

I hereby give notice of an Ordinary meeting of the

<b>Meeting</b>	Mangawhai Community Park Governance Committee
<b>Date</b>	Monday 19 February 2018
<b>Time</b>	10.00 am
<b>Venue</b>	Meeting Room, Kaipara District Council offices – 6 Molesworth Drive, Mangawhai

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## **Open Agenda**

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### **Membership**

Chair: Councillor Anna Curnow

Members: Messrs Maurice Langdon and Jim Wiltle, Councillor Peter Wethey

### Staff and Associates:

Key Relationships Manager Community, Community Planner, Parks Officer, Treasury and Financial Services Manager, Administration Assistant (Minute-taker)

Linda Osborne  
**Administration Manager**

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**Mangawhai Community Park Governance Committee**

**Monday 19 February 2018, Mangawhai**

**1 Opening**

**1.1 Present**

**1.2 Apologies**

**1.3 Confirmation of Agenda**

The Committee to confirm the Agenda.

**1.4 Conflict of Interest Declaration**

Committee Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as a Committee Member/Commissioner and any private or other external interest they might have. It is also considered best practice for those members to the Executive Team attending the meeting to also signal any conflicts that they may have with an item before the Committee.

**1.5 Deputations and Presentations**

## **2 Confirmation of Minutes**

### **2.1 Mangawhai Community Park Governance Committee minutes 27 November 2017**

Administration Manager            1611.04

#### **Recommended**

*That the minutes of the meeting of Mangawhai Community Park Governance Committee held on 27 November 2017 be confirmed as a true and correct record.*

**Mangawhai Community Park Governance Committee**

meeting held

<b>Date</b>	Monday 27 November 2017
<b>Time</b>	Meeting opened at 10.00 am Meeting closed at 11.32 am
<b>Venue</b>	Meeting Room, Kaipara District Council offices – 6 Molesworth Drive, Mangawhai
<b>Status</b>	Unconfirmed

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**Minutes**

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**Membership**

Chair: Councillor Anna Curnow

Members: Messrs Maurice Langdon and Jim Wittle, Councillor Peter Wethey

Staff and Associates:

Parks and Community Manager, Parks Officer, Administration Assistant (Minute-taker).

Linda Osborne  
**Administration Manager**  
[losborne@kaipara.govt.nz](mailto:losborne@kaipara.govt.nz)

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Unconfirmed

**Minutes Mangawhai Community Park Governance Committee  
Monday 27 November 2017, Mangawhai****1 Opening****1.1 Present**

Councillor Anna Curnow (Chair), Messrs Maurice Langdon and Jim Wintle

**In Attendance**

<b>Name</b>	<b>Designation</b>	<b>Item(s)</b>
Darlene Lang	Parks and Community Manager	All
Hamish Watson	Parks Officer	All
Natalie Edwards	Administration Assistant	All (Minute-taker)

**Adjournments**

Nil.

**Absences**

Nil.

**1.2 Apologies**

Nil.

**1.3 Confirmation of Agenda**

The Committee confirmed the Agenda.

**1.4 Conflict of Interest Declaration**

Nil.

**1.5 Deputations and Presentations**

Nil.

## 2 Confirmation of Minutes

### 2.1 Mangawhai Community Park Governance Committee minutes 21 August 2017

Democratic Services Manager 1611.04

Moved Curnow/Wintle

*That the minutes of the meeting of Mangawhai Community Park Governance Committee held on 21 August 2017 be confirmed as a true and correct record.*

Carried

## 3 Operational

### 3.1 Mangawhai Community Park Master Plan Operations Update: September to October 2017

Parks and Community Manager 4702.13.06

Moved Crunow/Morris

*That the Mangawhai Community Park Governance Committee:*

- 1 *Receives the Parks and Community Manager's report 'Mangawhai Community Park Master Plan Operations Update: September to October 2017' dated 16 November 2017; and*
- 2 *Delegates the Parks and Community Manager to send an acknowledgement in response to the letter from Mangawhai Activity Zone dated 31 August 2017 (Attachment 1 to the afore-mentioned report).*

Carried

### 3.2 Mangawhai Community Park Master Plan Review

Parks and Community Manager 4702.13.06

Moved Curnow/Wintle

*That the Mangawhai Community Park Governance Committee:*

- 1 *Receives the Parks and Community Manager's report 'Mangawhai Community Park Master Plan Review' dated 17 November 2017; and*
- 2 *Believes it has complied with the decision-making provisions of the Local Government Act 2002 to the extent necessary in relation to this decision; and in accordance with the provision of section 79 of the Act determines that it does not require further information prior to making a decision on this matter; and*
- 3 *Approves an update of the Mangawhai Community Park Master Plan.*

Carried



#### 4 Closure

The meeting closed at 11.32 am.

Confirmed:

Chair:

Kaipara District Council  
Dargaville

Unconfirmed

### **3 Operational**

#### **3.1 Mangawhai Community Park Master Plan Operations Update: November 2017 to January 2018**

**Parks and Community Manager                      4702.13.06**

##### **Recommended**

*That the Mangawhai Community Park Governance Committee receives the Key Relationships Manager Community's report 'Mangawhai Community Park Master Plan Operations Update: November 2017 to January 2018' dated 13 February 2018, and Attachments 1 to 4, and the information contained therein.*

**File number:** 4702.13.06 **Approved for agenda**   
**Report to:** Mangawhai Community Park Governance Committee  
**Meeting date:** **19 February 2018**  
**Subject:** **Mangawhai Community Park Master Plan Operations Update:  
November 2017 to January 2018**  
**Date of report:** 13 February 2018  
**From:** Darlene Lang, Key Relationships Manager Community  
**Report purpose**  **Decision**  **Information**  
**Assessment of significance**  **Significant**  **Non-significant**

### Summary

The Mangawhai Community Park Governance Committee (MCPGC) is the body which oversees the implementation of the Mangawhai Community Park Master Plan (the Plan) for the Mangawhai Community Park (MCP). The revised MCP 2015/2025 Work Programme was adopted in June 2016 and amended in May 2017.

A summary of activities, operations and maintenance work carried out over the months of November 2017 to January 2018 is reported below.

A change in reporting lines means that the Domain will now fall under the Infrastructure Department. The Chief Operating Officer and General Manager Infrastructure, Curt Martin, will attend future Committee meetings, with Hamish Watson continuing as the Parks Officer for the Park.

### Recommendation

*That the Mangawhai Community Park Governance Committee receives the Key Relationships Manager Community's report 'Mangawhai Community Park Master Plan Operations Update: November 2017 to January 2018' dated 13 February 2018, and Attachments 1 to 4, and the information contained therein.*

### Reason for the recommendation

To keep the MCPGC up-to-date on progress of the work programme and relevant information regarding the ongoing operations and works at MCP.

### Reason for the report

To report on the Mangawhai Community Park Master Plan (the Plan) operations, providing an update for the November 2017 to January 2018 period.

### Background

The Plan was developed after public consultation and feedback and adopted by Council on 25 November 2014.

The Vision for the Park is: Mangawhai Community Park will be a visible, predominantly natural, public space at the entrance to Mangawhai Heads, used (freely) by the community for recreation and enjoyment of the outdoor environment.

The following is a summary of activities, operations and maintenance work carried out over the months of November 2017 to January 2018.

