 Council officers will arrange completion of the transfer of Taieri Airport to the Trust.

25 Following transfer, Council officers will proceed towards winding up the Fund.

Signatories

Author:	Karilyn Canton - Senior In-House Legal Counsel
Authoriser:	Sue Bidrose - Chief Executive Officer

Attachments

	Title	Page
A	Report to Council - 1 August 2017	
B	Minute Extract from Council meeting of 1 August 2017	
C	Agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated	
D	Plan showing the Development Land in Green	
E	Proposed Amendment to 2004 Agreement	

SUMMARY OF CONSIDERATIONS***Fit with purpose of Local Government***

This decision relates to providing local infrastructure, local decision making and a public service, and it is considered good-quality and cost-effective.

Fit with strategic framework

	Contributes	Detracts	Not applicable
Social Wellbeing Strategy	☒	☐	☐
Economic Development Strategy	☒	☐	☐
Environment Strategy	☐	☐	☒
Arts and Culture Strategy	☐	☐	☒
3 Waters Strategy	☒	☐	☐
Spatial Plan	☐	☐	☒
Integrated Transport Strategy	☒	☐	☐
Parks and Recreation Strategy	☐	☐	☒
Other strategic projects/policies/plans	☐	☐	☒

Māori Impact Statement

There are no known impacts for tangata whenua.

Sustainability

The continued operation of the Taieri Airport supports social sustainability and also ensures the continued operation of a secondary airport for Dunedin.

LTP/Annual Plan / Financial Strategy / Infrastructure Strategy

There are no implications.

Financial considerations

The value of the Taieri Airport land will need to be written off in the Council's books.

Significance

This decision is of low to medium significance under the Council's Significance and Engagement Policy.

Engagement – external

Otago Aero Club Incorporated. The solicitors for the Taieri Airport Trust.

Engagement - internal

City Planning, Finance and Property Teams.

Risks: Legal / Health and Safety etc.

There are no material risks associated with the decision.

Conflict of Interest

There are no known conflicts of interest.

Community Boards

Taieri Airport falls within the boundaries of the Mosgiel Taieri Community Board. The Mosgiel Taieri Community Board has not been consulted as this report primarily relates to existing contractual obligations.

TAIERI AIRPORT- OTAGO AERO CLUB

Department: Civic and Legal

REASONS FOR CONFIDENTIALITY

Grounds:	S48(1)(a) - The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.
Reason:	S7(2)(g) - The withholding of the information is necessary to maintain legal professional privilege. S7(2)(i) - The withholding of the information is necessary to enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
In particular:	This report is confidential because it contains legal advice and relates to potential commercial negotiations.

EXECUTIVE SUMMARY

- 1 This report outlines the terms and conditions of an agreement dated 27 August 2004 between the Council and the Otago Aero Club Incorporated. The agreement was entered into by the parties as a means of resolving long outstanding issues.
- 2 As part of the agreement, the Council is required to transfer ownership of Taieri Airport at Mosgiel to The Taieri Airport Trust.
- 3 In recent years, legislation has been passed and Ministerial consent given to allow the transfer of Taieri Airport to The Taieri Airport Trust.
- 4 In meeting its obligations under the agreement, the Council will need to formally resolve to complete the transfer of ownership of Taieri Airport, decide who it wants as the Council appointed Trustees on The Taieri Airport Trust and consider whether the Council should seek an amendment to the The Taieri Airport Trust Deed given that the Trust is currently a Council Controlled Organisation.

RECOMMENDATIONS

That the Council:

- a) **Retains** John Bezett as one of the Council appointed Trustees of The Taieri Airport Trust.
- b) **Removes** Robert Clark as one of the Council appointed Trustees of The Taieri Airport Trust.
- c) **Appoints** Laura McElhone, the Council's Group Manager of Property Services, as one of the Council appointed trustees of The Taieri Airport Trust.
- d) **Delegates** to the Council's Chief executive Officer the authority to negotiate, approve and sign an amendment to The Taieri Airport Trust Deed where the amendment has the effect of the Council being able to appoint at least two Trustees on The Taieri Airport Trust but not the power to appoint half or more of the Trustees.
- e) **Resolves** that Taieri Airport does not need to offer all or any part of Taieri Airport back to the former owner under section 40 of the Public Works Act 1981 as the former owner was the Otago Aero Club Incorporated and it has consented to the transfer of Taieri Airport to The Taieri Airport Trust and the exceptions in section 40(2)(a) apply.
- f) **Transfers** Taieri Airport (being the land contained in CFR OT 2C/1307) to The Taieri Airport Trust, and completes all other matters required under the agreement dated 27 August 2004 between the Council and Otago Aero Club Incorporated.

BACKGROUND

Introduction

- 5 The Council is currently the registered owner of the Taieri Airport, as shown outlined in red on the attached plan ("Taieri Airport").
- 6 The Taieri Airport is 38.2691 hectares and is held in CFR OT 2C/1307.
- 7 The Council leased the Taieri Airport to The Otago Aero Club Incorporated ("Club") for a term of 21 years commencing on 21 December 1986 ("1986 Lease"). The 1986 Lease was for ten cents per annum, with the Club being responsible for all outgoings (including local body rates). The 1986 Lease recorded that, as at the date of the lease, all of the buildings at Taieri Airport were owned by the Club excluding one dwelling house.
- 8 Prior to the expiry of the 1986 Lease, the Council entered into an agreement dated 27 August 2004 with the Club ("2004 Agreement").
- 9 In essence, the 2004 Agreement records that:
 - a) The Taieri Airport Trust is established in accordance with the Trust Deed dated 27 August 2004 ("Taieri Airport Trust").
 - b) The Council and the Club, as the settlors, together settle Taieri Airport on the Taieri Airport Trust.

- c) Until Taieri Airport is transferred to the Taieri Airport Trust, the Club's lease shall continue to run on the terms and conditions contained in the 1986 Lease.
 - d) Once Taieri Airport is transferred to the Taieri Airport Trust, a new lease will be put in place for a perpetually renewable period of 99 years at a peppercorn rental ("New Lease"). The Club will continue to be responsible for all outgoings (including local body rates).
- 10 In 2015, the Reserves and Other Lands Disposal Act 2015 was enacted. That legislation specified that the Council may transfer Taieri Airport to the Taieri Airport Trust, subject to the Minister of Transport's consent. The Minister has now provided his consent to the transfer.
- 11 Gallaway Cook Allen has been acting for the Council in this matter since well before the 2004 Agreement. Gallaway Cook Allan has advised that the 2004 Agreement is fully binding on the Council.
- 12 In terms of the Taieri Airport itself, it currently has the status of an operational airfield under Civil Aviation Authority requirements. It serves as a secondary airport for Dunedin.
- 13 The Taieri Airport is zoned as Industrial 1 land in the District Plan and as Taieri Aerodrome under the 2GP.
- 14 The Rateable Value of Taieri Airport has been recently reviewed following an objection by the Club to the assessed value. The Capital Value is \$4,550,000 (with that figure being made up from a Land Value of \$2,700,000 and Value of Improvements of \$1,870,000).
- 15 Taieri Airport is the base for the Club and for private aircraft. The Club provides pilot training for the agricultural and tourist industries, as well as for commercial airlines.
- 16 The Rescue Helicopter, servicing the lower South Island, is based at Taieri Airport.

History

- 17 It is helpful to understand the history of this matter as it explains why the Council entered into the 2004 Agreement.
- 18 The Club was formed in 1927. In 1930, the Club purchased 100 acres of land on the Taieri and began developing it into an airport.
- 19 The Club became concerned about the future of the Airport and sought the Council's help to ensure the Airport's continued long term operation. As a result, the Club gifted the 100 acres ("1931 Trust Land") to the Council to hold on trust under the terms of a Trust Deed dated 5 August 1931 ("1931 Trust Deed").
- 20 The 1931 Trust Deed recorded that the Council held the 1931 Trust Land "in trust for the purposes of aviation generally and for the purposes of an airport for the City of Dunedin and the Provincial District of Otago and for the purposes of a licensed aerodrome".
- 21 The Council subsequently granted a lease of the 1931 Trust Land to the Club at a peppercorn rental, but required the Club to meet all outgoings in respect of the land.
- 22 The Club continued to use the 1931 Trust Land until World War 2. At that time, the Crown took over use of the land for wartime purposes.
- 23 In 1957, the Royal New Zealand Air Force released the 1931 Trust Land back to the Council.

- 24 Between 1957 and 1965, the Council sold parts of the 1931 Trust Land, which had by then been given an industrial designation by the Mosgiel Borough Council. It appears that the proceeds of sale were used at least partly to fund the acquisition and development of an airport at Momona.
- 25 As a result of the sale of part of the 1931 Trust Land, a substituted Trust Deed was signed in 1965 in relation to the remaining 38.2691 hectares of land that now forms the Taieri Airport. Apart from the reduced area of land, the principal terms of the 1965 Trust Deed were otherwise effectively the same as the original 1931 Trust Deed.
- 26 Doubts arose in regard to the power of the Council to subdivide, develop and sell parts of the 1931 Trust Land. This led to the enactment of the Reserves and Other Lands Disposal Act 1973. That Act was passed to:
- a) Explicitly allow the Council to subdivide, develop, lease or sell the remaining land.
 - b) Validate the earlier subdivision, development and sale of parts of the 1931 Trust Land.
 - c) Authorise the Council's use of its Air Development Capital Reserve Fund to pay all costs and expenses incurred by it in subdividing, developing, leasing or selling parts of the 1931 Trust Land.
 - d) Record that the proceeds from any future sales must be split evenly between the Council and the Crown, with the Council using its portion in reduction of any loans raised by the Council in connection with the acquisition and development of Momona Airport.
- 27 Understandably, the Club was concerned that the land that it had gifted to the Council on Trust may be sold at the expiry of the Club's lease term, with proceeds being paid to the Council and the Crown with no reference to the Club and the Trusts under which the original land had been held.
- 28 There was also some discussion at the time about the possibility of the Club being relocated to Momona which, for safety reasons, the Club did not see as a sensible option.
- 29 Following protracted discussions between the Council, the Club and the Ministry of Transport, the Council and the Club entered into the 2004 Agreement.

Agreement between Otago Aero Club Incorporated and Dunedin City Council

- 30 The objectives of the 2004 Agreement are recorded as being:
- a) That the Club have permanent security and occupancy in respect of the Taieri Airport;
 - b) That the Council divest ownership of the Taieri Airport to the Taieri Airport Trust;
 - c) That the affairs of the Taieri Airport Trust be regulated in a way acceptable to both the Club and the Council; and
 - d) That the Taieri Airport be reconfigured and developed for the benefit of the Taieri Airport Trust, the Club and the community of Otago generally.
- 31 In seeking to achieve those objectives, the 2004 Agreement:
- a) Requires the transfer of Taieri Airport to the Taieri Airport Trust at no cost.
 - b) Establishes the Taieri Airport Trust.

- c) Records the terms of a new proposed lease to the Club.

32 In addition, the 2004 Agreement records that:

- a) If at some time in the future the Council decides that it wants to extend Hagart Alexander Drive/Centre Street to Carncross Street (being the street that follows the western boundary of Taieri Airport), then the Club would agree to land being taken from the southern end of the runway if it is replaced with additional land at the northern end of the Club's main runway.
- b) The Council will act as the Taieri Airport Trust's agent to sell or lease the land shown in green on the attached plan ("Development Land"). This issue is discussed later in this report.

Taieri Airport Trust

33 The Taieri Airport Trust was established in 2004 by the Taieri Airport Trust Deed.

34 The Taieri Airport Trust Deed records that it has the following objects:

- a) As the primary object, the continuation, maintenance and advancement of Taieri Airport as a secondary airport in Dunedin for the use by the Club and the aviation public;
- b) As the secondary object, the development, maintenance and advancement of airport facilities elsewhere in the Dunedin city area for the benefit of the Club and the aviation public in the event that Taieri Airport cannot be used as a secondary airport in Dunedin;
- c) As the tertiary object, the purposes of aviation generally; and
- d) As the residuary object, any charitable purposes in Dunedin and in the Otago region which are from time to time selected by the Trustees and which are valid charitable purposes.

35 The Taieri Airport Trust Deed also records that:

- a) The settlors of the Trust are the Council and the Club.
- b) The Council has a right of first refusal in the event that the Trust wishes to sell Taieri Airport. The offer to the Council would be on terms and conditions fixed by the Trustees in their discretion.
- c) The Trustees have wide powers to achieve the objects of the Trust, but they may not operate a trading undertaking, borrow money, create a security interest over any of the Trust's assets or enter into any transactions with related parties unless certain conditions have been met.
- d) The Trust Deed may only be altered with the prior written consent of the Council and the Club and after 14 days' notice to all Trustees.
- e) The Council has the power to appoint half the Trustees ("Council Trustees") and the Club has the power to appoint the other half ("Club Trustees").
- f) There are currently four Trustees, but the Trustees may increase the number to six.
- g) The Council has the power to appoint Trustees and to remove or replace any Trustees appointed by it. The Club has the same powers in relation to its Trustees.

- h) Matters may only be determined by the unanimous agreement of the Trustees present and voting on a particular matter. If unanimous agreement is not reached, the Council or the Club has the right to have the matter determined by mediation or arbitration.
 - i) There are appropriate indemnities for the Trustees.
 - j) Trustees must hold at least one meeting per annum.
 - k) The Taieri Airport Trust may only be wound up by law or by a unanimous resolution after first obtaining written consent of the Council and the Club. In the event that the Trust was wound up, then this would inevitably involve a sale of the Taieri Airport and would trigger Council's right of first refusal. Whether or not the Council exercised its right of first refusal, the Crown would receive half of the sale proceeds and the remaining funds would be distributed to a charitable purpose in Dunedin and the Otago region approved by both the Council and the Club.
- 36 The Taieri Airport Trust is not currently incorporated under the Charities Act 2005. The Taieri Airport Trust's application for registration under that Act was declined in 2013 by the Charities Registration Board.
- 37 The present Council Trustees are Robert Clark (a former Council Property Manager) and John Bezett (a former City Councillor). The present Club Trustees are Sir Julian Smith and Dougal Rillstone.

Transfer of Taieri Airport from Council to the Taieri Airport Trust

- 38 The Council is the present owner of Taieri Airport.
- 39 The Club has an unregistered lease of Taieri Airport and owns a lot of the improvements on the property.
- 40 The 2004 Agreement specifies that :
- "The Club and the Council wish to recognise, protect and advance the ideals of the 1931 Trust and to this end wish to transfer the Taieri Airport land contained in CT 2C/1307 by way of settlement to a replacement Trust, to be called The Taieri Airport Trust, which will then in turn lease that part of the Taieri Airport which does not contain the Development Land...to the Club...."*
- 41 The clear intent of the 2004 Agreement is that the land and improvements at Taieri Airport will be transferred to the Taieri Airport Trust without payment. The Council will need to formally resolve to transfer Taieri Airport.
- 42 Before passing a resolution to transfer Taieri Airport, it must first consider whether it has an obligation to offer Taieri Airport back to the previous owner under section 40 of the Public Works Act 1981.
- 43 Here, the previous owner of Taieri Airport was the Club. Although the Crown was the owner of Taieri Airport during World War 2 to 1957, there is no obligation to offer this land back to the Crown as it is also a public entity.
- 44 In considering whether the Council has any obligations to the Club under section 40 of the Public Works Act 1981, the writer's view is that there is no obligation to first offer the land back to the Club. This is because the Club has consented to the transfer of Taieri Airport to The Taieri Airport Trust. Further, given the history of this matter, including the need to obtain specific legislation in the form of the Reserves and Other Lands Disposal Act 2015 and the details within the 2004 Agreement, it is open to the Council to resolve that the exceptions in section 40(2)(a) apply, namely that the Council considers it would be impracticable, unfair and/or unreasonable to offer the land back.

Lease from the Taieri Airport Trust to the Otago Aero Club Incorporated

- 45 As set out above, the 1986 Lease of Taieri Airport from the Council to the Club has continued to the present day on the basis that the rent is ten cents per annum, with all outgoings (including local body rates) being payable by the Club.
- 46 Under the 2004 Agreement, once Taieri Airport has been transferred to the Taieri Airport Trust, then the Taieri Airport Trust must lease Taieri Airport to the Club for 99 years, with a perpetual right of renewal. The lease however excludes the Development Land (being the land outlined in green on Attachment A).
- 47 The rent is to be \$1.00 plus GST per annum, with the Club paying all local body rates and any utility costs.
- 48 The 2004 Agreement records that the nominal rental payable reflects the Club's ongoing obligations under the lease to:
- a) Maintain all buildings, fixtures, fittings and other improvements at Taieri Airport.
 - b) Maintain the airport improvements (namely all runways, runway signage, taxiways, aprons, plane parking or standing areas and all associated lighting, fencing and other equipment) to the necessary standard required for the Taieri Airport to remain a secondary airport in the Dunedin area.
 - c) Ensure that any sub-lessee improvements are maintained.
- 49 The proposed New Lease records that:
- a) The Club may only use the Taieri Airport land for aviation purposes.
 - b) The Club has the right to control and manage use of the land by the aviation public (provided that it does not unreasonably prevent or restrict the use of the land by the aviation public).
 - c) The Club may impose reasonable charges for the use of Taieri Airport (such as landing charges and rents for use of its hangars).
 - d) From time to time, the Club may close Taieri Airport for special events.
 - e) The Club may set aside unused areas for cropping or farming.
 - f) The Club and the Taieri Airport Trust both have various rights to construct, alter or demolish improvements on Taieri Airport.
 - g) Subject to certain conditions, the Club may sublet portions of Taieri Airport.
 - h) The Club must indemnify the Taieri Airport Trust from any negligent act or omission of the Club.
 - i) The Club must meet all statutory obligations, which would include certain obligations under the Health and Safety at Work Act 2015.

Development land

- 50 As mentioned earlier in this report, the 2004 Agreement records that the Council will act as the Taieri Airport Trust's agent to sell or lease the Development Land shown in green on the attached plan. The Development Land is excluded from the proposed New Lease from the Taieri Airport Trust to the Club.

- 51 The 2004 Agreement specifies that the parties' intentions are to obtain for the Taieri Airport Trust the maximum potential income or value for the Development Land, consistent with retaining the necessary operational and safety margins applying in respect of an airfield.
- 52 The intention to obtain maximum potential income or value is tempered by a subsequent clause in the 2004 Agreement that records that the Club would prefer the Development Land to be leased rather than sold so as to secure rental income to assist the Taieri Airport Trust to further develop the objects of the Trust.
- 53 In any event, any proposals in regard to the Development Land would need to be carefully considered by the Council. This is because of a number of factors, including the following:
- a) The Reserves and Other Lands Disposal Act 2015 records that half the net sale proceeds of any sale would need to be paid to the Crown. The Council and the Club made a joint submission to the Primary Production Select Committee to have that requirement removed, but were unsuccessful.
 - b) The zoning in this area has changed extensively since the 2004 Agreement. Around the time of the 2004 Agreement, there was a perceived shortage of industrial land in the area, but plan change 9B opened up a lot of industrial land in the area. Also, the 2GP has a separate Taieri Aerodrome zone which provides that essentially any industrial activity is a non-complying activity.
 - c) The 2004 Agreement specifies that the Council agrees to apply the Council's Air Development Capital Reserve Fund for development costs, with the balance being paid to the Taieri Airport Trust.