- The second terrace of pavers at the Pioneer Village is nearing completion;
- The area between the Pioneer Village and the Wetlands has been grassed;
- Renovations of the buildings at the Pioneer Village are ongoing;
- Bike pump tracks have been installed;
- Mangawhai Activity Zone (MAZ) has put in a grant to Foundation North for the storage shed and lookout building;
- An Agreement with the Fire Brigade has been finalised and signed by Council. It is now with Fire Emergency New Zealand (FENZ) to be signed;
- Licences to Occupy for MAZ (**Attachment 1** - LTO and **Attachment 2** - Deed of Surrender) and the Pioneer Village (**Attachment 3**), plus the Pioneer Village Development Agreement (**Attachment 4**) are attached for your information;
- The Mangawhai Museum's Deed of Surrender is still being negotiated. What needs to be determined is what land of the surrendered lease area is going to be used by the Art Centre or other organisations. This needs to be taken out of the non-exclusive Licence to Occupy that Council is providing the Museum over the surrendered land; and
- The Plan Review Update consultation has been completed. There have been 125 surveys received as at 31 January 2018. Jim Wintle is continuing to engage with young people, so the online survey will remain open until 17 February 2018 and the results will be tabled at the Committee meeting. This information will give the Committee direction for the next stage of the Plan.

#### ***Mangawhai Community Park Operations Update***

A capital budget of \$100,000 per annum was approved in the Long Term Plan (LTP) 2015/2025 for the development of the Park from financial contributions (Reserves).

The following is a summary of activities, operations and maintenance work carried out over the last five months within the Park.

<b>Description</b>	<b>Budget</b>	<b>Actual</b>
Complete landscaping around village and create heritage gardens, paths and steps.	\$65,000	\$51,500.00
Power installation to site.	\$10,000	\$13,500.00
Implement planting programme.	\$5,000	\$0
Engineering investigation into service lanes.	\$15,000	\$0
Remove exotics.	\$5,000	\$0
<b>Total</b>	<b>\$100,000</b>	<b>\$65,000</b>

#### **Factors to consider**

##### ***Community views***

The Plan was developed using a public process and reflects the views of the community and other stakeholders at the time of its development. The Plan was adopted in November 2014.

***Policy implications***

The financial budgets are set within the LTP and respective Annual Plan.

The funding received is from financial contributions received by Council through development, such as subdivisions.

***Financial implications***

It is the Key Relationships Manager Community's responsibility to ensure all operations are conducted within budget.

***Legal/delegation implications***

There are no known delegation issues; MCPGC has delegated authority from Council to govern Mangawhai Community Park in accordance with its Terms of Reference.

**Assessment of significance**

This is not a significant activity on Mangawhai Community Park and as such is not considered to be significant in terms of Council's Significance and Engagement Policy.

**Next step**

Continue to implement the Works Programme.

**Attachments**

Attachment 1 [MAZ Licence to Occupy](#)

Attachment 2 [MAZ - Deed of Surrender of Lease](#)

Attachment 3 [Mangawhai Pioneer Village Draft Licence To Occupy](#)

Attachment 4 [Mangawhai Pioneer Village Trust Development Agreement for LTO](#)

**Licence to Occupy**

**(March 2016)**

**Kaipara District Council**

(Council)

**Mangawhai Activity Zone Charitable Trust**

(Organisation)

**Licence to Occupy Land**

**Molesworth Drive, Mangawhai**

**Mangawhai Activity Zone**



## Licence to Occupy Land

**AGREEMENT** dated the \_\_\_\_\_ day of \_\_\_\_\_ 2016

### **PARTIES**

- 1 **Kaipara District Council** ("Council")
- 2 **Mangawhai Activity Zone Charitable Trust** ("Organisation")

### **INTRODUCTION**

- A The Council is the registered proprietor of the Land described in Schedule 1 and holds such Land for the benefit of the Kaipara community, which may allow for community organisations to use the Land for community purposes.
- B The Organisation has substantially completed the original Development Plan and achieved Practical Completion and the Council and the Organisation now enter into this Agreement to establish and provide for the Organisation to use and occupy the Land on the terms and conditions set out in this Agreement.

#### 1. **Agreement**

##### **Grant of Licence**

- 1.1 The Council grants and the Organisation accepts:
- (a) a licence to use and occupy the Improvements on the Land; and
  - (b) a licence to use the balance of the Land, excluding that part of the Land on which the Improvements are situated, in common with other organisations and persons to whom the Council may grant similar rights.

#### **Terms and Conditions**

- 1.2 The Council and the Organisation agree that they are bound by and will observe and perform their respective obligations under this Agreement as set out in the Schedules to this Agreement.

**Signed by** )

**Kaipara District Council** )

in the presence of: )

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**Signed by** )

**Mangawhai Activity Zone** )

**Charitable Trust** )

in the presence of: )

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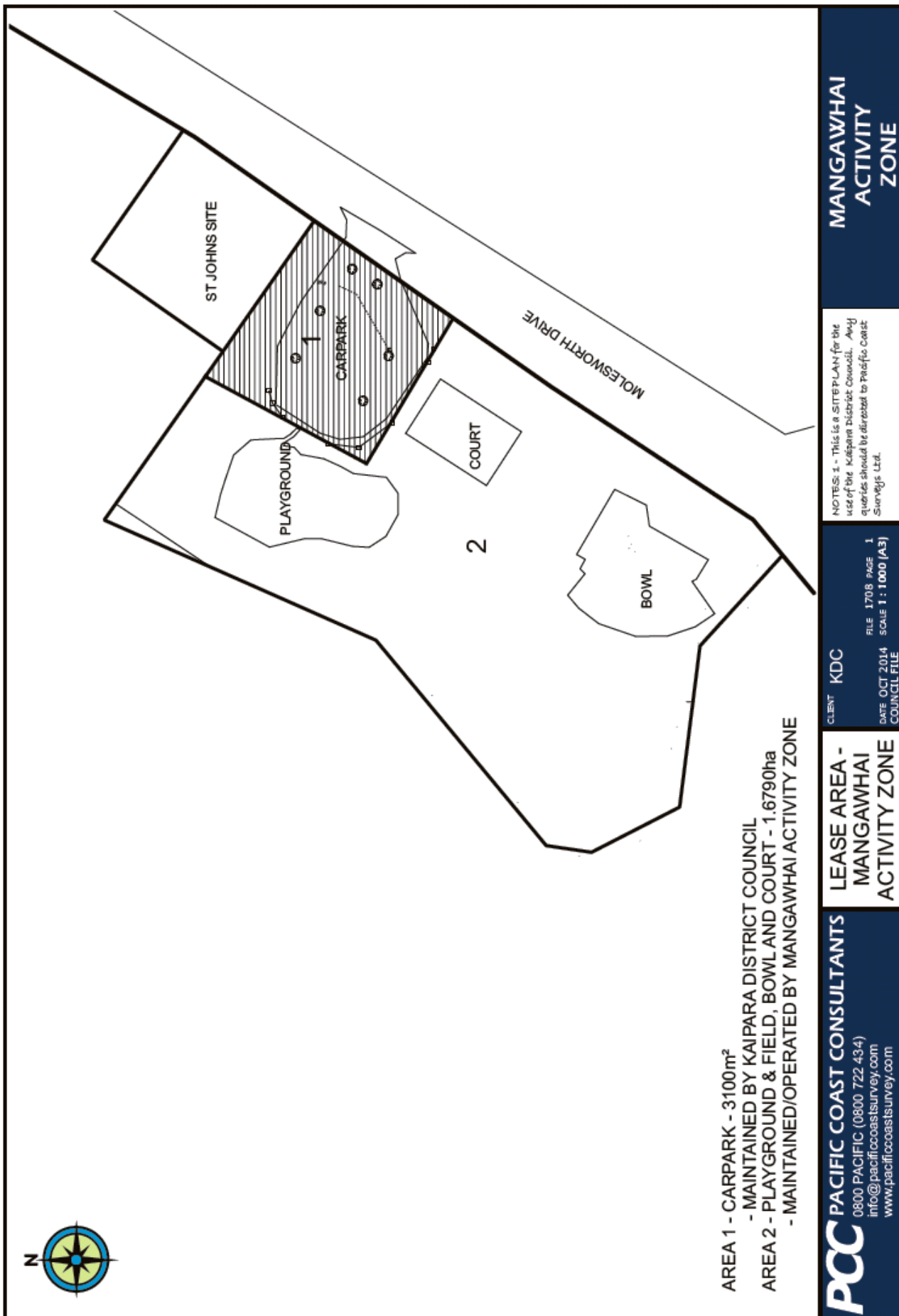


## Particulars Schedule I

### Mangawhai Activity Zone Charitable Trust

<b>Organisation</b>	Mangawhai Activity Zone Charitable Trust (MAZ)
<b>Organisation contact details</b>	Collin Gallagher colin@bramasole.net.nz <ul style="list-style-type: none"> <li>• 021 955 850</li> </ul>
<b>Council contact details</b>	Sue Hodge, Parks and Community Manager <ul style="list-style-type: none"> <li>• <a href="mailto:council@kaipara.govt.nz">council@kaipara.govt.nz</a></li> <li>• Private Bag 1001, Dargaville 0340</li> <li>• 09 439 3123 or 0800 727 059</li> </ul>
<b>Land</b>	Land situated at Mangawhai Community Park on Molesworth Drive, Mangawhai, as shown on the plan attached to this Schedule 1 being part of Lot 2 DP450057 C/T 571497
<b>Improvements</b>	Construction of a skate park and other recreational playground equipment and associated improvements.
<b>Status of Organisation</b>	Trust. Registered Charitable Entity – Yes
<b>Community Benefits</b>	The provision of skating and other playing/recreational facilities to the youth and other members of the Mangawhai community.
<b>Annual Licence Fee</b>	\$1.00 per annum plus GST subject to conversion to a substantive annual licence fee subject to reassessment. Annual licence fee payable annually.
<b>Reassessment Intervals</b>	Five-yearly.
<b>Outgoings Payable</b>	As detailed in clause 4.
<b>Term</b>	35 years from commencement.
<b>Commencement Date</b>	01 April 2016.
<b>Extension Terms</b>	None, however MAZ will be provided with a first right of refusal for a further period as determined by the Council.
<b>Further Extensions</b>	None.
<b>Total Possible Term</b>	30 years.
<b>Permitted Use</b>	Operation of an activity zone for the provision of outdoor recreational facilities principally for the use and benefit of the youth of Mangawhai.
<b>Public Risk Insurance Amount</b>	\$2.0 million.
<b>Insurance Value</b>	All improvements shall be insured against loss and damage by MAZ.
<b>Conditions/Special Terms</b>	MAZ will comply with the vision, principles and objectives of the Mangawhai Community Park Master Plan.

	<p>These objectives have been created to:</p> <ul style="list-style-type: none"> <li>• enhance the natural character through re-vegetation and increased biodiversity;</li> <li>• ensure the natural character of the Park dominates; and</li> <li>• improve the ability for people to experience the natural values of the Park by maintaining and developing access and connections through the Park.</li> </ul> <p>With regards to building and other structures:</p> <ul style="list-style-type: none"> <li>• they require existing and new buildings to have and implement a landscape plan;</li> <li>• they will use good urban design practice to maximise safety, to build an attractive aesthetic and no buildings on the skyline; and</li> <li>• they need approval of a registered architect appointed by the “Friends” group.</li> </ul>
<p><b>Financial Year of Organisation</b></p>	<p>TBC.</p>
<p><b>Performance Measures</b></p>	<ul style="list-style-type: none"> <li>• The community benefits are continuing to be provided;</li> <li>• Not-for-profit status of the Organisation is retained;</li> <li>• Registration of the Organisation as a charitable entity is retained;</li> <li>• The constituting document of the Organisation permits membership or ability to participate to all members of the public who can legitimately take part in the activities of the Organisation and no-one shall be excluded from membership, provided they pay the necessary fees and observe the usual and proper rules of the Organisation;</li> <li>• The degree and frequency of the undertaking of the Permitted Use; and</li> <li>• The degree and frequency of use, including shared use, of the Improvements and the Land by other community organisations and members of the public.</li> </ul>



**AREA 1 - CARPARK - 3100m<sup>2</sup>**  
 - MAINTAINED BY KAIPARA DISTRICT COUNCIL  
**AREA 2 - PLAYGROUND & FIELD, BOWL AND COURT - 1.6790ha**  
 - MAINTAINED/OPERATED BY MANGAWHAI ACTIVITY ZONE

**PCC** PACIFIC COAST CONSULTANTS  
 0800 PACIFIC (0800 722 434)  
 info@pacificcoastsurvey.com  
 www.pacificcoastsurvey.com

CLIENT KDC  
**LEASE AREA -  
MANGAWHAI  
ACTIVITY ZONE**

DATE OCT 2014  
 COUNCIL FILE  
 FILE 1708 PAGE 1  
 SCALE 1 : 1000 (A3)

NOTES: 1 - THIS IS A SITE PLAN for the  
 use of the Kaipara District Council. Any  
 queries should be directed to Pacific Coast  
 Surveyors Ltd.

**MANGAWHAI  
ACTIVITY  
ZONE**

## Schedule 2

### Terms and Conditions

#### 1 Definitions and Interpretation

##### Definitions

1.1 In this Agreement, including the Introduction and all Schedules to this Agreement, unless the context otherwise requires:

"**Administration fee**" is the fee which the Council may require the Organisation to pay as a component of the Annual Licence Fee for the Council's administration costs of and incidental to the implementation and administration of this Agreement, which, without limitation, may include provision for staff time and regular, periodic and as required expenditure on repairs to and maintenance and enhancement of the Land (excluding the Improvements).

"**Annual Licence Fee**" is the annual licence fee, plus GST payable by the Organisation to the Council, the initial amount of which is set out in Schedule 1, and subject to conversion and reassessment as provided for in Schedule 1, and as more particularly provided for in clause 3.

"**Authority**" means any local body, government or other authority having jurisdiction or authority over or in respect of the Land or the use or occupation of the Land.

"**Commencement Date**" means the commencement date of this Agreement as set out in Schedule 1.

"**Community Benefits**" means the community benefits for the Kaipara community as set out and described in Schedule 1 to be achieved by the Organisation by entering into this Agreement and undertaking the Permitted Use.

"**Council**" means the Kaipara District Council, its successors and assigns and includes any Government body, local authority or other organisation that takes over the responsibility of Kaipara District Council in respect of the Land.

"**Development Agreement/Plan**" means the prior Agreement between the Council and the Organisation for the development of the Improvements on the Land.

"**Extension Term/s**" means extension/s of the Term as set out in Schedule 1 and as provided for in clause 2.

"**Further extension/s**" means further extensions of the Term following the initial Term and the Extension Term/s, as set out in Schedule 1 and provided for in clause 2.

"**Improvements**" means the buildings' structures and all other improvements placed, erected or constructed by the Organisation on the Land and includes all services which serve the Improvements.

"**Land**" means the land set out and described in Schedule 1.

"**Outgoings**" means the outgoings in respect of the Improvements and the Land which, as set out in Schedule 1, shall be payable by the Organisation, and as provided for in clause 4.

"**Organisation**" means the Organisation named and described in Schedule 1 however does not include the Organisation's successors or assigns.

"**Permitted Use**" is the permitted use of the Improvements and the Land as set out and described in Schedule 1.

"**Performance Measures**" are as provided for in clause 9 and as more particularly set out in Schedule 1.

"**Rates**" means the Council and regional council rates payable in respect of the Land or a proportion of such rates, as determined by the Council.

"**Term**" means the term of this Agreement and all extensions of the Term as set out and provided for in Schedule 1.

"**Total Possible Term**" is the total possible term of this Agreement including all extensions of this Agreement, if granted.

## **Interpretation**

1.2 In this Agreement:

- a) references to clauses and schedules are reference to clauses and to schedules to this Agreement unless stated otherwise. Each such schedule forms part of this Agreement;
- b) where the context permits the singular includes the plural and vice versa;
- c) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;
- d) where the context permits references to a "**person**" include an individual, firm, company, corporation or unincorporated body or persons, any public authority, territorial or regional council, any government or any governmental agency;
- e) references to a "**party**" means a party to this Agreement and any reference to a party, to the extent applicable, includes the successors, executors and administrators (as the case may be) of that party;
- f) defined words and expressions bear the defined meaning throughout this Agreement including the Introduction.
- g) where any condition or special term set out in Schedule 1 is in conflict with or is inconsistent with any other term of this Agreement the condition or special term shall prevail.