DISCUSSION

- 54 If the Council wishes to change any of the terms of the 2004 Agreement, this may only occur if the Club is agreeable to the change. Similarly, any changes to the Taieri Airport Trust Deed would need to be approved by the Council, the Club and all Trustees of the Taieri Airport Trust.
- 55 At this point in time, it is prudent for the Council to consider who it wants as the Council Trustees and also whether it wants the Taieri Airport Trust to be a Council Controlled Organisation ("CCO").
- 56 As the Council has the power to appoint half of the Trustees, this technically makes the Taieri Airport Trust a CCO under the Local Government Act 2002.
- 57 Council Officers do not see any need for the Taieri Airport Trust to be a CCO, but anticipate that there will be statutory compliance costs associated with meeting the obligations under the Local Government Act 2002 in relation to CCOs.
- 58 Accordingly, Council Officers recommend that an amendment be sought to the Trust Deed so that the Council no longer has the ability to appoint half the trustees. This could be achieved in a number of ways. For example, the Taieri Airport Trust Deed could be amended so that:
- a) The Council has the power to appoint two Trustees and the Club has the power to appoint three Trustees; or
 - b) The Club and the Council have the power to appoint the same number of Trustees, but there is provision for the appointment of an independent Trustee.

- 59 Initial discussions with the Club have indicated that the Club is likely to be happy with such a change, although the Club's preference appears to be to have a third Trustee appointed by the Club rather than an independent Trustee.
- 60 When considering what changes the Council might like to make to the number of Trustees, it is useful to bear in mind that the Taieri Airport Trust Deed specifically states that:
- a) a quorum requires all Trustees; and
 - b) any decisions can only be made by unanimous agreement. In the event that unanimous agreement is not reached, then either the Council or the Club may require the matter to be determined by mediation and/or arbitration.
- 61 Given that all decisions must be unanimous, it would be possible to have fewer Council appointees than the Club and still retain some level of control over the Taieri Airport through its Trusteeship on the Taieri Airport Trust.
- 62 As the Trust Deed can only be amended by the Trustees after the prior written consent of the Council and the Club, Council Officers recommend that the Council delegate to the Council's Chief Executive Officer the authority to negotiate, approve and sign an amendment to the Taieri Airport Trust Deed where the amendment has the effect of the Council having at least two Trustees appointed to the Taieri Airport Trust but not the power to appoint half or more of the Trustees.
- 63 Irrespective of whether or not the Club agrees to an amendment of the Taieri Airport Trust Deed, the Council now needs to consider whether it wants to change who it appoints as its Trustees on the Taieri Airport Trust.
- 64 As mentioned above, the present Council appointed Trustees are John Bezett (a former City Councillor) and Robert Clark (a former Council Property Manager).
- 65 Following discussions with the Mayor, Council Officers suggest retaining John Bezett, removing Robert Clark and appointing Laura McElhone (the Council's Group Manager of Property Services).
- 66 This would bring the Council's appointed Trustees on the Taieri Airport Trust to two.

OPTIONS

- 67 Only one option has been considered as the Council is contractually and legally bound to meet its obligations under the 2004 Agreement. The 2004 Agreement specifies that the Council must transfer Taieri Airport to the Taieri Airport Trust.
- 68 Although there are other options in regard to the administrative side of this matter (that is, who the Council wants as its Trustees on the Taieri Airport Trust and whether or not it wants the Trust to be a CCO), it does not have any discretion around the substantive issue of the transfer of Taieri Airport to the Taieri Airport Trust.
- 69 If the Council wants to appoint different Trustees to those recommended in this report, then this is something which is open to the Council. Similarly, it is open to the Council to decide whether or not it wants the Taieri Airport Trust to be a CCO. It is noted, however, that Council Officers do not see any need for the Trust to be a CCO and that there are statutory compliance costs that would come from the Trust being a CCO.
- 70 This report recommends that the Council pass the resolutions and grants the delegation set out under the heading "Recommendations". This will have the effect of:
- a) The Council appointing John Bezett and Laura McElhone as its Trustees on the Taieri Airport Trust.

- b) The Council's Chief Executive Officer seeking an amendment to the Taieri Airport Trust Deed so that the Trust is not a CCO.
- c) The Council transferring Taieri Airport to the Taieri Airport Trust.

Advantages

- This option meets the Council's contractual obligations.
- If the Club and the Trustees of the Taieri Airport Trust agree to an amendment to the Taieri Airport Trust Deed then it will no longer be a CCO.
- The transfer of Taieri Airport to the Taieri Airport Trust is consistent with the nature and spirit of the original gift by the Club and the original Trusts of 1931 and 1965.
- Resolves a long outstanding issue between the Council and the Club.
- Allows the Club to have essentially permanent tenure of Taieri Airport.
- Taieri Airport remains a secondary airport for Dunedin.
- In the event of flooding on the Taieri and the Momona Airport being rendered unusable, the Taieri Airport provides an alternative facility.
- The Airport provides a base for the Club and the Rescue Helicopter.
- The New Lease of Taieri Airport from the Taieri Airport Trust to the Club specifies that the Club must maintain the improvements, pay outgoings and not unreasonably restrict the use of the land by the aviation public.

Disadvantages

- The Council will no longer own the Taieri Airport.
- The Council may be required to act as an agent in the sale or lease of the Development Land. This however would be the subject of a further report to Council.

71 No further options have been considered as the Council is contractually bound to meet its obligations under the 2004 Agreement.

NEXT STEPS

72 The Club has indicated that it would like to discuss with Council Officers the possibility of an exchange or purchase of additional land for the Taieri Airport. Any such discussions would be subject to a further report back to Council.

73 There will need to be discussions between the Council, the Club and the Taieri Airport Trust in relation to the Development Land. Again, any such discussions would be subject to a further report back to Council.

Signatories

Author:	Karilyn Canton - In - House Legal Counsel
Authoriser:	Kristy Rusher - Manager Civic and Legal Sandy Graham - General Manager Strategy and Governance

Attachments

	Title	Page
A	Taieri Airport Map	

SUMMARY OF CONSIDERATIONS

Fit with purpose of Local Government

This decision relates to providing local infrastructure, local decision making and a public service, and it is considered good-quality and cost-effective.

Fit with strategic framework

	Contributes	Detracts	Not applicable
Social Wellbeing Strategy	☒	☐	☐
Economic Development Strategy	☒	☐	☐
Environment Strategy	☐	☐	☒
Arts and Culture Strategy	☐	☐	☒
3 Waters Strategy	☐	☐	☒
Spatial Plan	☐	☐	☒
Integrated Transport Strategy	☒	☐	☐
Parks and Recreation Strategy	☐	☐	☒
Other strategic projects/policies/plans	☐	☐	☒

Māori Impact Statement

No known impacts for Tangata Whenua.

Sustainability

The continued operation of the Taieri Airport supports social sustainability and also ensures the continued operation of a secondary airport for Dunedin.

LTP/Annual Plan / Financial Strategy / Infrastructure Strategy

There are no implications for the LTP or the Annual Plan.

Financial considerations

The value of the Taieri Airport land will need to be written down in the Council's books.

Significance

This decision is of low to medium significance under the Council's Significance and Engagement Policy.

Engagement – external

Otago Aero Club Incorporated. The solicitors for the Taieri Airport Trust.

Engagement - internal

Parks and Recreation, Transport, City Planning and Property Teams

Risks: Legal / Health and Safety etc.

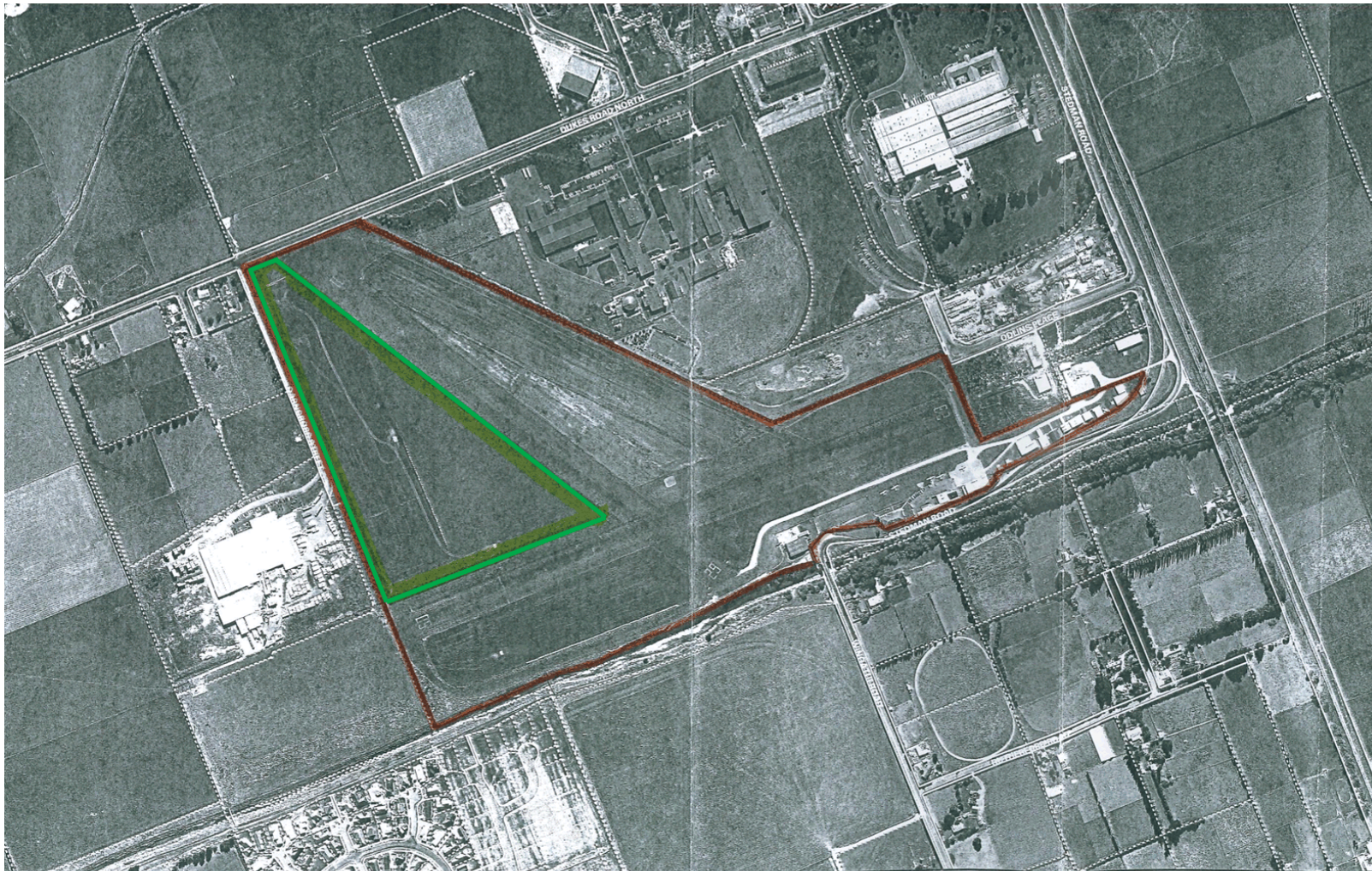
There are no material risks associated with the decision.

Conflict of Interest

No conflict of interest identified.

Community Boards

The Taieri Airport falls within the boundaries of the Mosgiel Taieri Community Board. The Mosgiel Taieri Community Board has not been consulted as this report primarily relates to matters that the Council is contractually obliged to complete.



Photographic Property Map



Selected Extent
Date: 23/4/4 User: evandomm



PARCEL LINES CAN VARY FROM
LEGAL PARCEL BOUNDARIES.
This map is for illustration purposes only
and is not accurate to surveying, engineering
or ortho-photographic standards. Every effort
has been made to ensure correctness and
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MINUTE EXTRACT

COUNCIL

01/08/2017

Item: C3
Subject: Taieri Airport- Otago Aero Club

Moved (Cr Kate Wilson/Cr Rachel Elder):

That the Council:

- a) **Retains** John Bezett as one of the Council appointed Trustees of The Taieri Airport Trust for the term of the triennium.
- b) **Removes** Robert Clark as one of the Council appointed Trustees of The Taieri Airport Trust.
- c) **Appoints** Laura McElhone, the Council's Group Manager of Property Services, as one of the Council appointed trustees of The Taieri Airport Trust.
- d) **Delegates** to the Council's Chief Executive Officer the authority to negotiate, approve and sign an amendment to The Taieri Airport Trust Deed where the amendment has the effect of the Council being able to appoint at least two Trustees on The Taieri Airport Trust but not the power to appoint half or more of the Trustees.
- e) **Resolves** that Taieri Airport does not need to offer all or any part of Taieri Airport back to the former owner under section 40 of the Public Works Act 1981 as the former owner was the Otago Aero Club Incorporated and it has consented to the transfer of Taieri Airport to The Taieri Airport Trust and the exceptions in section 40(2)(a) apply.
- f) **Transfers** Taieri Airport (being the land contained in CFR OT 2C/1307) to The Taieri Airport Trust, and completes all other matters required under the agreement dated 27 August 2004 between the Council and Otago Aero Club Incorporated.
- g) **Authorises** the Chief Executive Officer to make the report public at the appropriate time.

Motion carried (CNL/2017/168)

Amendment to Agreement

Otago Aero Club Incorporated

Dunedin City Council

**anderson
lloyd.**

Parties

- (1) Otago Aero Club Incorporated (**Club**)
- (2) Dunedin City Council (**Council**)

Background

- A. The Club and the Council are parties to an Agreement entered into between them dated 27 August 2004.
- B. Under the terms of the Agreement, the parties agreed to restructure the ownership and occupancy of the property known as the Taieri Airport, and resettle it on the Taieri Airport Trust.
- C. The Agreement provided that, following resettlement, the property would be subdivided into two parcels and dealt with as follows:
 - One parcel (described in the Agreement as the "*Development Land*") was to be developed and dealt with by the parties under the terms of clause 6 of the Agreement; and
 - The other parcel (described in the Agreement as the "*Airport Land*") was to be leased by the Trust to the Club under the terms of clause 5 of the Agreement.
- D. The parties have agreed that they no longer want to develop the Development Land in the way originally intended, but rather for it to remain in the ownership of the Trust.
- E. The parties record their agreement in this Deed.

Agreement

- 1 In this Deed:

Agreement means the Agreement between the Club and the Council dated 27 August 2004.

Airport Land means the land described in clauses 1.3 and 1.4 of the Agreement, being part of the Taieri Airport, outlined in red (but excluding the Development Land) shown on the plan attached to the Agreement.

Club means the Otago Aero Club Incorporated.

Council means the Dunedin City Council.

Development Land means the land described in clause 6.1 of the Agreement, being part of the Taieri Airport, outlined in green on the plan attached to the Agreement.

Taieri Airport means all of the property which comprises the Airport Land and the Development Land, containing 36.2691 ha approximately being Lot 1 Deposited Plan 11036 and being all of the land in Certificate of Title 2C/1307 (Otago Registry), noting that the property will be subject to easements in gross as detailed in Title Plan LT 518833.

Trust means the Trust established by the Club and the Council under Deed dated 27 April 2004.

2 The parties agree to amend the Agreement as follows:

(a) **Clause 6: Disposition of Development Land**

Sub-clauses 6.1 to 6.4 (inclusive) of the Agreement are deleted. For the sake of certainty, sub-clause 6.5 remains.

(b) **Clause 5: Lease**

Clause 5 of the Agreement is varied to read:

5.1 Following re-settlement of the Taieri Airport, the parties will procure the Trust to lease the Taieri Airport in perpetuity to the Club. Both parties agree to do and sign all such acts and things within their power and reasonably necessary to provide the Club a lease in perpetuity of the Taieri Airport.

5.2 (a) The lease of the land from the Trust to the Club will be in the form attached.

(b) Until that new lease is entered into, the Club will continue to occupy the Taieri Airport upon the terms and conditions contained in the existing lease from Council, which lease will run on after expiry upon the same terms and conditions until the new lease is in place.

3 All other terms of the Agreement are confirmed.

Execution as a Deed

Signed by **Otago Aero Club Incorporated** by
affixing its common seal in the presence of:

Authorised Witness

Authorised Witness

Common Seal

Signed by **Dunedin City Council** by affixing its
common seal in the presence of:

Authorised Witness

Authorised Witness

Common Seal

Form 11

Lease instrument

(Section 91 Land Transfer Act 2017)

Record of Title (unique identifier)	All/part	Area/Description of part
OT 2C/1307	All	36.2691 ha

Lessor

THE TAIERI AIRPORT TRUST

Lessee

OTAGO AERO CLUB INCORPORATED

Estate or Interest

Insert "fee simple"; "leasehold in lease number" etc.

Fee Simple

Lease Memorandum Number *(if applicable)*

N/A

Term

Ninety Nine (99) years from [] 2019 (the **Commencement Date**)

Rental

As per Clause 2 of the Terms of Lease set out in the Annexure Schedule.

Lease and Terms of Lease *If required, set out the terms of lease in Annexure Schedules*

The Lessor leases to the Lessee and the Lessee accepts the lease of the above Estate or Interest in the land in the affected record of title(s) for the Term and at the Rental and on the Terms of Lease set out in the above Lease Memorandum or in the Annexure schedule(s) (if any)

Annexure Schedule

Terms of Lease

1. Definitions and Interpretation

- 1.1 In this lease the following words and phrases shall have the meanings ascribed to them unless a contrary intention is expressed or unless the context otherwise requires:

"airport improvements" means all runways, runway signage, taxiways, aprons, plane parking or standing areas and all associated lighting, fencing (including all boundary fencing for the land) and other equipment used in association there with situated on the land.

"default interest rate" shall mean 5% per annum above the Bank of New Zealand base rate.

"improvements" means all buildings, fixtures, fittings and other improvements now or at any time during the term that are constructed or erected on, in or under or made to the land, other than airport improvements and the Sub-Lessee improvements.

"Lessee" includes the Lessee's successors and assigns and where not repugnant to the context includes the employees, agents, invitees, licensees and contractors of the Lessee.

"Lessor" includes the Lessor's successors and assigns and where not repugnant to the context includes the employees, agents, contractors and authorised representatives of the Lessor.

"Secondary Airport" means an airport of the dimension and standard of the current Taieri Airfield as at the commencement of this Lease being:

- (a) Operational runway directions and lengths:
 - (i) Runways 23/05 – 855 metres x 45 metres
 - (ii) Runways 11/29 – 759 metres x 45 metres.
- (b) Standard:
 - (i) Grass firm for groups 5 to 7 Equivalent Single Wheel Loading 6350 kg (as detailed in the NZAIP Planning Manual)

It is acknowledged that at the date of this lease the airport currently has the status of a current operational airfield meeting current Civil Aviation Authority requirements.

"Sub-Lessee improvements" means all buildings, fixtures, fittings and other improvements now or at any time during the term that are constructed or erected on, in or under or made to the land by Sub-Lessees of the Lessee.

"the Schedule" means the details set out on the front of this Lease.