## **2 Term of Licence**

2.1 The term of the licence granted by this Agreement shall be for the Term set out in Schedule 1 and shall commence on the Commencement Date as set out in Schedule 1.

2.2 If the Organisation, during the Term, to the satisfaction of the Council, has:

- a) paid the Annual Licence Fee;
- b) complied with the Organisation's obligations under this Agreement;
- c) and continues to meet the Performance Measures;

- 2.3 If this Agreement provides in Schedule 1 for a Further Extension of the Term on account of substantial improvements having been erected on the Land ("Further Extension") such extension shall be requested by the Organisation and granted by the Council in accordance with clause 2.2.
- 2.4 All extensions of the Term may be recorded in writing in such manner as the Council requires.
- 2.5 The total duration of the Term shall be limited to the Total Possible Term as set out in Schedule 1.

### **3 Annual Licence Fee**

- 3.1 The Organisation shall pay the Council the Annual Licence Fee during each year of the Term on the date and the frequency set out in Schedule 1. Provided however that the Council shall have the right to review the annual licence fee on or after the first year of this Agreement being in force and at successive yearly intervals thereafter if there should be any new facility or service which results in commercial activity **with an annual turnover greater than \$50,000 per annum** being carried on at the Land which, in the opinion of the Council, is being operated independently through the Organisation on a commercial basis. If there should be any dispute between the parties as to what in the circumstances would be a fair annual licence fee then the dispute shall be determined by arbitration by a single arbitrator under the Arbitration Act 1996
- 3.2 The initial Annual Licence Fee shall be the amount, plus GST, set out in Schedule 1.
- 3.3 Where the initial annual licence fee is a peppercorn rent (for example \$1.00 per annum plus GST) and the Organisation generates significant revenue over expenditure **(as defined in 3.1)** and/or fails to meet the performance measures as set out in Schedule 1, the Council may by notice in writing to the Organisation ("Conversion Notice") convert the amount of the annual licence fee to a substantive annual licence fee ("substantive annual licence fee") which shall comprise:
- (a) the administration fee as assessed by the Council; plus
  - (b) if the Council requires, a licence fee calculated at 5% per annum on the capital value of that part of the Land (excluding the improvements) on which the improvements are situated plus allowance for shared access, parking and curtilage, as assessed by a registered valuer appointed by the Council.
- 3.4 In the case of a conversion notice given by the Council under clause 3.3 the substantive Annual Licence Fee shall take effect from the date stipulated in the conversion notice given by the Council and may, at the discretion of the Council, be reassessed by the Council at the intervals and at the dates provided for in Schedule 1, calculated from the date of conversion. In any case where a substantive Annual Licence Fee applies from the Commencement Date the substantive Annual Licence Fee may at the discretion of the Council be reassessed at the intervals and at the dates set out in Schedule 1.

### **4 Outgoings**

- 4.1 The Organisation will, from the Commencement Date, duly and punctually pay for all consumables in respect of its undertaking of the Permitted Use and use and occupation of the Improvements and the Land which without limitation shall include charges for telephone, gas, electricity, water,

sanitation and sewage, cleaning, garden and ground maintenance, licences, consents and permits and land tax (if any).

- 4.2 The Organisation shall pay all Outgoings direct or otherwise as the Council directs and in respect of the Land, excluding the Improvements, shall pay a proportion of such Outgoings as are apportioned by the Council, which may include Outgoings which are shared with other organisations or persons.
- 4.3 The Organisation shall pay Rates to the Council unless remitted by operation of any policy implemented by the Council in relation to the remission of Rates.
- 4.4 All Outgoings payable by the Organisation shall be paid by the Organisation as and when each Outgoing falls due for payment and in the case of any outgoing which is payable to the Council upon request made by the Council.

## **5 Repair Maintenance and Replacement**

- 5.1 The Organisation shall at all times during the Term in a proper and workmanlike manner and to the reasonable requirements of the Council:
- a) keep and maintain the Improvements (both external and internal and including all plant, fixtures and fittings, floor coverings and surfaces) in good serviceable and substantial repair and condition, repairing and replacing as necessary, and will at the end or earlier determination of the Term yield and deliver up the Improvements to the Council in such good serviceable and substantial repair and condition;
  - b) redecorate, by painting or staining as applicable, those parts of the exterior and interior of buildings and structures comprising the Improvements when they reasonably require repainting and redecoration, to a standard approved by the Council such approval not to be unreasonably withheld;
  - c) make good (by repairing or replacing as necessary) any damage to the Improvements at any time during the Term;
  - d) keep and maintain, repairing and replacing as necessary, the stormwater and wastewater systems on the Land which serve the Improvements; and
  - e) ensure that all toilets, sinks, drains wastes, fittings and pipes on the Land are not blocked and are used for their designed purposes only and are regularly inspected, cleaned and maintained and repaired and replaced as necessary;
- 5.2 The Organisation shall at all times during the Term in a proper and workmanlike manner, and in such proportions as required by the Council where there is shared use of the Land by other organisations or persons:
- a) keep all open areas of the Land, whether utilised as open space, paths or tracks, bush or planted areas or carparking in a clean and tidy condition repairing and replacing (including replanting) as necessary; and
  - b) regularly cause all rubbish and garbage to be removed from the Land and keep all rubbish bins and containers in a tidy condition with the exception of the **three** Council provided bins

which will continue to be emptied by Council's Contractors. The Organisation will also, at the Organisation's own expense, cause to be removed all trade waste, boxes and other goods or rubbish not removable in the ordinary course by any Authority.

- 5.3 If this Agreement provides in Schedule 1 for Further Extension/s, the Organisation shall as a condition for any such Further Extension to be granted by the Council:
- a) have replaced or renewed all or some items of the Improvements on the Land during the initial Term or Extension Term/s provided for in this Agreement so that in the opinion of the Council their useful life extends into the Further Extension;
  - b) prepare and provide to the Council a development plan for the Further Extension to include the replacement of those items of the Improvements which the Council has notified to the Organisation in writing require replacement and any new or additional items of Improvements which the Organisation wishes to construct on the Land; and
  - c) obtain the approval of the Council to the Development Plan, such approval not to be unreasonably withheld.

## **6 Insurances**

- 6.1 The Organisation shall keep the Improvements together with all fixtures, fittings, plant, equipment and chattels on the Land insured against loss, damage or destruction by fire, earthquake, flood, lightning, storm, aircraft, electric fusion, machinery breakdown, malicious damage, inevitable accident and other usual risks for the value specified in Schedule 1 or such other value as is approved by the Council.
- 6.2 In the event the Improvements or any part of the Improvements at any time during the Term being partially destroyed or damaged by fire or other insurable extraneous peril then and so often as the same shall happen all moneys received in respect of such insurance shall be expended by the Organisation with all reasonable speed in repairing the damage sustained.
- 6.3 In the event of the Improvements being totally destroyed or damaged by any cause as to render the Improvements unusable or in the reasonable opinion of the Council to require demolition or reconstruction, the Organisation shall, if the Council consents to rebuilding or reinstating and so requires, rebuild or reinstate the Improvements provided that the Organisation shall not be required to expend more than the available proceeds of insurance towards such rebuilding and reinstatement. If the Council should not permit rebuilding or reinstating the Term shall immediately cease and determine and the Organisation will at its own cost demolish and clear the debris and have the Land cleared to the satisfaction of the Council.
- 6.4 The Organisation shall during the Term at its own cost take out and keep in full force and effect at all times a public liability insurance policy for a sum of not less than the sum set out in Schedule 1 for any single event or such greater sum required by the Council from time to time and shall within 30 days of the execution of this Agreement or request for additional cover produce to the Council a copy of the policy or certificate of currency.



## **7 Nature of Licence/Public Use**

- 7.1 The licence to use and occupy the Improvements and the licence to use the balance of the Land in common which is granted by this Agreement is subject to a right of use of the Land by the public but subject to the following provisions of this clause.
- 7.2 It shall be lawful for any person to enter and for any reasonable period of time to remain as a spectator upon the Land at all times and any person so entering or remaining on the Land shall not so long as he/she conducts and behaves himself/herself in an orderly and seemly manner and refrains from hindering and obstructing the activities of the Organisation be deemed to be a trespasser provided however that this authority shall not be deemed to authorise any person to enter or be within or upon any buildings or structures situated on the Land without the previous consent of the Organisation or person duly authorised by the Organisation.
- 7.3 The right of public entry on the Land is subject in all respects to the right, and obligation, of the Organisation to control the Improvements as licensee and occupier and the Organisation shall be entitled at all times to require compliance by the public with all legislation and by laws relating to the Improvements and the Land and its use and in particular the provisions of the Health and Safety in Employment Act 1992 and/or Health and Safety at Work Act 2015
- 7.4 The Council shall at any time during the Term be entitled to undertake, or permit other organisations to undertake, another development or developments on the Land known as Mangawhai Community Park (excluding the land that Council has licenced MAZ to use –identified in the Pacific Coast Consultants plan appended to this agreement) and the Organisation consents to any such development or developments, provided that the Council will use reasonable endeavours to ensure that as little interruption as possible is caused to the Organisation in its undertaking of the Permitted Use during the undertaking of such developments.

## **8 Permitted Use**

- 8.1 The Organisation shall use and occupy the Improvements and use the Land in common with others for the Permitted Use and shall provide the Community Benefits in accordance with the Performance Measures provided for in clause 9, all as set out and described in Schedule 1.
- 8.2 If at any time the Council is of the opinion that the Improvements and the Land are not being used or are not being sufficiently used for the Permitted Use or are being used for activities other than on a not for profit basis the Council, after making such enquiries as it thinks fit and giving the Organisation the opportunity of explaining the use of the Improvements and the Land, if the Council is satisfied that the Improvements and the Land are not being used or not being sufficiently used for the Permitted Use or are being used for activities other than on a not for profit basis, may terminate this Agreement by notice in writing to the Organisation.
- 8.3 The Organisation shall not:
- a) carry on on the Improvements or the Land any noxious, noisome or offensive act, trade, business, occupation or any act, matter or thing which may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of any adjoining land or any other licensee, occupier or user of any other part of the Land;

- b) bring or permit to be brought on to the Improvements or the Land any item of a flammable, volatile or explosive nature or any contaminant (as defined in Section 2 of the Resource Management Act 1991) without first complying with the provisions of all laws then in force relating to the handling and storage of such materials and the requirements of the insurers of the Improvements;
- c) allow, carry on on the Improvements or the Land any use or activity which may cause loss or damage to the Improvements or the Land or any adjoining land, or become an annoyance, nuisance or disturbance to the Council or any other user or occupier of the Land on any adjoining land;
- d) release into the environment, discharge, deposit, place or dispose of on or near the Land any contaminant referred to in clause 8.3(b) except in accordance with an approval given under environmental health and safety legislation;
- e) carry on any illegal or immoral activity; or
- f) carry on any use which is not a permitted use under the District Plan.

## **9 Community Benefits and Performance Measures**

- 9.1 The Organisation and the Council acknowledge and agree that they enter into this Agreement in order to provide through the undertaking of the Permitted Use, for the Term, the Community Benefits as set out and described in Schedule 1 and that the achievement of the Community Benefits are an essential term of this Agreement.
- 9.2 The provision of the Community Benefits shall be measured against the Performance Measures and the Performance Measures applicable to this Agreement are as set out and described in Schedule 1.
- 9.3 The Performance Measures shall be continuing obligations of the Organisation throughout the Term and the Organisation shall report to the Council annually against the Performance Measures within 3 months following the end of the financial year of the Organisation, as set out in Schedule 1, or at any other time reasonably requested by the Council. Such report shall include the provision of the annual financial statements of the Organisation (audited if required by law or the constituting document of the Organisation) and otherwise the report shall be in writing in a format reasonably required by the Council, however as an alternative may be provided, at the discretion of the Council, at a meeting or meetings held between representatives of the Council and the Organisation.
- 9.4 The achievement or non-achievement of the Performance Measures or any one or more of them may be taken into account by the Council in making decisions concerning:
- a) whether the Community Benefits continue to be provided;
  - b) termination of this Agreement by the Council;
  - c) any extensions of this Agreement as provided by clause 2;
  - d) whether the Annual Licence Fee should be a substantive Annual Licence Fee;
  - e) any funding sought by the Organisation from the Council; or
  - f) any variation to this Agreement sought by the Organisation or by the Council.
- 9.5 Any failure by the Organisation to report to the Council in terms of clause 9.3 shall be a breach of this Agreement.

## 10 Legislation, Bylaws and Health and Safety

- 10.1 The Organisation shall at all times during the Term at its own cost comply with all legislation, bylaws, regulations or directions (statutory or otherwise) made or issued by any Authority including the Council as relate to the Land or the Improvements and the undertaking of the Permitted Use.
- 10.2 The Organisation shall at all times during the Term:
- a) forthwith notify the Council in writing of any accident which takes place on the Improvements or the Land and of any actual or potential hazards which exist on the Improvements or the Land;
  - b) ensure that the Organisation has in place systematic checks to ascertain any actual or potential hazards which exist on the Improvements on the Land and immediately notify the Council in writing of such actual or potential hazards;
  - c) take immediately all practical steps to remove any actual or potential hazards where such are identified; and
  - d) indemnify the Council to the extent legally possible against all penalties, costs, damage, loss, injury or death resulting from any failure on the part of the Organisation to carry out the above obligations.

## 11 Indemnity

- 11.1 The Organisation shall indemnify and keep indemnified the Council from and against all claims, costs, damage, loss or penalties suffered or incurred by the Council directly or indirectly arising out of this Agreement, the undertaking of the Permitted Use or any use or activity on or about the Improvements or the Land whether on the part of the Organisation or the Organisation's officers members, employees, customers, contractors, invitees, licensees and any persons, including members of the public, for whom the organisation is responsible with respect to the undertaking of the Permitted Use.
- 11.2 In particular the Organisation shall fully recompense the Council for any charges or expenses incurred by the Council in making good any damage to the Land or the Improvements (notwithstanding such items may be owned by the Organisation) provided that the organisation shall only be liable to indemnify to the extent that the Lessor is not fully indemnified under any policy of insurance.

## 12 Assignment or Subletting

- 12.1 The Organisation shall not assign, charge or sub-licence this Agreement or part with possession of the Improvements or any part of the Land except as permitted by clause 12.2.
- 12.2 The Organisation may, during the Term permit use of the Improvements by other community organisations and members of the public for uses and activities which are within the Permitted Use.

## 13. Consequences on Termination

- 13.1 On termination of this Agreement by effluxion of time or surrender the Organisation shall have the right to transfer the Improvements to any body or organisation approved by the Council having

objects similar to the objects of the Organisation and which shall prohibit the distribution of its assets among its members and which body or organisation shall enter into a licence agreement with the Council for the use and enjoyment of the Improvements on the Land on such terms and conditions as determined by the Council.

- 13.2 The Organisation shall yield and deliver up to the Council the Improvements and to the extent applicable the Land in good clean and substantial order condition and repair fair wear and tear or damage by fire earthquake tempest or other inevitable accident alone excepted.
- 13.3 On termination of this Agreement by effluxion of time or surrender, breach of conditions or otherwise the Improvements shall revert to the Council without any compensation whatsoever being payable to the Organisation by the Council.