- 1.2 In this Lease unless a contrary intention is expressed:

- (a) Clause headings are for reference only and shall not affect the interpretation of this Lease.

- (b) Words denoting the singular shall include the plural and vice versa and the one gender shall include the other genders and words denoting persons shall include any firm, company or other body whether incorporated or not.
- (c) Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally.
- (d) Reference to anything of a particular nature following upon a general statement shall not in any way derogate from or limit the application of the general statement unless the particular context requires such derogation or limitation.

1.3 The covenants, powers and provisions implied in leases by the Property Law Act 2007 shall not apply to this Lease.

2. Rental

2.1 (a) The Lessee shall pay to the Lessor in each year during the term of the Lease, the annual rental specified in clause 2.1(b), by quarterly instalments paid in advance on the 1st days of March, June, September, and December in each year. The first instalment shall be paid on the Commencement Date, with a proportional adjustment for any broken period.

(b) (i) The Rental shall be estimated, initially at the Commencement Date, and thereafter as at the 31st day of March in each year during the term of the Lease, at a figure which includes only the Lessor's reasonable and actual costs of ownership of the Land, and administration of the Lease and the Trust, including Trustees' Liability Insurance for the Trustees of the Lessor (the **Lessor's Costs**).

(ii) After the 31st day of March in each year of the term of the Lease, the Lessor will supply to the Lessee reasonable details of the actual Lessor's Costs for the preceding year, and any overpayment shall be credited or refunded to the Lessee, and any deficiency will be payable to the Lessor on demand.

2.2 It is acknowledged by the parties that the Rental payable hereunder reflects the Lessee's ongoing obligations hereunder to:

- (a) Maintain the improvements situated on the Land during the term of the Lease; and
- (b) Maintain the airport improvements and to keep the same to the necessary standard required for the land to remain a secondary airport in the Dunedin area for the Lessee and the aviation public including not only airport improvements as are in existence at the commencement date but also any other airport improvements that are installed by either party hereto during the term of this Lease; and
- (c) Ensure that the Sub-Lessee improvements are maintained.

3. Utilities and outgoings

3.1 The Lessee shall punctually pay all charges and expenses in respect of all services, utilities, and amenities supplied to or used by the Lessee on the land including the following services:

- (a) Rates or levies payable to any local or territorial authority
- (b) Electricity
- (c) Water
- (d) Gas

- (e) Telephone rents and charges
- (f) All collection charges and levies in respect of the removal of rubbish
- (g) All New Zealand Fire Service charges and the maintenance service contract charges in respect of any fire detection equipment installed for the protection of the improvements and the airport improvements
- (h) Management expenses, but not to the extent that any profit is derived from same by the Lessor.

And the Lessee shall indemnify the Lessor against any liability in respect of such charges and expenses.

- 3.2 The Lessee will pay for all other outgoings whatsoever charged by whomsoever in relation to the land and the improvements and airport improvements situated thereon and the usage of the land by the Lessee for aviation purposes and the siting thereon of an airport for the Lessee and the aviation public.

4. Goods and Services Tax

- 4.1 The Lessee will pay all goods and services tax charged on the rent, outgoings or any other payments required to be made by it hereunder when such tax becomes due and payable.

5. Repairs and Maintenance

- 5.1 The Lessee will at its cost during the term keep and maintain all improvements and airport improvements whether owned by it or the Lessor in good condition order and repair and shall ensure that all Sub-Lessee improvements are kept and maintained in good condition, order and repair. In particular this clause shall extend to the keeping of the airport improvements maintained to a standard required by any appropriate authority for the land to remain as a Secondary Airport as well as an airport facility for the Lessee and the aviation public.
- 5.2 The Lessee acknowledges that throughout the term of the Lease there may be development of the airport improvements pursuant to the provisions of clause 8.2(b). The Lessee agrees that the maintenance obligations provided for in clause 5.1 shall extend to such new airport improvements.

6. Keep Land Clean and Tidy

- 6.1 The Lessee shall at all times keep and maintain the land and the improvements in a clean and tidy condition commensurate with the permitted use hereunder.

7. Use of the Land

- 7.1 The Lessee will not use or permit to be used all or any part of the land for any purpose other than for aviation purposes including the operation of:
- (a) A secondary airport for use by the Lessee and the aviation public; and
 - (b) The Lessee's own club activities including the siting of clubroom, hangars owned by it or its members and Sub-Lessee's activities and the siting of their associated improvements.
- 7.2 The Lessee shall during the term of this Lease be entitled to:
- (a) Control and manage use of the land by the aviation public (provided that it does not unreasonably prevent or restrict the use of the land by the aviation public) subject to the terms of this Lease;

- (b) Impose reasonable charges upon its members and members of the public for usage of the airport whether by way of landing fees, rentals or other charges provided that it shall have first obtained approval of the Lessor to the general level of such charges (such approval not to be unreasonably withheld in particular taking into account the maintenance and other obligations and the cost thereof imposed on the Lessee under this Lease);
 - (c) From time to time the airport to members of the public for the purposes of conducting special aviation events for itself or those conducted in association with other aero clubs or like organisations;
 - (d) From time to time close the airport for the purposes of conducting non-aviation events provided that the consent of the Lessor shall first be obtained (such consent not to be unreasonably withheld);
 - (e) From time to time close the airport where this is necessary or desirable to carry out its responsibilities under this Lease;
 - (f) Use those parts of the land not required for the time being for the purposes of aviation or of an airport for cultivating cropping or farming.
- 7.3 (a) The Lessee shall at all times comply with all statutes, ordinances, regulations, by-laws or other lawful requirements affecting or relating to the land or the use or occupation of the land and shall also comply with the provisions of all licences, requisitions, notices or orders made or given by any authority having jurisdiction in respect of the land or the use and occupation of the land; and shall keep the Lessor indemnified in respect of any non-compliance by the Lessee.
- (b) In particular the obligations in 7.3(a) shall extend to any additional requirements imposed upon the Lessee by any competent authority in relation to the operation of the land as a secondary airport.

8. Alteration and Improvements

- 8.1 Subject to clause 8.2 the Lessee may at any time and from time to time during the term of this Lease construct or erect additional improvements or alter or demolish any existing improvements so long as such additions or alterations are made for the uses set out in clause 7.
- 8.2 (a) Either party or both together may at any time and from time to time during the term of this Lease construct or erect new or make additions to the airport improvements provided that the written approval of the other shall have first been obtained.
- (b) For the sake of clarity the parties acknowledge that the continual development maintenance and advancement of the land as a secondary airport in the Dunedin area for the Lessee and the aviation public is intended by both parties.
- (c) Approvals sought under clause 8.2(a) shall involve consultation between the parties to a level commensurate with the level of cost of the improvement and providing the same shall be in advancement of the principles of clause 8.2(b) shall not be unreasonably withheld.

9. Improvements at Termination of Lease

- 9.1 Upon any termination of this Lease by effluxion of time or by earlier re-entry subject to holding over pursuant to clause 15.1 all improvements and all airport improvements shall transfer to the Lessor without payment of compensation by the Lessor to the Lessee. The Sub-Lessee improvements shall be removed within 3 months after any termination of this Lease.

10. Signs and Advertising

- 10.1 The Lessee shall be free to erect or display on the land any sign, advertisement, notice or advertising device provided that the same complies with the requirements of any authority having jurisdiction and relates to the Lessee's use of the land.
- 10.2 At the end or sooner termination of this lease the Lessee shall, at the Lessee's expense remove all signs, advertisements, notices, advertising devices, or any other distinctive marks put by or for the benefit of the Lessee on any part of the land.

11. Indemnities

- 11.1 The Lessor shall have no obligation or liability for any loss of or damage to any property of the Lessee, nor shall the Lessor be under any obligation or liability to the Lessee in respect of any loss, damages, costs or expenses incurred by the Lessee arising out of its occupancy of the land, except where the same has been occasioned by, or shall result from, the Lessor's neglect or failure to observe the terms and conditions of this lease where the Lessor is not discharged from liability pursuant to any other provision of this lease.
- 11.2 (a) The Lessee shall indemnify and keep indemnified the Lessor from and against:
- (i) All loss by damage or injury to any person; and
 - (ii) Any claims, proceedings or actions whatsoever made or brought against the Lessor in respect of the Land
- where these result from any negligent act or omission of the Lessee.
- (b) The Lessee shall only be liable to indemnify the Lessor pursuant to this clause to the extent the Lessor is not fully indemnified under any policy of insurance.

12. Assignment and Subletting

- 12.1 Except as provided for in clause 12.2 and 12.3 the Lessee shall not during the term of this Lease assign, sublet or part with possession of the land or any part thereof in any way and shall not without the prior written consent of the Lessor mortgage or encumber this Lease.
- 12.2 The Lessee may sublet portions of the land to its members for purposes associated with its club activities.
- 12.3 The Lessee may sublet portions of the land to other users upon such terms and conditions as it sees fit provided that such subletting shall only be for uses that are ancillary to the uses for which the Lessee is entitled to put the land hereunder and that the Lessor's written consent as to the terms and conditions thereof shall have been first obtained (the withholding of such consent to be subject to the same proviso as set out in clause 7.2(a) hereof).
- 12.4 No subletting hereunder shall be allowed whereby the Lessee's principal obligation hereunder to itself operate and maintain the airport on the land shall be compromised.

13. Quiet Enjoyment

- 13.1 Subject to the provisions of this Lease and the Lessee paying the rent and performing and observing all the covenants, conditions and agreements contained or implied in this Lease and on the part of the Lessee to be observed and performed, shall quietly hold and enjoy the Land without interruption by the Lessor or by any person claiming under the Lessor, until the expiry or sooner termination of this Lease.

14. Default, Distress, Etc

- 14.1 (a) If any of the following occur then the Lessor shall be entitled to re-enter upon the land or any part of the land whereupon the term of this Lease shall end:
- (i) If the Lessee fails to remedy the breach of any of the other terms contained or implied in this Lease and to be complied with by the Lessee within a reasonable time, (being not less than 60 days) from receipt by the Lessee of a written request from the Lessor to remedy such breach; or
 - (ii) If the Lessee makes or attempts to make any composition, assignment, or other arrangement with or for the benefit of the Lessee's creditors; or
 - (iii) In the event of the insolvency, liquidation or bankruptcy of the Lessee; or
 - (iv) In the event of the receivership of the Lessee where the receiver does not carry on the Lessee's business in a manner similar to the manner in which the Lessee carried on its business.
- (b) Termination of this Lease shall not release the Lessee from liability for rent then due or for any antecedent breach.
- 14.2 (a) If the Lessee has defaulted in the observance or performance of any of the provisions of this Lease to be complied with by the Lessee, and such default continues for 60 days after notice is given by the Lessor to the Lessee to remedy such default, then without prejudice to the Lessor's right of re-entry and termination or the Lessor's other remedies under this Lease, the Lessor may (but shall not be obliged to) do anything, including pay money, necessary to remedy the default.
- (b) The Lessor may enter and remain on the land with all persons, equipment or materials necessary for the purposes of this subclause, and all moneys paid and expenses incurred by the Lessor for such purpose shall, at the option of the Lessor, be a debt due from the Lessee to the Lessor, or may be treated by the Lessor as rent in arrear under this Lease and may be recovered by the Lessor accordingly.
- 14.3 The Lessee shall pay the Lessor's costs and expenses (including legal costs) incurred in remedying or attempting to remedy any breach by the Lessee of the terms of this Lease or incurred in the exercise or attempted exercise or enforcement of any power, right or remedy conferred upon the Lessor by this Lease or which the Lessor may otherwise incur in suing for rent or other moneys payable by the Lessee under this Lease.
- 14.4 Without prejudice to the other rights, powers and remedies of the Lessor under this Lease, any moneys expended by the Lessor on behalf of the Lessee or in order to remedy any breach of this Lease by the Lessee shall bear interest at the default interest rate, as from the date of expenditure of those moneys by the Lessor to the date of payment.

15. General

- 15.1 If the Lessor permits the Lessee to remain in occupation of the land after the expiry of the term without renewal, or sooner determination of the term, such occupation shall continue as a monthly tenancy only at the rent payable immediately before such expiration or determination, and otherwise on the same terms and conditions (so far as applicable to a monthly tenancy) as are contained or implied in this Lease.
- 15.2 No waiver or failure to act by the Lessor in respect of any one or more breaches by the Lessee of any of the terms contained or implied in this Lease shall operate as a waiver of another breach of any such terms.

- 15.3 Any notice to be given to the Lessor or the Lessee under this Lease shall be deemed sufficiently serviced if given in writing and sent by registered post to the addressee at the addressee's last known address in New Zealand, or in the case of a corporation to its registered office. Any notice posted or placed shall be deemed to have been served on the day following its posting or placement. Any notice or other document or writing served or given by the Lessor under this Lease or implied by statute shall be valid and effectual if served or given under the hand of the Lessor or a director or the company secretary of the Lessor (if the Lessor is a corporation), general manager, solicitor or other authorised representative for the time being of the Lessor.
- 15.4 Where the consent of the Lessor is required under this Lease such consent shall not be unreasonably or arbitrarily withheld.

16. Formal Meetings

- 16.1 It is acknowledged by the parties that given the use to which the land leased is put and the obligations of the parties hereunder there will be a requirement to review the provisions of the Lease and the performance of the parties thereunder on an ongoing regular basis.
- 16.2 The parties agree to meet formally every three (3) years on or about 1st July for such purpose.
- 16.3 No amendment shall be made to the Lease unless both parties agree. Any such amendments shall be recorded by registered Variation of Lease with each party sharing the cost equally.
- 16.4 Notwithstanding the provisions of clause 16.2 the parties agree that should during the period between the said three (3) yearly meeting either parties wish to call a meeting to formally discuss any aspects in relation to the leasing arrangements then the parties will meet upon one party giving one month's written notice to the other calling such meeting.

17. Dispute Resolution

- 17.1 If a party has any dispute with the other party in connection with this Agreement including decisions made pursuant to the terms of this Agreement:
- (a) That party will promptly give full written particulars of the dispute to the other.
 - (b) The parties will promptly meet together and in good faith try and resolve the dispute.
- 17.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 17.3 The party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 17.4 The mediation procedure is:
- (a) The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the Arbitrators and Mediators' Institute of New Zealand or the president's nominee.
 - (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
 - (c) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
 - (d) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.

- (e) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.

- 17.5 The terms of settlement are binding on the parties and override the terms of the Agreement if there is any conflict.
- 17.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 17.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 17.8 Either party may commence arbitration or proceedings when mediation ceases under this clause.
- 17.9 If the dispute is referred to arbitration the provisions of clause 43 of the Auckland District Law Society Commercial lease, Sixth Edition 2012 (5) shall apply (copy clause 43 annexed).
- 17.10 Neither party will unreasonably delay the dispute resolution procedures in this clause.
- 17.11 This clause does not apply to:
 - (a) Any dispute arising in connection with any attempted renegotiation of this agreement; or
 - (b) An application by either party for urgent interlocutory relief.
- 17.12 Pending resolution of any dispute the parties will perform this Agreement in all respects including performance of the matter which is the subject of dispute.

18. Right of Renewal

- 18.1 If the Lessee is not in breach of this lease and has given to the Lessor written notice to renew the lease at least three (3) calendar months before the end of the term hereby created then the Lessor will at the cost of the Lessee renew the lease for a further term of ninety-nine (99) years and the renewed lease shall be upon and subject to the covenants and agreements herein expressed and implied including this right of renewal.

Arbitration Schedule (Clause 17.9)

- 42.2** In respect of the means of service specified in subclause 42.1(b)(2), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
 - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
 - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
 - (d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 42.3** In the case of a notice to be served on the Tenant, if the Landlord is unaware of the Tenant's last known address in New Zealand or the Tenant's facsimile number, any notice placed conspicuously on any part of the premises shall be deemed to have been served on the Tenant on the day on which it is affixed.
- 42.4** A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 42.5** Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for subclause 47.1(p).
- 42.6** Any period of notice required to be given under this agreement shall be computed by excluding the date of service.

Arbitration

- 43.1** The parties shall first endeavour to resolve any dispute or difference by agreement and if they agree by mediation.
- 43.2** Unless any dispute or difference is resolved by mediation or other agreement within 30 days of the dispute or difference arising, the same shall be submitted to the arbitration of one arbitrator who shall conduct the arbitral proceedings in accordance with the Arbitration Act 1996 or any other statutory provision then relating to arbitration.
- 43.3** If the parties are unable to agree on the arbitrator, an arbitrator shall be appointed, upon request of any party, by the president or vice president of the New Zealand Law Society. That appointment shall be binding on all parties to the arbitration and shall be subject to no appeal. The provisions of Article 11 of the First Schedule of the Arbitration Act 1996 are to be read subject to this and varied accordingly.
- 43.4** The procedures prescribed in this clause shall not prevent the Landlord from taking proceedings for the recovery of any rent or other monies payable under this lease which remain unpaid or from exercising the rights and remedies in the event of the default prescribed in subclause 28.1.

No Implied Terms

- 44.1** The covenants, conditions and powers implied in leases pursuant to the Property Law Act 2007 and sections 224 and 266(1)(b) of that Act shall not apply to and are excluded from this lease where allowed.

Limitation of Liability

- 45.1** If any person enters into this lease as trustee of a trust, then:
- (a) That person warrants that:
 - (1) that person has power to enter into this lease under the terms of the trust; and
 - (2) that person has properly signed this lease in accordance with the terms of the trust; and
 - (3) that person has the right to be indemnified from the assets of the trust and that right has not been lost or impaired by any action of that person including entry into this lease; and
 - (4) all of the persons who are trustees of the trust have approved entry into this lease.
 - (b) If that person has no right to or interest in any assets of the trust except in that person's capacity as a trustee of the trust, that person's liability under this lease will not be personal and unlimited but will be limited to the actual amount recoverable from the assets of the trust from time to time ("the limited amount"). If the right of that person to be indemnified from the trust assets has been lost or impaired as a result of fraud or gross negligence that person's liability will become personal but limited to the extent of that part of the limited amount which cannot be recovered from any other person.
- 45.2** Notwithstanding subclause 45.1, a party to this lease that is named in item 17 of the First Schedule as a limited liability trustee, that person's liability will not be personal and unlimited but limited in accordance with subclause 45.1(b).

Counterparts

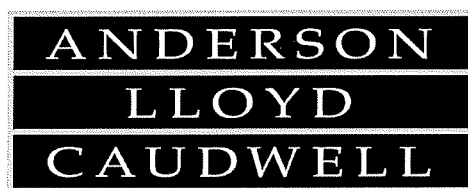
- 46.1** This lease may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same lease. A party may enter into this lease by signing a counterpart copy and sending it to the other party, including by facsimile or email.