#### **14 Council's Right to Inspect and Undertake Work**

- 14.1 Any person authorised by the Council may at all reasonable times enter upon the Improvements and the Land and view and inspect the Improvements and upon receipt by the Organisation of a notice in writing from an officer or agent of the Council of any defect or want of repair or maintenance of the Improvements or the Land requiring the Organisation within a reasonable time, to be specified in the notice, to repair or remedy the same the Organisation shall at the cost of the Organisation with all reasonable speed cause the defect to be remedied and/or the repair to be made to the satisfaction of the Council.
- 14.2 That if default shall be made by the Organisation in complying with any notice served by the Council pursuant to clause 14.1 the Council without prejudice to its other rights and remedies shall at its option be entitled by its representative/s together with workmen and professional or expert advisers with all necessary equipment and materials at all reasonable times to enter upon the Land and the Improvements to execute such works as may be specified in such notice and all moneys expended by the Council by reason of such default of the Organisation shall be payable by the Organisation to the Council upon demand together with interest at the rate charged by the Council's principal banker on overdraft until payment.

#### **15 Alterations, Replacements or Construction of New Improvements**

- 15.1 The Organisation shall not alter or replace Improvements or construct new Improvements without first obtaining the consent in writing of the Council.

#### **16 Sale and Supply of Alcohol 2012**

- 16.1 The Organisation shall be responsible for compliance with the provisions of the Sale and supply of Alcohol Act 2012 and shall ensure that all necessary licences are obtained and conditions met in relation to any liquor contained, consumed or supplied on the Land or the Improvements.

#### **17 Council's Role as Statutory Authority**

- 17.1 The Organisation acknowledges that the Council is the territorial authority for the area in which the Land is situated and that any power, right, obligation or duty of the Council under this Agreement shall be subject to compliance by the Council with the Local Government Act 2002, Resource

Management Act 1991, Public Works Act 1981, Building Act 2004, Reserves Act 1977 and any other legislation regulating the conduct of the Council.

- 17.2 Any consent given by the Council for the purposes of this Agreement is in addition to and not in satisfaction of any consent that may be required from the Council for regulatory purposes.

## **18 Reserves Act 1977**

- 18.1 If the Land is classified as reserve land under the Reserves Act 1977 this licence shall be subject to the applicable provisions of that Act.

## **19 Disputes and Mediation**

- 19.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Agreement.
- 19.2 If the discussions referred to in clause 19.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator appointed by the Council and such appointee shall conduct the mediation at his/her discretion, including the determination of procedural rules and timetable.
- 19.3 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 19.1 and 19.2.

## **20 Quiet Enjoyment - Conduct**

- 20.1 The Organisation paying the Annual Licence Fee and observing all the covenants and agreements expressed and implied in this Agreement shall quietly hold and enjoy the rights of use and occupation conferred by this Agreement throughout the Term without any interruption by the Council or any person claiming under the Council.
- 20.2 The Organisation will conduct the Permitted Use on the Improvements and the Land in a quiet and orderly manner so as not to cause a nuisance or annoyance to the occupiers of any neighbouring properties or any other licensee, occupier or user of any other part of the Land and in particular the Organisation shall at all times during the Term comply with the conditions of noise control as set by any Authority.

## **21 Cancellation**

- 21.1 The Council may (in addition to the Council's right to apply to the Court for an order for possession) cancel this Agreement by re-entering the Improvements and the Land at the time or at any time thereafter if the Organisation:
- a) makes default for a period of 30 days in payment of any licence fee required to be paid pursuant to the terms of this Agreement; or
  - b) makes default for a period of 30 days in payment of any of the moneys agreed to be paid by it under or by virtue of any loan the Council may have made or shall make to the Organisation for the purposes of the Improvements or the undertaking of the Permitted Use;
- or

- c) makes any default in performance of any other obligation whatsoever contained in this Agreement and such default continues for a period of 30 days; or
- d) suffers or permits this Agreement and the rights and privileges granted by this Agreement or the Land or the Improvements to be seized under any proceedings for execution issued in pursuance of any judgment; or
- e) passes any resolution to wind up; or
- f) becomes insolvent or its affairs or assets are placed under any sort of management or receivership; or
- g) ceases to undertake the Permitted Use on the Land;

and the Term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

## **22 General**

### **Goods and Services Tax ("GST")**

- 22.1 The Organisation shall pay to the Council as the Council shall direct the GST payable by the Council in respect of the Annual Licence Fee and other payments payable by the Organisation under this Agreement. The GST in respect of the Annual Licence Fee shall be payable on each occasion when any payment of the Annual Licence Fee falls due for payment and in respect of any other payments shall be payable upon demand.
- 22.2 If the Organisation shall make default in payment of the Annual Licence Fee or other moneys payable under this Agreement and the Council becomes liable to pay additional GST then the Organisation shall on demand pay to the Council the additional GST.

### **Suitability**

- 22.3 No warranty or representation expressed or implied has been or is made by the Council that the Land is now suitable or will remain suitable or adequate for use by the Organisation or that any use of the Land by the Organisation will comply with the bylaws or ordinances of the requirements of any Authority.

### **Non-Waiver**

- 22.4 The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Agreement or the waiver by either party of any term or right under this Agreement or of any default by the other party shall not be deemed or construed as a waiver by such party of any such term right or default in the future.

### **Costs**

- 22.5 The parties shall pay their own legal costs of and incidental to the negotiation and preparation of this licence and any variation or renewal. The organisation shall pay the Councils reasonable costs incurred in considering any request by the lessee for the Council's consent to any matter contemplated by this agreement and the Council's legal costs (as between solicitor and own client)

of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers under this Agreement.

### **Entire Agreement**

- 22.6 This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

### **Amendment**

- 22.7 This Agreement shall not be amended or varied except in writing signed by both parties or as otherwise provided in this Agreement.

### **23. Notices**

- 23.1 All notices must be in writing and must be served by one of the following means:

- a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
- b) In all other cases, unless otherwise required by sections 352 to 261 of the Property Law Act 2007;
  - i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
  - ii) by personal delivery or by posting by registered or ordinary mail, or by facsimile, or by email.

- 23.2 In respect of the means of service specified in clause 23.1(b)(ii), 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; or
- d) in the case of email, when acknowledged by the addressee by return email or otherwise in writing.

- 23.3 In the case of a notice to be served on the Organisation, if the Council is unaware of the Organisation's last known address in New Zealand or the Organisation's facsimile number or email address, any notice placed conspicuously on any part of the Land or the Improvements shall be deemed to have been served on the Organisation on the day on which it is affixed.

- 23.4 A notice shall be valid if given by any chief executive officer, director, general manager, solicitor, advisor or other authorised representative of the party giving the notice.

**KAIPARA DISTRICT COUNCIL**  
(Lessor)

**MANGAWHAI ACTIVITY ZONE CHARITABLE TRUST**  
(Lessee)

## **DEED OF SURRENDER OF LEASE**

**BROOKFIELDS**  
LAWYERS



## DEED OF SURRENDER OF LEASE

DEED dated the \_\_\_\_\_ day of \_\_\_\_\_ 2016

### PARTIES

1. **KAIPARA DISTRICT COUNCIL ("Lessor")**
  
2. **MANGAWHAI ACTIVITY ZONE CHARITABLE TRUST ("Lessee")**

### INTRODUCTION

- A. The Lessor is the present Lessor and the Lessee is the present Lessee under the Lease of the Premises.
  
- B. Clause 2.6 of the Lease provides that the grant of the Lease is conditional on the Lessor determining by resolution that the Premises be an area of approximately 2.7 hectares instead of the original area of approximately 1 hectare previously determined by the Lessor.
  
- C. The parties have agreed that an area of 1.6790 hectares (as shown on the plan attached) will be provided to the Lessee in the form of a licence to occupy in substitution for the Lease.
  
- D. The Lessee has been occupying and using the Premises pursuant to the terms and conditions of the Lease. This deed effects the surrender of the Lease.

### THIS DEED RECORDS that:

#### 1. INTERPRETATION

##### Definitions

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

"**Lease**" means the deed of lease of the Premises between the Lessor and the Lessee dated 18 April 2011.

"**Lessee**" includes the Lessee and its successors and permitted assigns.

"**Lessor**" includes the Lessor and its successors and assigns.

"**Premises**" means the land situated at Molesworth Drive, Mangawhai as more particularly described in the Lease.

"**Surrender Date**" means the day before the commencement date of the replacement licence to occupy to be entered into between the Lessor and the Lessee.

**2. SURRENDER**

- 2.1 With effect from the Surrender Date the Lessee surrenders to the Lessor the Lease of the Premises and the Lessor accepts the surrender of the Lease.
- 2.2 The Lessee shall have no further rights under the Lease from the Surrender Date but remains liable for the rental and all outgoings and the due performance of all the covenants and conditions of the Lease up to the Surrender Date.
- 2.3 In consideration of the Lessor accepting the surrender of the Lease from the Lessee, the Lessee indemnifies the Lessor against any costs, claims, penalties or expenses which the Lessor may incur as a consequence of accepting a surrender of the Lease.

**EXECUTION**

**SIGNED BY** )  
**KAIPARA DISTRICT COUNCIL** )

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

**THE COMMON SEAL of** )  
**MANGAWHAI ACTIVITY ZONE** )  
**CHARITABLE TRUST** was affixed in )  
the presence of: )

\_\_\_\_\_  
  
\_\_\_\_\_

**Licence to Occupy**

**October 2018**

**Kaipara District Council**

(Council)

**The Pioneer Village Trust**

(Organisation)

**Licence to Occupy Land**

**Molesworth Drive, Mangawhai**

**Historic Village**

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## Licence to Occupy Land

**AGREEMENT** dated the                      day of ..... 20

### PARTIES

1.        **Kaipara District Council** ("Council")
2.        **The Pioneer Village Trust** ("Organisation")

### INTRODUCTION

- A        The Council is the registered proprietor of the Land described in Schedule 1 and holds such Land for the benefit of the Kaipara community, which may allow for community organisations to use the Land for community purposes.
- B        The Organisation and the Council are parties to a Development Agreement which provides for the Organisation to undertake and complete a development on the Land in accordance with the terms and conditions of the Development Agreement.
- C        The Organisation has completed the Development and achieved Practical Completion (as both terms are defined in the Development Agreement) and pursuant to the Development Agreement the Council and the Organisation now enter into this Agreement to establish and provide for the Organisation to use and occupy the Land on the terms and conditions set out in this Agreement.

### 1        **Agreement**

#### **Grant of Licence**

- 1.1      The Council grants and the Organisation accepts:
- a)      a licence to use and occupy the Improvements on the Land; and
  - b)      a licence to use the balance of the Land, excluding that part of the Land on which the Improvements are situated, in common with other organisations and persons to whom the Council may grant similar rights.

#### **Terms and Conditions**

- 1.2      The Council and the Organisation agree that they are bound by and will observe and perform their respective obligations under this Agreement as set out in the Schedules to this Agreement.

**Signed by** )  
**Kaipara District Council** )  
in the presence of: )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: .....

**The Common Seal of** )  
**The Pioneer Village Trust** )  
was affixed in the )  
presence of: )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: .....

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**Schedule 1**
**Particulars Schedule**

<b>Organisation</b>	The Pioneer Village Trust
<b>Organisation Contact Details</b>	<ul style="list-style-type: none"> <li>• Jim Wintle</li> <li>• wintlejim-lynda@xtra.co.nzl</li> <li>• 09-4314766</li> </ul>
<b>Council Contact Details</b>	<ul style="list-style-type: none"> <li>• Parks and Community Manager</li> <li>• <a href="mailto:council@kaipara.govt.nz">council@kaipara.govt.nz</a></li> <li>• Private Bag 1001, Dargaville 0340</li> <li>• 09 439 3123 or 0800 727 059</li> </ul>
<b>Land</b>	Land situated at Mangawhai Community Park on Molesworth Drive, Mangawhai (Pt Lot 3, DP 108638) as shown on the plan attached as Schedule 3 and 4.
<b>Improvements</b>	Old Mangawhai School/Church, Tara Road School, Te Arai Library and original Mangawhai Post Office.
<b>Status of Organisation</b>	Incorporated Society Registered Charitable Entity – No
<b>Community Benefits</b>	The historical buildings are to be placed on a site adjacent to the Museum as they will complement the Museum. They will be restored and their historical significance will be appreciated by both the residents of Mangawhai and visitors to the District and used as community facilities available as meeting venues, spaces for displays and education purposes.
<b>Annual Licence Fee</b>	\$1.00 per annum plus GST subject to conversion to a substantive Annual Licence Fee subject to reassessment.
<b>Reassessment Intervals</b>	Five yearly and as at the commencement of any extension of the Term.
<b>Outgoings payable</b>	See Schedule 2 clause 4
<b>Term</b>	<b>Term</b> – 5 years from Practical Completion of Development.
<b>Commencement Date</b>	September 2018
<b>Further Terms</b>	Two terms of five years
<b>Further Extensions for Substantial Improvements</b>	Substantial improvements erected – yes Three terms of five years
<b>Total Possible Term</b>	Thirty years

<b>Permitted Use</b>	Operation of a Historical Village
<b>Public Risk Insurance Amount</b>	\$2m
<b>Insurance Value</b>	See Special Term
<b>Conditions/Special Terms</b>	<p>The Improvements shall be insured for the values (increased if increased from time to time under the Development Agreement for the Land) for the respective buildings and on the terms and conditions set out in the FMG insurance proposal dated 10th October 2016 a copy of which is attached. The Council may require the Licensee to review the values of the Improvements from time to time and in the case of increases in value assess whether increases in insurance cover should occur. A copy of the current policy for each year shall be provided to the Council.</p> <p>The Mangawhai Pioneer Village Trust will comply with the vision, principles and objectives of the Mangawhai Community Park Master Plan.</p> <p>These objectives have been created to:</p> <ul style="list-style-type: none"> <li>• Enhance the natural character through re-vegetation and increased biodiversity;</li> <li>• Ensure the natural character of the Park dominates;</li> <li>• Improve the ability for people to experience the natural values of the Park by maintaining and developing access and connections through the Park.</li> </ul> <p>With regards to buildings:</p> <ul style="list-style-type: none"> <li>• They require existing and new buildings to have and implement a landscape plan;</li> <li>• They will use good urban design practice to maximise safety, to build an attractive aesthetic and no buildings on the skyline;</li> </ul> <p>They will need approval of a registered architect appointed by the “Friends” group.</p>
<b>Financial Year of Organisation</b>	1 September - 31 August

<p><b>Performance Measures</b></p>	<ul style="list-style-type: none"> <li>• the Community Benefits are continuing to be provided;</li> <li>• not-for-profit status of the Organisation is retained;</li> <li>• registration of the Organisation as a charitable entity is retained;</li> <li>• the constituting document of the Organisation permits membership or ability to participate to all members of the public who can legitimately take part in the activities of the Organisation and no-one shall be excluded from membership provided they pay the necessary fees and observe the usual and proper rules of the Organisation;</li> <li>• the degree and frequency of the undertaking of the Permitted Use;</li> <li>• the degree and frequency of use, including shared use, of the Improvements and the Land by other community organisations and members of the public.</li> </ul>
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**Schedule 2**
**Terms and Conditions****1 Definitions and Interpretation****Definitions**

- 1.1 In this Agreement, including the Introduction and all Schedules to this Agreement, unless the context otherwise requires:

"**Administration Fee**" is the fee which the Council may require the Organisation to pay as a component of the Annual Licence Fee for the Council's administration costs of and incidental to the implementation and administration of this Agreement, which, without limitation, may include provision for staff time and regular, periodic and as required expenditure on repairs to and maintenance and enhancement of the Land (excluding the Improvements).