DEFINITIONS AND INTERPRETATION

- 47.1** In this lease:
- (a) "building services" means all services provided by the Landlord as an integral part of the building for the general use and enjoyment of the building by its tenants or occupants including water, gas, electricity, lighting, air conditioning, heating and ventilation, telecommunications, lifts and escalators whether or not they are located within the premises.
 - (b) "CPI" means the Consumer Price Index (All Groups) published by Statistics New Zealand or other government agency and any revised, replacement or substituted index.
 - (c) "Default GST" means any additional GST, penalty (civil or otherwise), interest, or other sum imposed on the Landlord (or where the Landlord is or was a member of a GST group its representative member) under the GST Act or the Tax Administration Act 1994 by reason of non-payment of any GST payable in respect of the supply made under this lease but does not include any sum levied against the Landlord (or where the Landlord is or was a member of a GST group its representative member) by reason of a default or delay by the Landlord after payment of the GST to the Landlord by the Tenant.
 - (d) "emergency" for the purposes of subclause 27.5 means a situation that:
 - (1) is a result of any event, whether natural or otherwise, including an explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, infestation, plague, epidemic, failure of or disruption to an emergency service; and
 - (2) causes or may cause loss of life or serious injury, illness or in any way seriously endangers the safety of the public or property; and
 - (3) the event is not caused by any act or omission of the Landlord or Tenant.

AGREEMENT

between
Otago Aero Club Incorporated
and
Dunedin City Council



BARRISTERS, SOLICITORS & NOTARIES SINCE 1862

gallaway cook allan
LAWYERS

Agreement

Date:

27 August

2004

Parties

1. **Otago Aero Club Incorporated** ("the Club")
2. **Dunedin City Council** ("the Council")

BACKGROUND

1. The parties acknowledge that the purpose of this Agreement is to resolve certain issues relating to the restructuring of the ownership and occupancy of the land which comprises the Taieri Airport.
2. It is acknowledged that the restructuring should meet the following objectives:
 - (a) That the Club have permanent security and occupancy in respect to the Taieri Airport.
 - (b) That the Council will divest ownership of the land to a community trust.
 - (c) That the affairs of the trust are regulated in a way acceptable to both the Club and the Council; and
 - (d) That the Taieri Airport be reconfigured and developed for the benefit of the said community trust, the Club and the community of Otago generally.

PART 1: THE TAIERI AIRPORT

1. Re-settlement of the Taieri Airport

- 1.1 The Council is the registered proprietor of the land known as the Taieri Airport. The Taieri Airport contains 36.2691 ha approximately being Lot 1 Deposited Plan 11036 and being all of the land comprised in Certificate of Title 2C/1307 (Otago Registry). A copy of CT 2C/1307 is attached.
- 1.2 The Club gifted the original Taieri Airport to the Council to hold on trust under the terms of a trust deed dated 5 August 1931, a copy of which is attached ("the 1931 Trust"). The Club now occupies the current Taieri Airport under a lease from the Council, a copy of which is attached.

The parties are in dispute as to whether trusts arise under the 1931 Trust in relation to the current Taieri Airfield, with the Council maintaining that it is unclear whether or not any such binding trusts apply. Notwithstanding its position as to the effect of the 1931 Trust, the Council has agreed, solely for the purposes of the resolution contained in this Agreement, to proceed on the basis that such trusts do apply.



- 1.3 (a) The Club and the Council wish to recognise, protect and advance the ideals of the 1931 Trust and to this end wish to transfer the Taieri Airport land contained in CT 2C/1307 by way of settlement to a replacement Trust, to be called The Taieri Airport Trust, which will then in turn lease that part of the Taieri Airport which does not comprise the Development Land specified in clause 6.2 of this Agreement to the Club in terms of clause 5 of this Agreement.
- (b) For the purposes of this Agreement, that part of the Taieri Airport to be leased to the Club is called "the Airport Land".
- 1.4 Ownership of the Taieri Airport is at present subject to section 9 of the Reserves and Other Lands Disposal Act 1973 ("the Act") a copy of which is attached and the parties wish to complete the transfer of the Taieri Airport to the Taieri Airport Trust free of the restrictions contained in that Act.

2. The Taieri Airport Trust

- 2.1 The Taieri Airport Trust ("the Trust") will be established as a not-for-profit trust by the Club and the Council as settlors. The Trust Deed will be in the form attached.

3. Ministry of Transport Consent

- 3.1 The transfer from the Council to the Trust as a result of the re-settlement requires the consent of the Ministry of Transport and the parties agree to use their best endeavours to obtain that consent as soon as possible.

In the event that the consent of the Ministry of Transport to the arrangement in this Agreement is not obtained within six (6) months of the date of this Agreement (or such later date as shall be mutually agreed by the parties) then this Agreement shall be of no effect and nothing herein shall be interpreted as representing acceptance by the Council of the existence of trust obligations in respect of the current Taieri Airport.

4. Settlement upon the Trust

- 4.1 Settlement of the Taieri Airport upon the Trust will be effected fourteen days after the consent of the Minister of Transport has been obtained.

5. Lease

- 5.1 Following re-settlement of the Taieri Airport the parties will procure the Trust to lease the Airport Land in perpetuity to the Club once the Airport Land has a separate Certificate of Title issued for same in terms of the subdivision required by clause 6.2 of this Agreement. The Airport land is shown outlined in red on the attached Development Plan. Both parties agree to do and sign all such acts and things within their power and reasonably necessary in order to provide the Club's lease in perpetuity of the Airport Land, before the expiry of the Club's current lease.

- 5.2 (a) The lease of the land from the Trust to the Club will be in the form attached.
- (b) Until that new lease is entered into, the Club will continue to occupy the Taieri Airport upon the terms and conditions contained in the existing lease from Council,

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which lease will run on after expiry upon the same terms and conditions until the new lease is in place.

PART 2: DISPOSITION OF PART OF TAIERI AIRPORT

6. Disposition

- 6.1 The Council and the Club have agreed to dispose of some land not presently used by the Club as part of the airfield. To this end, they agree to have the Trust appoint the Council as its agent to lease or sell the land approximately shown in green on the attached Development Plan ("the Development Land") on its behalf for the purpose of obtaining for the Trust the maximum potential income or value of that land consistent with retaining the necessary operational and safety margins applying in respect of the airfield. A restrictive land covenant protecting the operations of the Trust and the Club will be registered against the title to the Development Land on terms to be set by the Trust and the Club. The parties will procure the Trust and the Council to agree on the steps they reasonably consider necessary or desirable to achieve such purpose, including, if thought appropriate, first developing the Development Land (by subdivision as a necessity and otherwise as appropriate) and effecting the sale or lease of the Development Land either as a whole or in separate parts.
- 6.2 The Council acknowledges that the Club has a preference for the Trust leasing all or part of the Development Land (as opposed to selling same) and so secure rental income to assist the Trust to further the objects of the Trust. In the case of either a sale or a lease of the Development Land, the parties acknowledge that a subdivision of the Development Land will be necessary in order to provide a separate title for the continuation of the lease in perpetuity to the Club.
- 6.3 The lease or sale will be at the best price reasonably obtainable.
- 6.4 The Council shall apply the proceeds of the lease or sale (nett of reasonable development, sale and lease costs) to the Trust to be applied by the Trust for the objects of the Trust.
- 6.5 The Council agrees to apply the Air Development Capital Reserve Fund in accordance with the Act, with any balance being applied to the Trust for the objects of the Trust.

PART 3: HAGGART ALEXANDER DRIVE ROADING EXTENSION

7. Roading extension

- 7.1 The Council has advised the Club that it may wish to undertake the construction of a new road on the Taieri to be called the Haggart Alexander Drive/Carncross Street Extension which would run through the southern end of the Club's main runway. The Club will agree to this so long as any land at the southern end of the runway necessary for the new road is replaced by Council with the necessary amount of land at the northern end of the Club's main runway to enable the continuing use of the main runway in a reconfiguration which must be in accordance with all legal requirements and otherwise so as to ensure that existing runway lengths, building height restrictions, glide paths requirements and health and safety protections are retained and that current airfield capability is maintained as at present. The reconfiguration will be according to plans and specifications to be agreed between the Council and the Club and the Club will advise the Council of details of the

Handwritten signatures and a circular stamp. The stamp contains the text "Club of Taieri" and "18.08.04".

current airport capability to assist the Council in its planning process. For record purposes, the standard of the current Taieri Airport is as set out in the definition of "Secondary Airport" in the Lease attached to this Agreement.

- 7.2 All work associated with any re-configuration will be completed by, and at the cost of, the Council.
- 7.3 Each of the parties shall nominate a person/s to represent their party in further discussions and dealings with the other party with regard to the subject matter of this part of the Agreement.
- 7.4 The parties acknowledge that any land taken for road and any replacement land may necessitate further subdivisions and alterations to the Club's lease of the Airport Land, and both parties reiterate the absolute requirement to keep that lease on foot in a perpetually renewable form.

PART 4: GENERAL

8. Good faith

- 8.1 The parties agree to perform all obligations under this Agreement in good faith. The parties will generally use their best endeavours to ensure that full effect is given to the intentions of the parties under this Agreement. The parties declare their intention that this Agreement will operate between them with fairness and if in the course of the performance of this Agreement unfairness to any party is disclosed or anticipated then the parties will use their best endeavours to agree upon such action as may be necessary and equitable to remove the cause of the unfairness.

9. Further assurances

- 9.1 The parties will execute and deliver all documents and proactively do all things necessary or desirable for the proper and complete performance of their respective obligations under this Agreement, and, in particular, procure their respective appointees on the Trust to have the Trust give effect to the terms of this Agreement.
- 9.2 The parties acknowledge that this Agreement is being entered into for the benefit of the Trust and the Club and that all matters contemplated by this Agreement are to be undertaken at all times in such a way as to protect and advance the interests of the Trust and the Club.

10. Fees

- 10.1 All reasonable costs and legal fees incurred by the Trust, the Club and the Council with respect to all matters set out in this Agreement (excluding the roading work detailed in Part 3 of this Agreement which is to be carried out at the cost of the Council) shall be paid from the Air Development Capital Reserve Fund.

11. General

- 11.1 The parties will each use their best endeavours to achieve the objectives set out in this Agreement and that full effect is given to the intentions of the parties.
- 11.2 The parties agree that they will disclose to each other all information and give full explanations of all things relating to the subject matter of this Agreement.



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11.3 The parties declare their intention to proceed with the matters set out in this Agreement in a spirit of co-operation and frankness, and that any issues that require resolution between them will be dealt with in a like manner.

12. Condition

12.1 Notwithstanding any other conditions contained in the within Agreement, this Agreement shall be subject to and conditional upon ratification of the terms of the same by the full Council of the Council and by the Club by the 20th day of September 2004.

13. Dispute Resolution

13.1 The parties agree to follow the procedure set out in this clause in the event of:

- a. Any disagreement between them relating to the interpretation of any clause herein; and/or
- b. The resolution of any disagreement where agreement is required between them pursuant to any clause herein.

13.2 Negotiation

The parties shall actively and in good faith negotiate with a view to a speedy resolution of any dispute or difference which may arise between them concerning any matter as set out above.

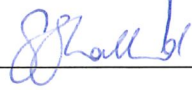
13.3 In the event that a dispute or difference is not resolved by discussion between the parties, then the same will be resolved through the Dispute Resolution provision comprised in clause 17 of the lease referred to in clause 5.2 hereof.

THIS AGREEMENT is executed on the date first before written.

SIGNED by **OTAGO AERO CLUB INCORPORATED** by affixing its Common Seal in the presence of::





 SECRETARY

PRESIDENT



THE COMMON SEAL

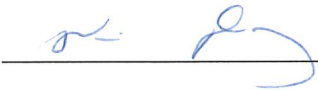
SIGNED for and on behalf of **DUNEDIN CITY COUNCIL**
 was hereto affixed in the presence of
 By:



 C.L. Weatherall
 Councillor

C.L. Weatherall
 Councillor

Mayor



Administration Co-ordinator

Team Leader - Governance





COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



Search Copy

R. W. Muir
Registrar-General
of Land

Identifier **OT2C/1307**
Land Registration District **Otago**
Date Issued 06 May 1966

Prior References

OT1D/554 OT262/15

Estate Fee Simple
Area 38.2691 hectares more or less
Legal Description Lot 1 Deposited Plan 11036

Proprietors

The Dunedin City Council

Interests

Part Section 18 Block VI East Taieri Survey District herein is subject to Section 59 Land Act 1948

600365 Mortgage of Lease 698029 to Bank of New Zealand - 22.8.1983 at 1.59 pm

698029 Lease creating the following easements - 10.3.1988 at 10.29 am

Type	Servient Tenement	Easement Area	Dominant Tenement	Statutory Restriction
Right of way	Lot 1 Deposited Plan 11036 - herein	Yellow DP 11036	Lot 2 Deposited Plan 11036 - CT OT2C/1308	

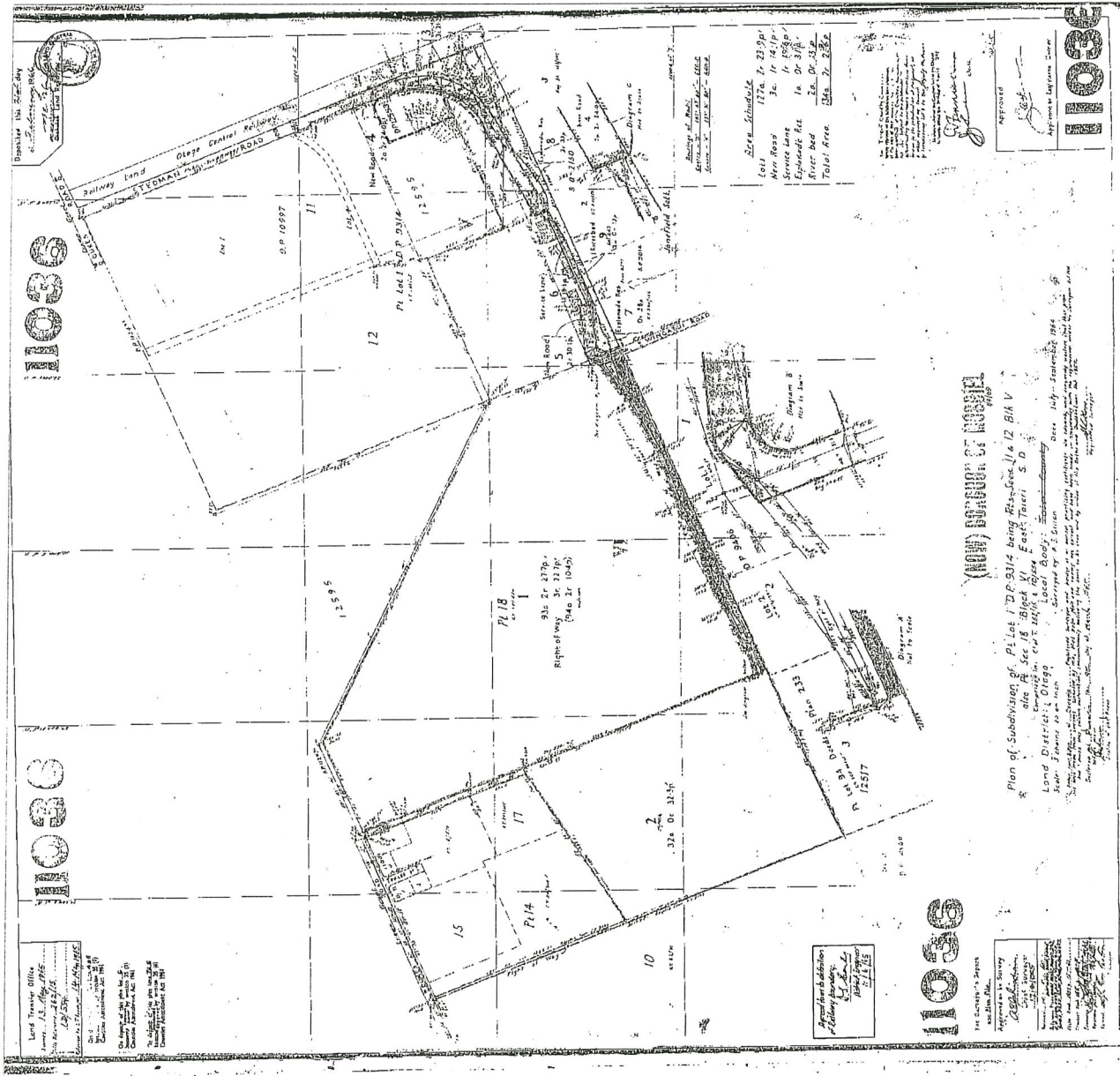
698029 Lease in renewal of Lease 296788 to The Otago Aero Club (Incorporated) Term 21 years from 21 December 1986 - 10.3.1988 at 10.29 am

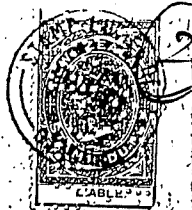
Fencing agreement in Lease 698029 - 10.3.1988 at 10.29 am



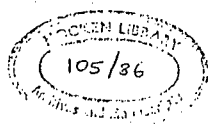
Identifier

OT2C/1307





THIS TRUST DEED is made the Fifth day of August One thousand nine hundred and thirty-one by THE MAYOR COUNCILLORS AND CITIZENS OF THE CITY OF DUNEDIN a body corporate under the provisions of "The Municipal Corporations Act, 1920" and hereinafter referred to as "the Corporation" WHEREAS the lands described in the Schedule hereto were until recently owned by THE OTAGO AERO CLUB (INCORPORATED) and have for some time past been laid out and used for the purposes of an air port for the City of Dunedin and the Provincial District of Otago. AND WHEREAS the Otago Aero Club (Incorporated) has recently conveyed and assured the said lands to the Corporation and has accepted a lease thereof from the Corporation upon the terms set forth in a certain Deed of Lease dated the Fifth day of August One thousand nine hundred and thirty-one and made between the Corporation and the said The Otago Aero Club (Incorporated) NOW THIS DEED WITNESSETH that the Corporation hereby declares that it holds the said lands ^{Recently deeded} and the nett rents profits and other moneys accruing to the Corporation in respect of the said lands ^{such} in trust for the purposes of aviation generally and more particularly for the purposes of an air port ^{for} for the City of Dunedin and the Provincial District of Otago and for the purposes ^{and} of a licensed aerodrome within the meaning of that expression in the Air Navigation Regulations SUBJECT HOWEVER to the terms and conditions of the ^{said} [said Deed of] Lease and with power on the determination of the term created by the said lease to make all such charges and to levy all such dues and fees for the use of the said lands ^{such} and the facilities thereon provided or to be provided as are usually and customarily made and levied in respect of persons or aircraft using lands and facilities appropriated for the purposes of aviation and for the purposes of air ports in New Zealand PROVIDED HOWEVER that the Corporation shall have power if the said lands ^{Recently deeded} cannot conveniently be used or if the same shall in the opinion of the Corporation cease to be used for the purposes ^{Recently deeded} aforesaid to sell the said lands or any part or parts thereof and in its discretion to pay and apply the nett proceeds of such sale remaining after payment of all expenses and all moneys charged upon or owing by the Corporation in respect of ^{such} [the said] lands either in the purchase of other lands and premises (which said other lands and premises and the nett rents profits and other moneys accruing to the Corporation in respect thereof shall be held by the Corporation upon the same trusts as are herein declared of and concerning the said ^{Recently deeded} lands described in the said Schedule) or in the improvement and development of other lands held by the Corporation on trusts for



Otago Aero Club
Archives

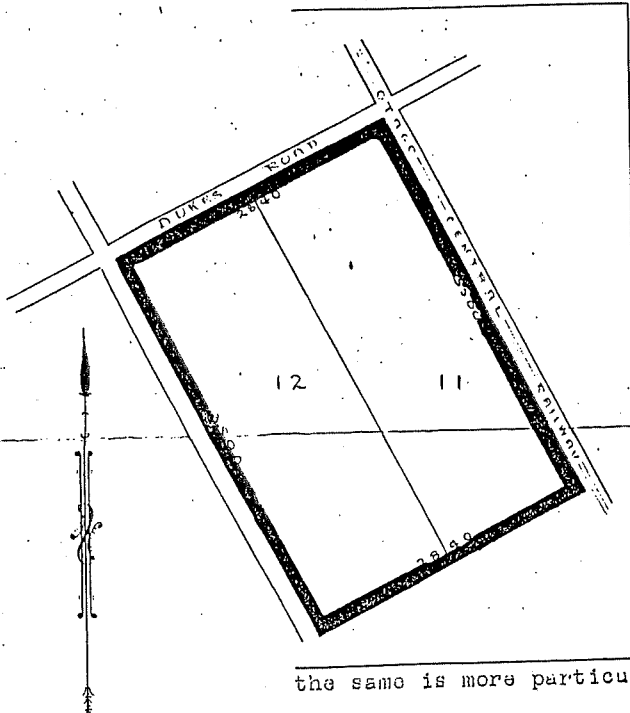
W. J. 85

aviation similar to the trusts herein contained or for such charitable objects for the benefit of the citizens of Dunedin and in such manner as the Corporation shall think fit.

IN WITNESS whereof these presents have been executed by and on behalf of the Corporation the day and year first before written.

THE SCHEDULE.

ALL THAT parcel of land situate in Provincial District of Otago containing ninety-nine (99) acres one (1) rood and twenty-four (24) poles be the same a little more or less being Section



Twelve (12) and part Section Eleven (11) Block Five (V) on the map of the East Taieri Survey District bounded towards North West by a road line known as Duke's Road Two thousand eight hundred and forty links towards North East by other part of said Section 11 (taken for Otago Central Railway) Three thousand five hundred links towards South East by part Section 5 and by Section 6 of said Block Two thousand eight hundred and forty links and towards South West by a road line Three thousand five hundred links as

the same is more particularly delineated on the plan drawn in the margin hereof and therein edged red.

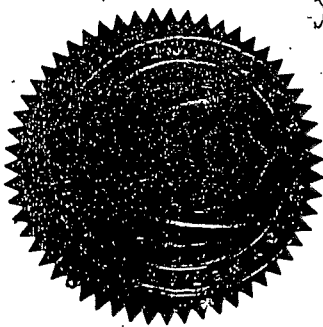
THE COMMON SEAL of THE MAYOR COUNCILLORS
AND CITIZENS OF THE CITY OF DUNEDIN was
hereunto affixed in the presence of:-

R. L. Hall

Mayor.

H. Mitchell

Councillor.



698029

L. and D. 86

New Zealand

(K)

MEMORANDUM OF LEASE

(1) Name, address,
and occupation of
person giving the lease.

(1) THE DUNEDIN CITY COUNCIL

(2) Nature of the estate
or interest—e.g., "in
fee-simple", "of
Leasehold" etc.

(hereinafter called "the Lessor"), being registered as the proprietor of an estate⁽²⁾ in fee simple
, subject,

(3) District—e.g.,
"County (or City, etc.),
of."

however, to such encumbrances, liens, and interests as are notified by memorandum under-
written or endorsed hereon, in the piece of land situated in the⁽³⁾ East Taieri District

(4) Here state the area.

of

containing⁽⁴⁾ 38.26919 ha

(5) Here set out the land
as described in the
relative Certificate of
Title and refer to the
title by its volume and
folio, and in cases other
than "fee-simple" also
refer to the document
being dealt with by
number and description
stating whether the land
is the whole, the balance,
or only a part of that in
the title and/or document.

be the same a little more or less,⁽⁵⁾ being Lot 1 Deposited Plan 11036 and being
all of the land comprised in Certificate of Title No. 2C/1307
(Otago Registry) Part Section 18 Block VI East Taieri District
being subject to Section 59 Land Act 1948

(6) Name, address, and
occupation of the Lessee.

DO HEREBY LEASE to⁽⁶⁾ THE OTAGO AERO CLUB (INCORPORATED) a duly
incorporated Society having its registered office at Dunedin

(hereinafter called "the demised premises")

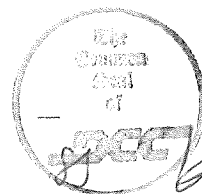
(hereinafter called "the Lessee") all the said lands/to be held by the Lessee as tenant for the

(7) Number of years and
commencing date.

term of⁽⁷⁾ twenty-one years computed from the 21st day of December 1986

(8) Here state terms of
payment.

at the yearly rental of TEN CENTS (0.10¢) ,
payable⁽⁸⁾ if demanded



(9) Here set forth all special covenants, if any.

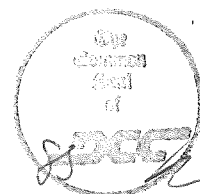
subject to the following covenants, conditions, and restrictions: (9)

1. THE Lessee will from time to time and at all times during the said term pay and discharge all rates taxes charges assessments and outgoings whatsoever which are now or may at any time hereafter be assessed charged or imposed upon the demised premises or on the owner or occupier in respect thereof.

2. THE Lessee during the said term will keep and maintain in good and substantial repair the dwellinghouse and other buildings and erections on the demised premises and will paint paper and whitewash the same when necessary and will keep and repair all doors gates posts and fences and keep all hedges on the demised premises regularly trimmed.

3. THE Lessee will bear and pay the cost of construction and repair and maintenance of all fences between the said piece of land and any other lands of the Lessor but this provision shall not enure for the benefit of any purchaser of such other lands or any part thereof.

4. THE Lessee will at all times during the said term use the demised premises solely for the purposes of aviation and for the purposes of an airport PROVIDED HOWEVER that nothing herein contained shall be construed so as to prevent the Lessee from making all such reasonable charges nor from levying all such reasonable dues and fees for the use of the demised premises and the facilities thereon provided or to be provided or for admission thereto as are usually and customarily made and levied in respect of persons or aircraft using lands and facilities set apart for the purposes of aviation and for the purposes of airports AND PROVIDED FURTHER that nothing herein contained shall prevent the Lessee from subletting the dwellinghouse on the demised premises to any person or persons or from using any of the buildings thereon for the purposes of club rooms or from using for recreational purposes or for cultivating cropping farming or for subletting to be cultivated cropped or farmed any portion of the demised premises for the time being not required for the purposes of aviation or of an airport.



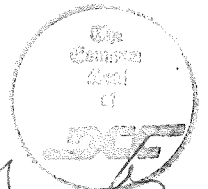
5. THE Lessee will at the determination of the said term yield up the demised premises in such a state of repair cultivation and management as shall be in compliance in all respects with the Lessee's covenants hereinbefore contained.

6. THE Lessor reserves unto itself its successors and assigns and others the owner or owners occupier or occupiers for the time being of Lot 2 on the said Deposited Plan No. 11036 and its his and their tenants servants agents workmen licencees and invitees from time to time and at all times hereafter by day or by night for all purposes to go pass and repass with or without vehicles of all descriptions laden or unladen implements and appliances horses and any other animals through over and along that part of the said Lot 1 Deposited Plan 11036 coloured yellow on the said Deposited Plan 11036.

7. PROVIDED ALWAYS and these presents are upon this condition that if the Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements 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 discharge the functions usually discharged by Aero Clubs in New Zealand then and in such case it shall be lawful for the Lessor or any person or persons duly authorised by it in that behalf into or upon the demised premises or any part thereof in the name of the whole to re-enter and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained.

8. THE Lessor acknowledges that the buildings at present standing on the said land with the exception of the dwellinghouse are the property of the Lessee and if this lease or any renewal thereof or substituted lease of the said land shall be determined or through any cause other than pursuant to Clause 7 hereof or if the Lessee upon a renewal of this

Revised
20/1



W. L. 81

lease or a substituted lease of the said land being available to it shall decline to accept such renewal or substituted lease then the Lessee shall have the right at its own expense to dismantle and completely remove such buildings and such further buildings as may be erected hereafter by the Lessee upon the said land with prior consent of the Lessor leaving the site hereof clean and tidy and free from rubbish and debris but if the Lessee shall at that time be operating as an Aero Club in the same or substantially the same manner as at present regard being had to the circumstances ruling at that date and shall not desire to dismantle and remove the said buildings or any of them as aforesaid the Lessor shall immediately take over such of the buildings as shall not be dismantled and removed and within six calendar months from the date of taking over such buildings the Lessor and the Lessee shall agree upon the most advantageous use to which such buildings can thereafter reasonably be put by the Lessor and the Lessor shall pay for such buildings at a fair price to be agreed upon between the Lessor and the Lessee regard being had to such use and if the parties hereto cannot agree upon such use or upon such fair price the same shall be determined by arbitration in accordance with the Arbitration Act 1908 or any amendment or re-enactment thereof.

9. AND IT IS HEREBY DECLARED that if at any time hereafter any dispute doubt or question shall arise between the Lessor and the Lessee touching the construction meaning or effect of these presents or any clause or thing herein contained or their respective rights or liabilities under these presents or otherwise in relation to the premises then every such dispute doubt or question shall be referred to a single arbitrator in case the parties can agree upon one otherwise to two arbitrators one to be appointed by each party to the reference and in either case in accordance with and subject to the provisions of the Arbitration Act 1908 or any statutory modification or re-enactment thereof for the time being in force.



10. THE express covenants provisions and powers herein contained shall supersede those referring to the same subjects and those only implied in Memoranda of Lease by the Property Law Act 1952 and the Land Transfer Act 1952.

AND the said THE OTAGO AERO CLUB (INCORPORATED) DOTH HEREBY ACCEPT this Lease of the above described lands to be held by it as tenant and subject to the covenants conditions and restrictions and provisions set forth or referred to AND hereby requests the District Land Registrar to note his Memorial that this lease is in renewal of Memorandum of Lease No. 296788.

DATED this 4 day of November 1987.

THE COMMON SEAL of THE)
DUNEDIN CITY COUNCIL was)
hereto affixed in the)
presence of :-)

Mayor

City Secretary



THE COMMON SEAL of THE)
OTAGO AERO CLUB)
(INCORPORATED) was)
hereto affixed in the)
presence of:-)



.....) Members of Executive

.....) Secretary



W. L. 88

do hereby accept this lease of the above-described lands, to be held by _____ as tenant
and subject to the conditions, restrictions, and covenants above set forth.

Dated this _____ day of _____

Signed by the above named

Lessor.

as Lessor , in the presence of—

Witness: _____

Occupation: _____

Address: _____

Signed by the above named

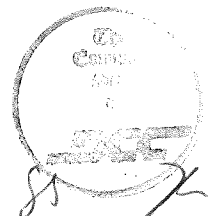
Lessee.

as Lessee, in the presence of—

Witness: _____

Occupation: /

Address:



REGISTERED IN TRIPLICATE

LEASE

L. and D. 86

THE DUNEDIN CITY COUNCIL, Lessor.

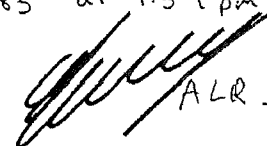
Correct for the purposes of the Land Transfer Act.

THE OTAGO AERO CLUB (INCORPORATED), Lessee.



Solicitor for the Lessee.

600365 - Mortgage to Bank of
New Zealand 22.8.1983 at 1.59 pm.



ALR.

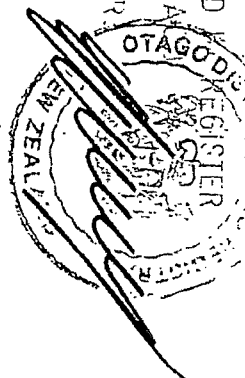
Particulars entered in the register set out on the front
page herein on the date and at the time stamped below.

Assistant
District Land Registrar

of the District of

BRENT, HAGGITT & CO.,
SOLICITORS,
DUNEDIN.

91508J-4,000/2/77D



20/29 10/MAR/88 698029
20/1307
PARTICULARS ENTERED IN REGISTER
LAND REGISTRY OTAGO DISTRICT

REGISTERED IN TRIPLICATE



R / RESERVES AND OTHER LANDS DISPOSAL ACT 1973 / 9. Empowering the Dunedin City Corporation to subdivide, develop, lease, and sell the old Taieri Airport, requiring it to apply the proceeds for the benefit of Momona Airport, and validating subdivisions, developments, and sales already completed by the Corporation—

9. Empowering the Dunedin City Corporation to subdivide, develop, lease, and sell the old Taieri Airport, requiring it to apply the proceeds for the benefit of Momona Airport, and validating subdivisions, developments, and sales already completed by the Corporation—

Whereas the Mayor, Councillors, and Citizens of the City of Dunedin (in this section called "the Corporation") are registered as the proprietors of an estate in fee simple in the land first and secondly described in subsection (12) of this section: And whereas the land comprises the old Taieri Airport and is controlled by the Corporation: And whereas Taieri Airport became inadequate for the needs of the district, and a new airport was therefore constructed at Momona under the control of the Corporation: And whereas by a deed dated the 9th day of March 1960 (as varied by a supplementary deed dated the 21st day of April 1964), made between the Corporation and the Crown, it was agreed between the parties that the Corporation should sell or otherwise dispose of the land first and secondly described in subsection (12) of this section, and apply the proceeds towards the costs of acquisition and development of Momona Airport: And whereas in reliance on the agreement between the Corporation and the Crown, the Corporation has subsequently subdivided, developed, and sold parts of the land to various purchasers, and has made certain payments in respect of the costs and expenses incurred in doing so: And whereas doubts have arisen as to the power of the Corporation to subdivide, develop, or sell any parts of the land or to pay any costs or expenses incurred in doing so: And whereas it is desired to resolve such doubts by conferring power on the Corporation to subdivide, develop, lease, and sell the land, and to pay the costs and expenses incurred in doing so: And whereas it is also desired to validate the subdivision, development, and sale of parts of the land already completed by the Corporation, and the payments already made by it in respect of the costs and expenses incurred in doing so: And whereas it is also desired to provide for the application of the proceeds of all such subdivisions, developments, leases, and sales of the land: Be it therefore enacted as follows:

(1) Notwithstanding the Airport Authorities Act 1966 or the Civil Aviation Act 1964 or any other enactment or rule of law, the Corporation shall hold, administer, and dispose of the land first and secondly described in subsection (12) of this section in accordance with the provisions of this section.

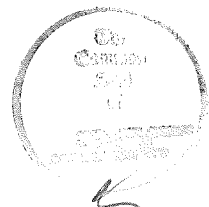
Statutes © Brookers Limited

Current Query:

[Headings Legislation Title, reserves and other lands disposal act 1973][Field Section Title:9]

Annotated to 2004 No 49 and SR 2004/129 (6/2004)

Page 1 18/08/2004 8:59:21 AM



WP L. 81

Editorial Note

The Civil Aviation Act 1964 (1964 No 68) was repealed, as from 1 September 1990, by section 101(1) Civil Aviation Act 1990 (1990 No 98).

- (2) The Corporation shall, as long as any parts of the land are still required for the purposes of an aerodrome, continue to hold those parts of the land for those purposes.
- (3) The Corporation may from time to time, with the prior consent in writing of the [Minister of Transport], do any one or more of the following things in respect of any part of the land that is no longer required for the purposes of an aerodrome:
- (a) Subdivide or re-subdivide it into lots:
 - (b) Lease it on such terms and conditions as the Corporation may think fit:
 - (c) Sell it by such method of sale and on such terms and conditions as the Corporation thinks fit, with or without any grants or reservations of easements or other rights or privileges in favour of the purchaser or the Corporation or any other person.
- (4) The Corporation may, in subdividing or re-subdividing any part of the land under subsection (3) of this section, construct or provide such public streets, service lanes, access ways, sanitary and water drains, water supplies, electric power lines or cables, and other services and public works, as it thinks necessary or desirable for the use, convenience, and enjoyment of the land subdivided or re-subdivided.
- (5) The Corporation may pay out of its Capital Reserve Account (known as the Air Development Capital Reserve Fund) all the costs and expenses incurred by it in subdividing, re-subdividing, leasing, or selling any parts of the land under subsection (3) of this section, or in doing any of the things specified in subsection (4) of this section.
- (6) The Corporation shall pay the net proceeds from the subdivision, development, lease, and sale of any parts of the land under subsection (3) of this section into its Air Development Capital Reserve Fund.
- (7) The Corporation shall then apply those proceeds in recoupment of all costs and expenses paid from the Air Development Capital Reserve Fund under subsection (5) of this section.

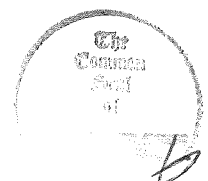
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Current Query:

[Headings Legislation Title, reserves and other lands disposal act 1973][Field Section Title:9]

Annotated to 2004 No 49 and SR 2004/129 (6/2004)

Page 2 18/08/2004 8:59:21 AM



(8) After applying the proceeds in accordance with subsection (7) of this section, the Corporation shall divide the balance of the proceeds into 2 equal portions.

(9) Without prejudice to section 13B of the Civil Aviation Act 1964, the Corporation shall pay the first portion of the balance of the proceeds to the Minister of Civil Aviation and Meteorological Services, who shall lodge it to the credit of the Consolidated Revenue Account.

Editorial Note

The Civil Aviation Act 1964 (1964 No 68) was repealed, as from 1 September 1990, by section 101(1) Civil Aviation Act 1990 (1990 No 98).

(10) The Corporation shall apply the other portion of the balance of the proceeds in reduction of any loans raised by the Corporation in connection with the acquisition and development of Momona Airport, and [may apply any excess for any purpose for which it may lawfully apply any of its income].

(11) All subdivisions, developments, and sales of parts of the land completed by the Corporation before the commencement of this section, and all payments made by the Corporation in respect of the costs and expenses incurred by it in doing so, that would have been valid if this section had been in force at the time when they were completed or made, are hereby validated and declared to have been lawfully completed and made; and the Corporation shall apply the net proceeds from such subdivisions, developments, and sales in accordance with the other provisions of this section.

(12) This section relates to the following land:

All that area of land in Mosgiel Borough and Taieri County, Otago Land District, containing first 90.4067 hectares, more or less, being Section 18, Block VI, East Taieri Survey District, and being all the land in cancelled certificate of title Register 1D, folio 554, Otago Land Registry (SO Plan 13669); and secondly 40.2257 hectares, more or less, being Section 12 and Part Section 11, Block V, East Taieri Survey District, and being all the land in cancelled certificate of title Volume 262, folio 15 (limited as to parcels), Otago Land Registry.

History

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Current Query:

[Headings Legislation Title, reserves and other lands disposal act 1973][Field Section Title:9]

Annotated to 2004 No 49 and SR 2004/129 (6/2004)

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Subsections (3) and (10) were amended, as from 1 September 1990, by s 102(1) Civil Aviation Act 1990 (1990 No 98) by substituting the words "Minister of Transport" for the words "Minister of Civil Aviation and Meteorological Services".

Subsection (10) was further amended, as from 15 November 2000, by s 3 Reserves and Other Lands Disposal Amendment Act 2000 (2000 No 80) by substituting the words "may apply any excess for any purpose for which it may lawfully apply any of its income" for the words "shall hold any excess in reserve and use it for the future development of Momona Airport in such manner as may from time to time be agreed on between the Corporation and the Minister of Civil Aviation and Meteorological Services". However, the words "Minister of Transport" had been substituted for the words "Minister of Civil Aviation and Meteorological Services", as from 1 September 1990, by s 102(1) Civil Aviation Act 1990 (1990 No 98).

[Click here to see the historical text. 01 Sep 1990 to 14 Nov 2000.](#)

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Current Query:

[Headings Legislation Title, reserves and other lands disposal act 1973][Field Section Title:9]

Annotated to 2004 No 49 and SR 2004/129 (6/2004)

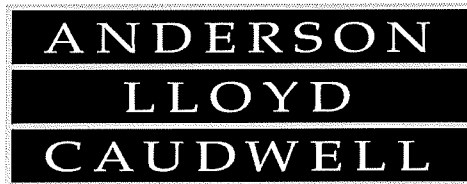
Page 4 18/08/2004 8:59:22 AM



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THE TAIERI AIRPORT TRUST

TRUST DEED



BARRISTERS, SOLICITORS & NOTARIES SINCE 1862

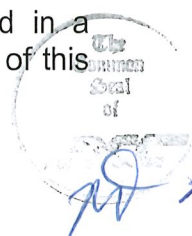
gallaway cook allan
LAWYERS

PARTIES:

1. **THE DUNEDIN CITY COUNCIL** a local authority constituted under the Local Government Act 1974 ("the Council")
2. **OTAGO AERO CLUB INCORPORATED** a body incorporated under the Incorporated Societies Act 1908 ("the Club")
3. **JULIAN CHARLES STANLEY SMITH and DAVID ROSS BLACK both of Dunedin, Company Directors** ("Aero Club Trustees").
4. **MALCOLM FARRY** Company Director and **DAVID MCKENZIE**, Property Manager ("Dunedin City Council Trustees")

BACKGROUND:

- A. The Otago Aero Club was formed in 1927, being the first of its kind in New Zealand. The Club's primary objects include the encouragement and promotion of aviation generally, the training of pilots, the provision of suitable airport facilities and the undertaking of other general club activities.
- B. In 1930 the Club purchased 100 acres of land on the Taieri, near Dunedin, for 10,000 pounds and began developing it into an airport. The Club became concerned about the future of the airport and sought the Council's help to ensure the airport's continued long-term operation. As a result, the Club gifted the land to the Council to hold on trust under the terms of a Trust Deed dated 5 August 1931. The Trust Deed recorded that the Council held the land "in trust for the purposes of aviation generally and for the purposes of an airport for the City of Dunedin and the Provincial District of Otago and for the purposes of a licensed aerodrome".
- C. The Council granted a lease of the land to the Club at a peppercorn rental, but requiring the Club to meet outgoings in respect of the land. The Club used the land as an airport until World War II when the Crown began using it for wartime purposes. During this time the Crown purchased adjoining land and incorporated this into the airport. The Royal New Zealand Airforce occupied the airport until 1957 when it was released back to the Council.
- D. Between 1957 and 1965 the Council sold parts of the trust land, which had by then been given an industrial designation by the Mosgiel Borough Council. In addition, a new airport for Dunedin and Otago had been established at Momona under the control of a committee of Local Authorities. As a result, it became expedient to amend the area of the trust land, the new area comprising 38.2691 ha, being legally described as Lot 1, DP 11036, Certificate of Title 2C/1307 (Otago Registry). The amendments were recorded in a substituted Trust Deed dated 21 December 1965. The principal terms of this



new trust deed were otherwise effectively the same as those in the original Trust Deed. Because the legality of the Council's earlier actions in selling parts of the trust land were questioned, the Reserves and Other Lands Disposal Act 1973, was passed to ratify the amendments and "validate what is otherwise desirable and necessary".

- E. The lease of the trust land from the Council to the Club has continued to the present day, with it being a base for the Club's activities and the aviation public. The airport currently has the status of a current operational airfield meeting current Civil Aviation Authority requirements.
- F. The Council and the Club wish to recognise, protect and advance the ideals of the original trust and to this end have agreed to establish and register under the Charitable Trusts Act 1957 a trust, to be known as the Taieri Airport Trust Incorporated.
- G. This Deed is being completed by the Council, the Club and the Trustees to establish the terms of the Trust.

THIS DEED RECORDS:

- 1. The Council and the Club, as settlors, together settle the Trust Land on the Trustees as an initial settlement on the Trust.
- 2. The Trustees agree to act as trustees of the Trust on the terms set out in this Deed.

PART I

ESTABLISHMENT, OBJECTS AND POWERS OF THE TRUST

1. Interpretation Definitions

1.1 In this Deed, unless the context otherwise requires:-

"Charitable purposes" means every purpose which under the law of New Zealand is charitable.

"Club" means Otago Aero Club Incorporated.

"Council" means The Dunedin City Council.

"Financial Year" means the annual period from 1 July to 30 June.

"Related Party" means:

- a. the Mayor, any Councillor, or any employee of the Council or any company or other entity owned or

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controlled by the Council; and

- b. any company, partnership, trust or other entity in which the Mayor, any Councillor, or any employee of the Council is financially interested whether as a shareholder, partner, director, employee, beneficiary or otherwise; or
- c. any office bearer, any member, or any employee of the Club or any company or other entity owned or controlled by the Club; or
- d. any company, partnership, trust or other entity in which any office bearer, any member or any employee of the Club is financially interested whether as a shareholder, partner, director, employee, beneficiary or otherwise; or
- e. any company, partnership, trust, or other entity in which any Trustee or any spouse or any common law or de facto partner or child of a Trustee is financially interested, whether as a shareholder, partner, director, employee, beneficiary or otherwise; or
- f. any spouse or any common law or de facto partner or child of a Trustee.

"Trust" means the trust established by this deed and known as The Taieri Airport Trust.

"Trust Assets" means the Trust Land as well as all money, investments, property and other assets owned or held by the Trust, all income of, and accretions and additions to, the Trust Assets.

"Trust Land" means the land, and improvements thereon, being Lot 1 DP 11036 being the land in Certificate of Title 2C/1307 (Otago Registry) and/or any other property, land and improvements substituted therefor, or purchased or held by the Trust.

"the Trustees" means the Aero Club Trustees and the Dunedin City Council Trustees being the trustees of the Trust.

"this Deed" means this deed and includes any schedules and amendments.

1.2 A person includes any individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state (in each case whether or not having separate legal personality).

1.3 Headings and marginal notes are included for convenience only and do not affect the interpretation of this Deed.

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- 1.4 This Deed is binding upon the parties and their respective successors and permitted assigns.
- 1.5 Where the context permits, words describing the singular include the plural and vice versa, and words imputing masculine, feminine or neuter gender include all genders.
- 1.6 In this Deed, unless the context otherwise requires, any reference to any legislation includes a modification and re-enactment of that legislation or legislation enacted in substitution for any regulation, order in council and other instrument from time to time issued or made under that legislation.

2. Establishment of the Trust

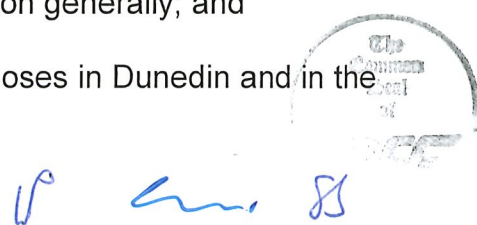
- 2.1 The Trust shall comprise all Trust Assets held by the Trustees upon the trusts of this Deed including the income arising therefrom.
- 2.2 The Trust Assets shall be held on trust by the Trustees and shall be managed and administered on the terms contained in this Deed.
- 2.3 The Trust shall commence on the date of this Deed and shall continue until wound up pursuant to clause 14.

3. Name of the Trust

- 3.1 The name of the Trust is "The Taieri Airport Trust".
- 3.2 Should the Trust be incorporated under the Charitable Trusts Act 1957 pursuant to clause 10, the Trust shall be named "The Taieri Airport Trust Incorporated".

4. Objects of the Trust

- 4.1 The aims and purposes of the trust are to apply both capital and income of the trust to, or for the following objects:
 - 4.1.1 As the primary object, the continuation, maintenance and advancement of the Trust Land as a secondary airport in Dunedin for use by the Club and the aviation public;
 - 4.1.2 As the secondary object, the development, maintenance and advancement of airport facilities elsewhere in the Dunedin city area for the benefit of the Club and the aviation public in the event that the Trust Land cannot be used as a secondary airport in Dunedin;
 - 4.1.3 As the tertiary object, the purposes of aviation generally; and
 - 4.1.4 As the residuary object, any charitable purposes in Dunedin and in the

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Otago region which are from time to time selected by the trustees and which are valid charitable purposes.

5. Powers of the Trust

5.1 In addition to the powers conferred on the Trustees by law the Trustees shall, subject to the provisions of this Deed,

(and, in particular, but without limitation, subject to clause 5.3), the Trustees shall have all powers over and in respect of the Trust and the Trust Assets which they could exercise if they were the absolute and beneficial owners of the Trust Assets so long as the objects of the Trust are not compromised nor the Trust Assets put at risk in any way.. In particular, without derogating from the foregoing and subject to the provisions of this Deed, the Trustees shall have full and absolute power to do the following:-

- 5.2.1 enter into contracts with the Council or any other person for the purposes of managing and operating the Trust;
- 5.2.2 purchase, sell, lease or otherwise deal with assets including property (both real and personal) on behalf of the Trust upon such terms as the Trustees think fit, provided that no sale, lease or other dealing of or with any real property shall be permitted which would adversely affect the use of the Trust Land by the Club whilst the Club is lessee of the Trust Land;
- 5.2.3 carry out and pay for repairs and improvements relating to Trust Assets;
- 5.2.4 insure any Trust Assets for such amounts and on such conditions as the Trustees determine;
- 5.2.5 instruct agents and consultants to act in relation to Trust Assets or assets intended to be acquired by the Trust;
- 5.2.6 agree, enter into and perform any contract, option or other right relating to any part or all of the Trust Assets or proposed Trust Assets;
- 5.2.7 agree to the release, modification or variation of any rights, privileges or liabilities of any Trust Assets from time to time or any securities given in relation thereto;
- 5.2.8 enter into any arrangements with any government, public body or authority to obtain any rights, authorities, concessions or clearances and to give any undertakings binding upon the Trustees either generally or on conditions that the Trustees think fit and to carry out, exercise and comply with any of the same;
- 5.2.9 employ, engage or contract with upon such terms and conditions as to salary, remuneration, contract, payment or other consideration any employee, manager, agent, professional advisor or other person as the

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Club
Council
Seal
of

Trustee think fit upon such terms as the Trustees deem expedient;

- 5.2.10 participate in the rights and obligations, including obligations to contribute in any manner to the liabilities of the parties, under any partnership, joint venture, or other agreement relating to Trust Assets or otherwise;
- 5.2.11 enter into, perform and enforce agreements and arrangements;
- 5.2.12 institute, prosecute, compromise and defend legal proceedings;
- 5.2.13 determine whether any money or other Trust Asset is capital or income and what expenses ought to be paid out of income and capital respectively and also apportion blended funds. Every such determination or apportionment shall be final and binding on all persons interested in the Trust provided that such determination is made in good faith and in accordance with the requirements of this Deed;
- 5.2.16 invest in pooled or mixed forms of investment in common with other investors;
- 5.2.17 open a bank account or accounts in the name of the Trustees or the Trust and to resolve how cheques and other banking documents may be signed on behalf of the Trust;
- 5.2.18 incorporate any company to purchase, establish and carry on any business or other commercial venture for the purposes of benefiting the Trust;
- 5.2.19 develop, build, demolish, and otherwise make improvements or alterations to any of the Trust Assets in such manner as the Trustees think fit;
- 5.2.20 receive and make donations and seek sponsorship;
- 5.2.21 pay all or any of the expenses incurred in connection with the incorporation and establishment of the Trust;
- 5.2.22 obtain any statutory or similar order or Act of Parliament enabling the Trust to carry or better carry any of its objects into effect or to effect any modification to the Trust constitution or for any other purposes which the Trustees consider expedient;
- 5.2.23 without in any way limiting the wide powers conferred by this clause 5 the Trustees shall:
 - a. have power to invest the Trust Assets and the income from the Trust Assets not immediately required for the objects of the Trust; and

WP 

- b. in making any investment, exercise the care, diligence and skill required of a prudent trustee as set out in the Trustee Act 1956.

5.3 The Trust shall not:

- 5.3.1 Operate a trading undertaking with the intention or purpose of making a profit; and
- 5.3.2 Borrow or raise money; and
- 5.3.3 Create, or allow to exist, a security interest over any of the Trust Assets. For the purposes of this clause a security interest includes:
 - a. any mortgage, encumbrance, fixed or floating charge, pledge, lien, financial lease, sale and lease back or sale and re-purchase;
 - b. any security or preferential interest or arrangement of any kind;
 - c. any other right of or arrangement with any person the effect of which is to have its claims satisfied in priority to other unsecured and unsubordinated creditors with, or from the proceeds of, any assets;
 - d. retention of title arrangements; and
 - e. a deposit of money or any other asset by way of security or support.

6. **Transactions with Trustees and Related Parties**

6.1 The Trustees shall not:

- a. sell, purchase or otherwise acquire or dispose of any Trust Asset to or from any Trustee or any Related Party; or
- b. cause any Trust Assets that comprise cash to be invested or lodged with any Trustee or any Related Party; or
- c. Enter into any contract, agreement or other arrangement with any Trustee or any Related Party to provide management, administration or other services for the Trust; or
- d. enter into any other transaction with any Trustee or any Related Party in relation to the Trust;

unless, subject at all times to clause 7, they are doing so:

- e. with the consent of the Council and of the Club; or
- f. in the normal course of business and on arms length commercial terms;

W P
The
Common
Seal
of
the
Aero Club

or

- g. to receive a benefit from the Trustee or any Related Party which is greater than the benefit received by the Trustee or Related Party under the transaction.

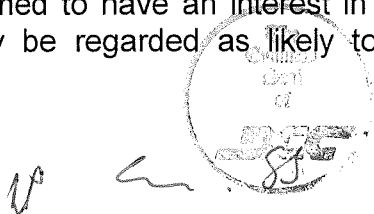
6.2 The Trustees will not sell the Trust Land during the duration of the Trust without first offering it to the Council on written terms and conditions fixed by the Trustees in their discretion ("the Trustees' Offer").

- a. The Trustees' Offer will remain open for acceptance by the Council for 20 days after the Council receives it ("the Offer Period").
- b. If the Council does not accept the Trustees' Offer within the Offer Period:
 - i. the Trustees may not sell the Trust Land on any terms which are more favourable than those in the Trustees' Offer without
 - ii. re-offering the sale of the Trust Land to the Council on the more favourable terms.
- c. Any re-offer will also be a Trustees' Offer for the purposes of this clause.
- d. This Right of Refusal clause will no longer apply if the Trustees sells the Trust Land to a third party after first complying with the Trustees' obligations in the clause.

7. Trustees' Declaration of Interest

7.1 It shall be the duty of a Trustee who is in any way directly or indirectly interested (regardless of how such interest arises) including, without limitation, a Trustee's interest in or relationship with a Related Party) in any contract, arrangement, or proposed contract or arrangement, or other matter with the Trust to declare the nature of his or her interest at a meeting of the Trustees, but failure to do so shall not disqualify the Trustee or invalidate the contract, proposed contract or any other matter in which the interest lies. A Trustee who is so interested shall not be entitled to vote on any issue related to the contract, arrangement, or proposed contract or arrangement, or other matter in which the interest lies, shall not be entitled to take part in any discussion on any such issue, and the ruling of the chairperson of the meeting as to whether or not the Trustee should be required to withdraw from the meeting for the duration of any discussion on any such issue shall be final and conclusive. If the chairperson is so interested, the chairperson's duties under clauses 7.1 and 7.2 shall devolve to a deputy chairperson to be elected unanimously by the remaining Trustees.

7.2 If any question shall arise at any meeting as to whether a Trustee is directly or indirectly interested in any contract, arrangement, or proposed contract or arrangement, or other matter with the Trust, such question shall be referred to the chairperson of the meeting whose ruling in relation to such Trustee shall be final and conclusive. A Trustee shall be deemed to have an interest in any matter in which he or she would reasonably be regarded as likely to be



influenced materially to prefer interests other than those of the Trust, or any other affected party, for reasons of personal advantage or the advantage of business or family associates.

8. Trustees' Indemnity and Liability

8.1 The Trustees shall not be liable for:-

- a. any losses except losses arising from their own dishonesty, default or breach of trust; or
- b. any act or attempted act done in exercise of or pursuant to any trust, power or discretion vested in them by this Deed; or
- c. any omission or non-exercise in respect of any trust, power or discretion of the Trustee under this Deed.

8.2 The Trustees and every other person acting on behalf of the Trustees shall be indemnified out of the Trust Assets against all liabilities and expenses incurred by them in the exercise or attempted exercise of the trust, powers and discretions vested in the Trustees pursuant to this Deed, and in respect of any matter or thing done or omitted to be done in any way relating to this Deed and the Trust. This indemnity shall extend to any payments made to any person whom the Trustees bona fide believe to be entitled thereto though it may be subsequently found that the person was not in fact so entitled. The Trustees shall have a lien or charge on the Trust Assets and may retain and pay out of any moneys in the Trust all sums and amounts necessary to give effect to this indemnity.

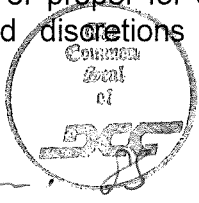
8.3 The liability of the Trustees in connection with this Deed or at law shall at all times be limited to the Trust Assets.

9. Delegation by Trustees

9.1 The Trustees shall have to the extent permitted by law, full power to delegate to any officers or employees of the Trustees or to any attorney, agent or other person nominated or appointed by the Trustees, all or any of the powers, authorities and discretions exercisable by the Trustees under this Deed, but without in any way releasing the Trustees from their obligations under this Deed. Without in any way affecting the generality of the foregoing, the Trustees may in exercising this power of delegation:-

- a. by power of attorney appoint any person to be the attorney or agent of the Trustees for such purposes and with such powers, authorities or discretions as the Trustees think fit with power for the attorney or agent to subdelegate any such powers, authorities or discretions.
- b. appoint by writing or otherwise any person to be agent or sub-agent of the Trustees as the Trustees may think necessary or proper for such purposes and with such powers, authorities and discretions (not

W. L. J. 28



exceeding those vested in the Trustees) as they think fit and to supersede or suspend any such agent or sub-agent for any reason as the Trustees think sufficient.

10. Incorporation under the Charitable Trusts Act 1957

- 10.1 The Trustees shall immediately after the execution of this Deed apply for incorporation under the Charitable Trusts Act 1957 and the Trustees are authorised to make such application on behalf of the Trust. The Trustees will use their best endeavours to obtain such incorporation, but if not achieved the Trust will nevertheless continue until wound up in terms of clause 14.

11. Common Seal

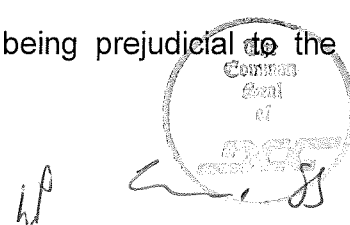
- 11.1 Upon incorporation of this Trust in accordance with clause 10, the Trustees shall procure a common seal for the Trust and shall provide for its safe custody. Any documents required to be signed under the common seal shall be attested by any two Trustees, one of whom must be a Trustee appointed by the Council under clause 16.2 and the other of whom must be a Trustee appointed by the Club under clause 16.2.1.

12. Accounts and Audit

- 12.1 The Trustees shall keep proper records and accounts relating to the Trust including a record of all sums of money received and expended by or on behalf of the Trust.
- 12.2 At the end of each Financial Year, the Trustees shall prepare accounts for the Trust and will have those accounts audited by an independent qualified chartered accountant who shall be appointed annually by the Trustees.
- 12.3 A copy of the audited accounts for the Trust shall be submitted to the Council and to the Club within 90 days of the end of the Financial Year.
- 12.4 The Trustees shall prepare and give to the Council such accounting and other information concerning the Trust as the Council may require to fulfil its obligations under the Local Government Act 1974.

13. Alteration to the Deed

- 13.1 The Trustees may from time to time by amending deed or instrument alter, rescind or add to any of the provisions of this Deed subject to:-
- a. at least 14 days notice of intention to move any amendment to this Deed being given to all Trustees; and
 - b. no amendment being made to this Deed without the prior consent in writing of both the Council and the Club;
 - c. the alteration, rescission or addition not being prejudicial to the legal



charitable status of the Trust.

14. Winding up of the Trust

14.1 The Trust shall terminate and be wound up and dissolved if:-

- a. the Trustees (after first obtaining written consent of the Council and of the Club) resolve by unanimous resolution in writing that the Trust shall be wound up; or

the Trust is wound up by law.

14.2 Every resolution to wind up the Trust shall specify an effective termination date of the Trust and thereafter the Trustees shall realise or dispose of the Trust Assets as soon as reasonably practicable in accordance with this clause 14.

14.3 The Trust Assets or the proceeds resulting therefrom shall be applied by the Trustees upon a winding up in the following order or priority and manner:-

- a. first, in meeting all costs, expenses and liabilities of the Trust including the costs and expenses of winding up of the Trust and setting aside any amount that the Trustees consider necessary or desirable in respect of any contingent liability of the Trust.
- b. second, in the payment or distribution (by instalments if the Trustees consider appropriate) of the remaining Assets of the Trust to any charitable purpose or purposes in Dunedin and the Otago region approved by both the settlors.

15. Remuneration of Trustees

15.1 The Trustees may, with the prior approval of the Council and the Club, resolve to pay themselves or any of them reasonable remuneration for their services as trustees.

PART II

PROCEEDINGS OF TRUSTEES

16. Appointment and Removal of Trustees

16.1 The number of Trustees shall at the date of this Trust be four (4). The trustees may increase the number of trustees to six (6) The foundation Trustees are those listed at the front of this Deed.

16.2 The Council shall have the power from time to time to appoint half the Trustees (Dunedin City Council Trustees), to set the terms of the appointments, and to

Handwritten signatures and a circular stamp. The stamp contains the text "The Aero Club of New Zealand" and "21.07.04". There are two signatures, one of which appears to be "NP" and the other is a cursive signature.

remove and/or replace any such trustees appointed by it.

16.2.1 The Club shall have the power from time to time to appoint half the Trustees, to set the terms of the appointments, and to remove and/or replace any such trustees appointed by it.

16.3 The Trustees initially appointed by the Council are listed at the front of this Deed.

16.3.1 The Trustees initially appointed by the Club are listed at the front of this Deed.

16.4 A certificate signed by or on behalf of the Council or the Club to the effect that a person has been appointed a Trustee or removed from the office of Trustee shall be conclusive evidence of that fact.

16.6 The appointment of a Trustee shall be vacated if a Trustee:-

- a. resigns by giving written notice to the chairperson of the Trust;
- b. dies;
- c. becomes bankrupt;
- d. becomes of unsound mind;
- e. is removed from such position by the person having the power to do so;
- f. becomes for any reason unable to perform the duties of Trustee (such inability to be determined by a resolution of the Trustees);
- g. is convicted of any indictable offence;
- h. refuses to act.

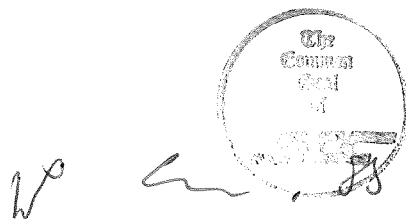
17. **Appointment of Chairperson**

17.1 The trustees shall appoint one of their number to be a chairperson.

17.2 If a chairperson is unable for any reason to perform the chairperson's duties, then the Trustees may elect an acting chairperson during the relevant period of inability.

18. **Proceedings of Trustees**

18.1 Subject to this Deed, the Trustees may meet together for the dispatch of business and may adjourn or otherwise regulate their meetings as they think fit.



18.2 At any meeting of the Trustees, the chairperson shall preside or in the absence of the chairperson the Trustees may elect one of their members to preside.

18.3 At all meetings of Trustees:-

- a. the necessary quorum shall be all of the Trustees;
- b. matters must be determined by the unanimous agreement of the Trustees present and voting on that question. In the event of unanimous agreement on any matter not being reached but either of the settlors shall have the right to have the matter determined by mediation and arbitration in accordance with the directions of the president for the time being of the Arbitrators and Mediators' Institute of New Zealand or the president's nominee.

18.4 An act or decision of the Trustees shall not be invalid by reason only of:-

- a. a fault, default or irregularity in or in connection with the appointment of a Trustee; or
- b. a vacancy in the number of the Trustees including a vacancy arising because of the failure to appoint a Trustee.

18.5 The Trustees shall keep a minute book and shall cause minutes to be kept therein of all meetings, resolutions and decisions made by them. Minutes purporting to be signed by the chairperson of the Trustees of a meeting shall be receivable as prima facie evidence of the matters contained in such minutes.

18.6 The Trustees may co-opt any non-voting person to attend any meeting of the Trustees, and the Trustees may delegate any matter to a sub-committee consisting of any persons (whether Trustees or otherwise).

19. **Convening of Meetings**

19.1 The Trustees shall hold at least 1 meeting in each calendar year, and shall meet at such other times as the Trustees deem appropriate.

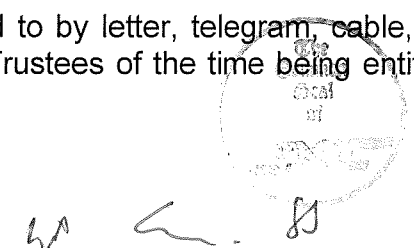
19.2 The chairperson shall convene the meetings of the Trustees.

19.3 The chairperson shall convene a meeting of the Trustees within 14 days if the chairperson receives a written request from at least three Trustees to hold a meeting.

19.4 Reasonable prior notice of meetings of Trustees shall be given to all Trustees.

20. **Resolution Assented to by all Trustees**

20.1 A resolution in writing signed or assented to by letter, telegram, cable, telex, facsimile or other written manner, by all Trustees of the time being entitled to

A handwritten signature is written over a circular stamp. The stamp contains the text "The Aero Club of New Zealand" and "Incorporated in New Zealand".

receive notice of meetings of the Trustees shall be as valid and effective as if it had been passed at a meeting of Trustees duly called and constituted. Any such resolution may consist of several documents in like form either signed or purporting to have been despatched by any one or more of the Trustees.

21. **Teleconference Meeting of Trustees**

21.1 The contemporaneous linking together by telephone or other means of communication of a number of Trustees not less than the quorum (whether or not any one or more of the Trustees is out of New Zealand) shall be deemed to constitute a meeting of Trustees and all the provisions of this Deed in respect of such meetings shall apply so long as the following conditions are met:-

- a. All Trustees for the time being entitled to receive notice of a meeting of the Trustees shall be entitled to notice of the meeting by telephone or other means of communication and to be linked by telephone or other means for the purpose of such meeting.
- b. Each Trustee taking part in a meeting by telephone or other means of communication must throughout the meeting be able to hear each of the Trustees taking part in the meeting.
- c. At the commencement of the meeting each Trustee must acknowledge the Trustees presence for the purpose of the meeting to all other Trustee's taking part.

**THE COMMON SEAL of
THE DUNEDIN CITY COUNCIL**
was affixed in the presence of:



**THE COMMON SEAL of
OTAGO AERO CLUB
INCORPORATED**
Was affixed in the presence of:



) 
) **C.L. Weatherall**
) Councillor

) 
) Tegm Leader - Governance

) 
) PRESIDENT

) 
)  SECRETARY

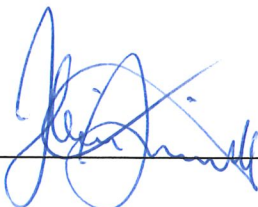
SIGNED by JULIAN CHARLES STANLEY SMITH)

In the presence of:)

Witness:

Occupation:

Address:



SIGNED by DAVID ROSS BLACK)

In the presence of:)

Witness:

Occupation:

Address:



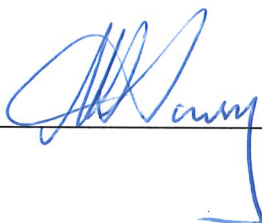
SIGNED by MALCOLM FARRY)

In the presence of:)

Witness:

Occupation:

Address:



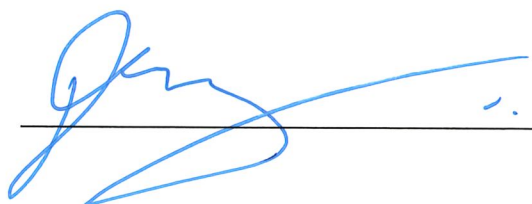
SIGNED by DAVID McKENZIE)

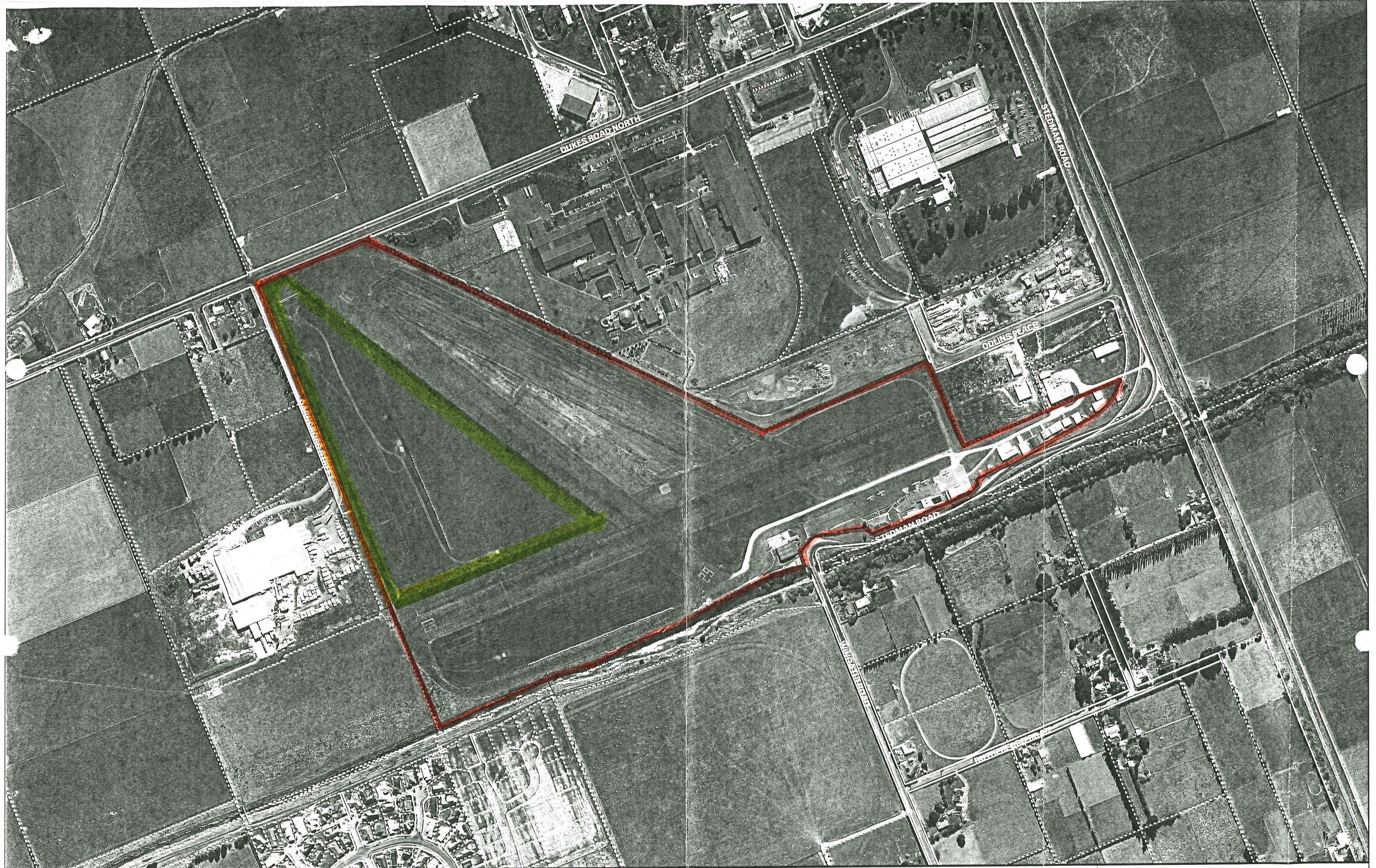
In the presence of:)

Witness:

Occupation:

Address:

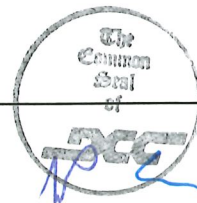

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Photographic Property Map

Selected Extent

Date: 23/4/4 User: evandomm



1 : 5000

PARCEL LINES CAN VARY FROM
LEGAL PARCEL BOUNDARIES.
This map is for illustration purposes only
and is not accurate to surveying, engineering
or ortho-photographic standards. Every effort
has been made to ensure correctness and
timeliness of the information presented.

Aerial Photography Copyright DCC and
Terralink International Ltd Aerial Photography
Cadastral Information derived from
Land Information New Zealand data
CROWN COPYRIGHT RESERVED

Lease instrument
Section 115, Land Transfer Act 1952



BARCODE

Land registration district

OTAGO

Unique identifier(s)
or C/T(s)

All/part

Area/description of part or stratum

Title to subdivided land

All

("the land")

Lessor

Surname(s) must be underlined or in CAPITALS

THE TAIERI AIRPORT TRUST

Lessee

Surname(s) must be underlined or in CAPITALS

OTAGO AERO CLUB INCORPORATED

Estate or interest*

Insert "fee simple", "leasehold in lease number", etc

Fee simple

Lease memorandum number

NA

Term

Ninety nine (99) years from

2004 ("the Commencement Date")

Rental

One dollar (\$1.00) plus GST per annum

Operative clause

If required, set out the terms of lease in Annexure Schedule(s).

The Lessor leases to the Lessee and the Lessee accepts the lease of the above estate or interest in the land in the above certificate(s) of title or computer register(s) for the term and at the rental and on the terms of lease set out in the above lease memorandum or in the Annexure Schedule(s) (if any).

Dated this

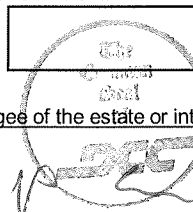
day of

2004

Attestation

	Signed in my presence by the Lessor
	<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name Occupation Address
Signature [common seal] of Lessor	
	Signed in my presence by the Lessee
	<i>Signature of witness</i> <i>Witness to complete in BLOCK letters (unless legibly printed)</i> Witness name THE COMMON SEAL of OTAGO AERO CLUB INCORPORATED was hereto affixed in the presence of: Occupation Address
Signature [common seal] of Lessee	

Certified correct for the purposes of the Land Transfer Act 1952.



[Solicitor for] the Lessee

*The specified consent form must be used for the consent of any mortgagee of the estate or interest to be leased

CONTINUATION OPERATIVE CLAUSE

1. DEFINITIONS AND INTERPRETATION

1.1 In this lease the following words and phrases shall have the meanings ascribed to them unless a contrary intention is expressed or unless the context otherwise requires:

"airport improvements" means all runways, runway signage, taxiways, aprons, plane parking or standing areas and all associated lighting, fencing (including all boundary fencing for the land) and other equipment used in association therewith situated on the land.

"default interest rate" shall mean 5% per annum above the Bank of New Zealand base rate.

"improvements" means all buildings, fixtures, fittings and other improvements now or at any time during the term that are constructed or erected on, in or under or made to the land, other than airport improvements and the Sub-Lessee improvements.

"Lessee" includes the Lessee's successors and assigns and where not repugnant to the context includes the employees, agents, invitees, licensees and contractors of the Lessee.

"Lessor" includes the Lessor's successors and assigns and where not repugnant to the context includes the employees, agents, contractors and authorised representatives of the Lessor.

"Secondary Airport" means an airport of the dimension and standard of the current Taieri Airfield as at the commencement of this Lease being:

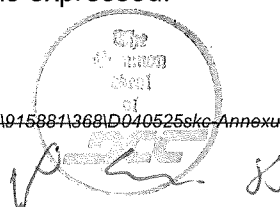
1. Operational runway directions and lengths:
 - (a) Runways 23/05 – 855 metres x 45 metres
 - (b) Runways 11/29 – 759 metres x 45 metres.
2. Standard:
Grass firm for groups 5 to 7 Equivalent Single Wheel Loading 6350 kg (as detailed in the NZAIP Planning Manual).

It is acknowledged that at the date of this lease the airport currently has the status of a current operational airfield meeting current Civil Aviation Authority requirements:

"Sub-Lessee improvements" means all buildings, fixtures, fittings and other improvements now or at any time during the term that are constructed or erected on, in or under or made to the land by Sub-Lessees of the Lessee.

"the Schedule" means the details set out on the front of this Lease.

1.2 In this Lease unless a contrary intention is expressed:



- (a) Clause headings are for reference only and shall not affect the interpretation of this Lease.
- (b) Words denoting the singular shall include the plural and vice versa and the one gender shall include the other genders and words denoting persons shall include any firm, company or other body whether incorporated or not.
- (c) Any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally.
- (d) Reference to anything of a particular nature following upon a general statement shall not in any way derogate from or limit the application of the general statement unless the particular context requires such derogation or limitation.

1.3 The covenants, powers and provisions implied in leases by the Property Law Act 1952 shall not apply to this Lease.

2. RENT

2.1 The Lessee shall pay if demanded to the Lessor in each year during the term the annual rent specified in the Schedule in one sum in advance. The first instalment shall be paid on the commencement date.

2.2 It is acknowledged by the parties that the nominal rental payable hereunder reflects the Lessee's ongoing obligations hereunder to:

- (a) maintain the improvements situated on the land during the term of the Lease; and
- (b) maintain the airport improvements and to keep the same to the necessary standard required for the land to remain a secondary airport in the Dunedin area for the Lessee and the aviation public including not only airport improvements as are in existence at the commencement date but also any other airport improvements that are installed by either party hereto during the term of this Lease; and
- (c) ensure that the Sub-Lessee improvements are maintained.

3. UTILITIES AND OUTGOINGS

3.1 The Lessee shall punctually pay all charges and expenses in respect of all services, utilities, and amenities supplied to or used by the Lessee on the land including the following services:

- (a) Electricity
- (b) Water
- (c) Gas
- (d) Telephone rents and charges
- (e) All collection charges and levies in respect of the removal of rubbish

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Handwritten: 85

- (f) All New Zealand Fire Service charges and the maintenance service contract charges in respect of any fire detection equipment installed for the protection of the improvements and the airport improvements.

And the Lessee shall indemnify the Lessor against any liability in respect of such charges and expenses.

- 3.2 The Lessee will pay for all other outgoings whatsoever charged by whomsoever in relation to the land and the improvements and airport improvements situated thereon and the usage of the land by the Lessee for aviation purposes and the siting thereon of an airport for the Lessee and the aviation public.

4. **GOODS AND SERVICES TAX**

- 4.1 The Lessee will pay all goods and services tax charged on the rent, outgoings or any other payments required to be made by it hereunder when such tax becomes due and payable.

5. **REPAIRS AND MAINTENANCE**

- 5.1 The Lessee will at its cost during the term keep and maintain all improvements and airport improvements whether owned by it or the Lessor in good condition order and repair and shall ensure that all Sub-Lessee improvements are kept and maintained in good condition, order and repair. In particular this clause shall extend to the keeping of the airport improvements maintained to a standard required by any appropriate authority for the land to remain as a Secondary Airport as well as an airport facility for the Lessee and the aviation public.
- 5.2 The Lessee acknowledges that throughout the term of the Lease there may be development of the airport improvements pursuant to the provisions of clause 8.2.2. The Lessee agrees that the maintenance obligations provided for in clause 5.1 shall extend to such new airport improvements.

6. **KEEP LAND CLEAN AND TIDY**

- 6.1 The Lessee shall at all times keep and maintain the land and the improvements in a clean and tidy condition commensurate with the permitted use hereunder.

7. **USE OF THE LAND**

- 7.1 The Lessee will not use or permit to be used all or any part of the land for any purpose other than for aviation purposes including the operation of:
 - (a) A secondary airport for use by the Lessee and the aviation public; and
 - (b) The Lessee's own club activities including the siting of clubroom, hangers owned by it or its members and Sub-Lessees activities and the siting of their associated improvements.
- 7.2 The Lessee shall during the term of this Lease be entitled to:



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- (a) Control and manage use of the land by the aviation public (provided that it does not unreasonably prevent or restrict the use of the land by the aviation public) subject to the terms of this Lease;
- (b) Impose reasonable charges upon its members and members of the public for usage of the airport whether by way of landing fees, rentals or other charges Provided That it shall have first obtained approval of the Lessor to the general level of such charges (such approval not to be unreasonably withheld in particular taking into account the maintenance and other obligations and the cost thereof imposed on the Lessee under this Lease);
- (c) From time to time close the airport to members of the public for the purposes of conducting special aviation events for itself or those conducted in association with other aero clubs or like organisations;
- (d) From time to time close the airport for the purposes of conducting non aviation events provided that the consent of the Lessor shall first be obtained (such consent not to be unreasonably withheld);
- (e) From time to time close the airport where this is necessary or desirable to carry out its responsibilities under this Lease;
- (f) Use those parts of the land not required for the time being for the purposes of aviation or of an airport for cultivating cropping or farming.

7.3.1 The Lessee shall at all times comply with all statutes, ordinances, regulations, by-laws or other lawful requirements affecting or relating to the land or the use or occupation of the land and shall also comply with the provisions of all licences, requisitions, notices or orders made or given by any authority having jurisdiction in respect of the land or the use and occupation of the land; and shall keep the Lessor indemnified in respect of any non-compliance by the Lessee.

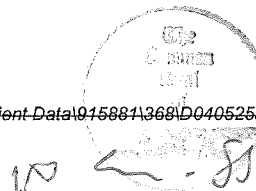
7.3.2 In particular the obligations in 7.3.1 shall extend to any additional requirements imposed upon the Lessee by any competent authority in relation to the operation of the land as a secondary airport.

8. ALTERATION AND IMPROVEMENTS

8.1 Subject to clause 8.2 the Lessee may at any time and from time to time during the term of this Lease construct or erect additional improvements or alter or demolish any existing improvements so long as such additions or alterations are made for the uses set out in clause 7.

8.2.1 Either party or both together may at any time and from time to time during the term of this Lease construct or erect new or make additions to the airport improvements provided that the written approval of the other shall have first been obtained.

8.2.2 For the sake of clarity the parties acknowledge that the continual development maintenance and advancement of the land as a secondary airport in the Dunedin area for the Lessee and the aviation public is intended by both parties.

A circular stamp is located at the bottom center of the page. Inside the stamp, the text "SIGNED" is visible at the top, followed by a date "11/01/2011". Below the date, there is a handwritten signature that appears to be "W. J. J.". The stamp is partially obscured by the page number and the footer text.

- 8.2.3 Approvals sought under clause 8.2.1 shall involve consultation between the parties to a level commensurate with the level of cost of the improvement and providing the same shall be in advancement of the principles of clause 8.2.2 shall not be unreasonably withheld.

9. IMPROVEMENTS AT TERMINATION OF LEASE

- 9.1 Upon any termination of this Lease by effluxion of time or by earlier re entry subject to holding over pursuant to clause 15.1 all improvements and all airport improvements shall transfer to the Lessor without payment of compensation by the Lessor to the Lessee. The Sub-Lessee improvements shall be removed within 3 months after any termination of this Lease.

10. SIGNS AND ADVERTISING

- 10.1 The Lessee shall be free to erect or display on the land any sign, advertisement, notice or advertising device provided that the same complies with the requirements of any authority having jurisdiction and relates to the Lessee's use of the land.
- 10.2 At the end or sooner termination of this lease the Lessee shall, at the Lessee's expense remove all signs, advertisements, notices, advertising devices, or any other distinctive marks put by or for the benefit of the Lessee on any part of the land.

11. INDEMNITIES

- 11.1 The Lessor shall have no obligation or liability for any loss of or damage to any property of the Lessee, nor shall the Lessor be under any obligation or liability to the Lessee in respect of any loss, damages, costs or expenses incurred by the Lessee arising out of its occupancy of the land, except where the same has been occasioned by, or shall result from, the Lessor's neglect or failure to observe the terms and conditions of this lease where the Lessor is not discharged from liability pursuant to any other provision of this lease.
- 11.2 (a) The Lessee shall indemnify and keep indemnified the Lessor from and against:
- (i) all loss by damage or injury to any person; and
 - (ii) any claims, proceedings or actions whatsoever made or brought against the Lessor in respect of the Land
- where these result from any negligent act or omission of the Lessee.
- (b) The Lessee shall only be liable to indemnify the Lessor pursuant to this clause to the extent the Lessor is not fully indemnified under any policy of insurance.

12. ASSIGNMENT AND SUBLETTING

- 12.1 Except as provided for in clause 12.2 and 12.3 the Lessee shall not during the term of this Lease assign, sublet or part with possession of the land or any part thereof in any way and shall not without the prior written consent of the Lessor mortgage or encumber this Lease.

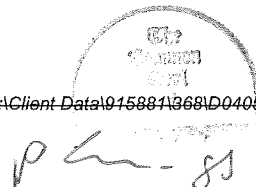
- 12.2 The Lessee may sublet portions of the land to its members for purposes associated with its club activities.
- 12.3 The Lessee may sublet portions of the land to other users upon such terms and conditions as it sees fit provided that such subletting shall only be for uses that are ancillary to the uses for which the Lessee is entitled to put the land hereunder and that the Lessor's written consent as to the terms and conditions thereof shall have been first obtained (the withholding of such consent to be subject to the same proviso as set out in clause 7.2(a) hereof).
- 12.4 No subletting hereunder shall be allowed whereby the Lessee's principal obligation hereunder to itself operate and maintain the airport on the land shall be compromised.

13. QUIET ENJOYMENT

- 13.1 Subject to the provisions of this Lease and the Lessee paying the rent and performing and observing all the covenants, conditions and agreements contained or implied in this Lease and on the part of the Lessee to be observed and performed, shall quietly hold and enjoy the Land without interruption by the Lessor or by any person claiming under the Lessor, until the expiry or sooner termination of this Lease.

14. DEFAULT, DISTRESS, ETC

- 14.1 (a) If any of the following occur then the Lessor shall be entitled to re-enter upon the land or any part of the land whereupon the term of this Lease shall end:
- (i) if the Lessee fails to remedy the breach of any of the other terms contained or implied in this Lease and to be complied with by the Lessee within a reasonable time, (being not less than 60 days) from receipt by the Lessee of a written request from the Lessor to remedy such breach; or
 - (ii) if the Lessee makes or attempts to make any composition, assignment, or other arrangement with or for the benefit of the Lessee's creditors; or
 - (iii) in the event of the insolvency, liquidation, or bankruptcy of the Lessee; or
 - (iv) in the event of the receivership of the Lessee where the receiver does not carry on the Lessee's business in a manner similar to the manner in which the Lessee carried on its business.
- (b) Termination of this Lease shall not release the Lessee from liability for rent then due or for any antecedent breach.
- 14.2 (a) If the Lessee has defaulted in the observance or performance of any of the provisions of this Lease to be complied with by the Lessee, and such default continues for 60 days after notice is given by the Lessor to the Lessee to remedy such default, then without prejudice to the Lessor's right of re-entry and termination or the Lessor's other



remedies under this Lease, the Lessor may (but shall not be obliged to) do anything, including pay money, necessary to remedy the default.

- (b) The Lessor may enter and remain on the land with all persons, equipment or materials necessary for the purposes of this subclause, and all moneys paid and expenses incurred by the Lessor for such purpose shall, at the option of the Lessor, be a debt due from the Lessee to the Lessor, or may be treated by the Lessor as rent in arrear under this Lease and may be recovered by the Lessor accordingly.

14.3 The Lessee shall pay the Lessor's costs and expenses (including legal costs) incurred in remedying or attempting to remedy any breach by the Lessee of the terms of this Lease or incurred in the exercise or attempted exercise or enforcement of any power, right or remedy conferred upon the Lessor by this Lease or which the Lessor may otherwise incur in suing for rent or other moneys payable by the Lessee under this Lease.

14.4 Without prejudice to the other rights, powers and remedies of the Lessor under this Lease, any moneys expended by the Lessor on behalf of the Lessee or in order to remedy any breach of this Lease by the Lessee shall bear interest at the default interest rate, as from the date of expenditure of those moneys by the Lessor to the date of payment.

15. GENERAL

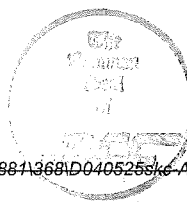
15.1 If the Lessor permits the Lessee to remain in occupation of the land after the expiry of the term without renewal, or sooner determination of the term, such occupation shall continue as a monthly tenancy only at the rent payable immediately before such expiration or determination, and otherwise on the same terms and conditions (so far as applicable to a monthly tenancy) as are contained or implied in this Lease.

15.2 No waiver or failure to act by the Lessor in respect of any one or more breaches by the Lessee of any of the terms contained or implied in this Lease shall operate as a waiver of another breach of any of such terms.

15.3 Any notice to be given to the Lessor or the Lessee under this Lease shall be deemed sufficiently served if given in writing and sent by registered post to the addressee at the addressee's last known address in New Zealand, or in the case of a corporation to its registered office. Any notice posted or placed shall be deemed to have been served on the day following its posting or placement. Any notice or other document or writing served or given by the Lessor under this Lease or implied by statute shall be valid and effectual if served or given under the hand of the Lessor or a director or the company secretary of the Lessor (if the Lessor is a corporation), general manager, solicitor or other authorised representative for the time being of the Lessor.

15.4 Where the consent of the Lessor is required under this Lease such consent shall not be unreasonably or arbitrarily withheld.

16. FORMAL MEETINGS



- 16.1 It is acknowledged by the parties that given the use to which the land leased is put and the obligations of the parties hereunder there will be a requirement to review the provisions of the Lease and the performance of the parties thereunder on an ongoing regular basis.
- 16.2 The parties agree to meet formally every three (3) years on or about 1st July for such purpose.
- 16.3 No amendment shall be made to the Lease unless both parties agree. Any such amendments shall be recorded by registered Variation of Lease with each party sharing the cost equally.
- 16.4 Notwithstanding the provisions of clause 16.2 the parties agree that should during the period between the said three (3) yearly meeting either parties wish to call a meeting to formally discuss any aspects in relation to the leasing arrangements then the parties will meet upon one party giving one month's written notice to the other calling such meeting.

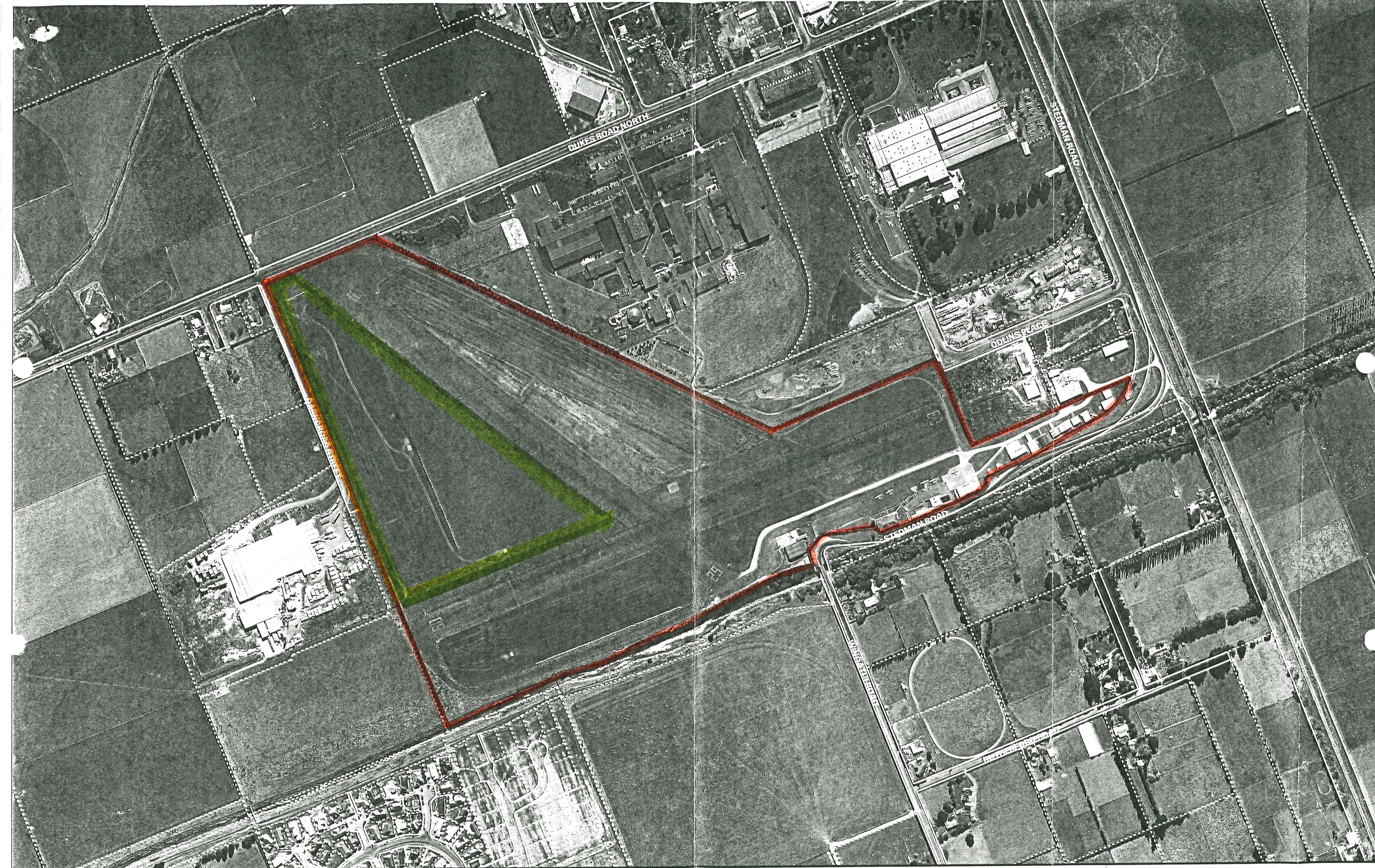
17. DISPUTE RESOLUTION

- 17.1 If a party has any dispute with the other party In connection with this Agreement including decisions made pursuant to the terms of this Agreement:
- (a) That party will promptly give full written particulars of the dispute to the other.
 - (b) The parties will promptly meet together and in good faith try and resolve the dispute.
- 17.2 If the dispute is not resolved within 7 days of written particulars being given (or any longer period agreed to by the parties) the dispute will be referred to mediation.
- 17.3 A party must use the mediation procedure to resolve a dispute before commencing arbitration or legal proceedings.
- 17.4 The mediation procedure is:
- (a) The parties will appoint a mediator and if they fail to agree the mediator will be appointed by the president of the Arbitrators and Mediators' Institute of New Zealand or the president's nominee.
 - (b) The parties must co-operate with the mediator in an effort to resolve the dispute.
 - (c) If the dispute is settled, the parties must sign a copy of the terms of the settlement.
 - (d) If the dispute is not resolved within 14 days after the mediator has been appointed, or within any extended time that the parties agree to in writing, the mediation must cease.

- (e) Each party must pay a half share of the costs of the mediator's fee and costs including travel, room hire, refreshments etc.
- 17.5 The terms of settlement are binding on the parties and override the terms of the Agreement if there is any conflict.
- 17.6 The terms of settlement may be tendered in evidence in any mediation or legal proceedings.
- 17.7 The parties agree that written statements given to the mediator or to one another, and any discussions between the parties or between the parties and the mediator during the mediation period are not admissible by the recipient in any arbitration or legal proceedings.
- 17.8 Either party may commence arbitration proceedings when mediation ceases under this clause.
- 17.9 If the dispute is referred to arbitration the provisions of clause 44 of the Auckland District Law Society Commercial lease, third edition 1993(2) shall apply (copy clause annexed).
- 17.10 Neither party will unreasonably delay the dispute resolution procedures in this clause.
- 17.11 This clause does not apply to:
 - (a) Any dispute arising in connection with any attempted renegotiation of this agreement; or
 - (b) An application by either party for urgent interlocutory relief.
- 1617.12 Pending resolution of any dispute the parties will perform this Agreement in all respects including performance of the matter which is the subject of dispute.

18. RIGHT OF RENEWAL

- 18.1 If the Lessee is not in breach of this lease and has given to the Lessor written notice to renew the lease at least three (3) calendar months before the end of the term hereby created then the Lessor will at the cost of the Lessee renew the lease for a further term of ninety-nine (99) years and the renewed lease shall be upon and subject to the covenants and agreements herein expressed and implied including this right of renewal.



Photographic Property Map

Selected Extent

Date: 23/4/4 User: evandomm



1 : 5000

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