"**Annual Licence Fee**" is the annual licence fee, plus GST payable by the Organisation to the Council, the initial amount of which is set out in Schedule 1, and subject to conversion and reassessment as provided for in Schedule 1, and as more particularly provided for in clause 3.

"**Authority**" means any local body, government or other authority having jurisdiction or authority over or in respect of the Land or the use or occupation of the Land.

"**Commencement Date**" means the commencement date of this Agreement as set out in Schedule 1.

"**Community Benefits**" means the community benefits for the Kaipara community as set out and described in Schedule 1 to be achieved by the Organisation by entering into this Agreement and undertaking the Permitted Use.

"**Council**" means the Kaipara District Council, its successors and assigns and includes any government body, local authority or other organisation that takes over the responsibility of Kaipara District Council in respect of the Land.

"**Development Agreement**" means the prior Agreement between the Council and the Organisation for the development of the Improvements on the Land.

"**Extension Term/s**" means extension/s of the Term as set out in Schedule 1 and as provided for in clause 2.

"**Further Extension/s**" means further extensions of the Term following the initial Term and the Extension Term/s, as set out in Schedule 1 and provided for in clause 2.

"**Improvements**" means the buildings structures and all other improvements placed erected or constructed by the Organisation on the Land and includes all services which serve the Improvements.

"**Land**" means the land set out and described in Schedule 1.

"**Outgoings**" means the outgoings in respect of the Improvements and the Land which, as set

out in Schedule 1, shall be payable by the Organisation, and as provided for in clause 4.

"**Organisation**" means the Organisation named and described in Schedule 1 however does not include the Organisation's successors or assigns.

"**Permitted Use**" is the permitted use of the Improvements and the Land as set out and described in Schedule 1.

"**Performance Measures**" are as provided for in clause 9 and as more particularly set out in Schedule 1.

"**Rates**" means the Council and Regional Council rates payable in respect of the Land or a proportion of such rates, as determined by the Council.

"**Term**" means the Term of this Agreement and all extensions of the Term as set out and provided for in Schedule 1.

"**Total Possible Term**" is the total possible Term of this Agreement including all extensions of this Agreement, if granted.

### Interpretation

#### 1.2 In this Agreement:

- a) references to clauses and schedules are reference to clauses and to schedules to this Agreement unless stated otherwise. Each such schedule forms part of this Agreement;
- b) where the context permits the singular includes the plural and vice versa;
- c) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;
- d) where the context permits references to a "**person**" include an individual, firm, company, corporation or unincorporated body or persons, any public authority, territorial or regional council, any government or any governmental agency;
- e) references to a "**party**" means a party to this Agreement and any reference to a party, to the extent applicable, includes the successors, executors and administrators (as the case may be) of that party;
- f) defined words and expressions bear the defined meaning throughout this Agreement including the Introduction.
- g) where any condition or special term set out in Schedule 1 is in conflict with or is inconsistent with any other term of this Agreement the condition or special term shall prevail.

## 2 Term of Licence and Extensions

- 2.1 The Term of the licence granted by this Agreement shall be for the Term set out in Schedule 1 and shall commence on the Commencement Date as set out in Schedule 1.

- 2.2 If the Organisation, during the Term, has, to the satisfaction of the Council:
- a) paid the Annual Licence Fee;
  - b) has complied with the Organisation's obligations under this Agreement;
  - c) has and continues to meet the Performance Measures;
  - d) for the purposes of a Further Extension has complied with the conditions set out in clause 5.3;
  - e) has given written notice to the Council at least three months but not more than nine months (time to be of the essence) before the expiry of the Term of the Organisation's desire to accept an extension of the Term;

and if the Council is satisfied that the Improvements and the Land are being sufficiently used for the Permitted Use and there is a continuing community need for the Permitted Use, shall grant, and the Organisation agrees to accept, by way of extension of this Agreement, the relevant Extension Term as provided for in Schedule 1.

- 2.3 If this Agreement provides in Schedule 1 for a Further Extension of the Term on account of substantial improvements having been erected on the Land ("Further Extension") such extension shall be requested by the Organisation and granted by the Council in accordance with clause 2.2.
- 2.4 All extensions of the Term may be recorded in writing in such manner as the Council requires.
- 2.5 The total duration of the Term shall be limited to the Total Possible Term as set out in Schedule 1.

### **3 Annual Licence Fee**

- 3.1 The Organisation shall pay the Council the Annual Licence Fee during each year of the Term on the date and the frequency set out in Schedule 1.
- 3.2 The initial Annual Licence Fee shall be the amount, plus GST, set out in Schedule 1.
- 3.3 Where the initial Annual Licence Fee is a peppercorn rent (for example \$1.00 per annum plus GST) the Council may at its discretion by notice in writing to the Organisation ("conversion notice") convert the amount of the Annual Licence Fee to a substantive Annual Licence Fee ("substantive Annual Licence Fee") which shall comprise:
- a) the Administration Fee as assessed by the Council; plus
  - b) if the Council requires, a licence fee calculated at 5% per annum on the capital value of that part of the Land (excluding the Improvements) on which the Improvements are situated plus allowance for shared access, parking and curtilage, as assessed by a registered valuer appointed by the Council.
- 3.4 In the case of a conversion notice given by the Council under clause 3.3 the substantive Annual Licence Fee shall take effect from the date stipulated in the conversion notice given by

the Council and may, at the discretion of the Council, be reassessed by the Council at the intervals and at the dates provided for in Schedule 1, calculated from the date of conversion. In any case where a substantive Annual Licence Fee applies from the Commencement Date the substantive Annual Licence Fee may at the discretion of the Council be reassessed at the intervals and at the dates set out in Schedule 1.

- 3.5 In any assessment of the Annual Licence Fee which is a substantive Annual Licence Fee, the decision of the Council on the annual amount of the substantive Annual Licence Fee, plus GST, (which shall be communicated to the Organisation by the Council in writing) shall be final and binding on the Organisation.

#### **4 Outgoings**

- 4.1 The Organisation will, from the Commencement Date, duly and punctually pay for all consumables in respect of its undertaking of the Permitted Use and use and occupation of the Improvements and the Land which without limitation shall include charges for telephone, gas, electricity, water, sanitation and sewage, cleaning, garden and ground maintenance, licences, consents and permits and land tax (if any).
- 4.2 The Organisation shall pay all Outgoings direct or otherwise as the Council directs and in respect of the Land, excluding the Improvements, shall pay a proportion of such Outgoings as are apportioned by the Council, which may include Outgoings which are shared with other organisations or persons.
- 4.3 The Organisation shall pay Rates to the Council unless remitted by operation of any policy implemented by the Council in relation to the remission of Rates.
- 4.4 All Outgoings payable by the Organisation shall be paid by the Organisation as and when each Outgoing falls due for payment and in the case of any outgoing which is payable to the Council upon request made by the Council.

#### **5 Repair Maintenance and Replacement**

- 5.1 The Organisation shall at all times during the Term in a proper and workmanlike manner and to the reasonable requirements of the Council:
- a) keep and maintain the Improvements (both external and internal and including all plant, fixtures and fittings, floor coverings and surfaces) in good serviceable and substantial repair and condition, repairing and replacing as necessary, and will at the end or earlier determination of the Term yield and deliver up the Improvements to the Council in such good serviceable and substantial repair and condition;
  - b) redecorate, by painting or staining as applicable, those parts of the exterior and interior of buildings and structures comprising the Improvements when they reasonably require repainting and redecoration, to a standard approved by the Council, such approval not to be unreasonably withheld;
  - c) make good (by repairing or replacing as necessary) any damage to the Improvements at

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any time during the Term;

- d) keep and maintain, repairing and replacing as necessary, the stormwater and wastewater systems on the Land which serve the Improvements;
- e) ensure that all toilets, sinks, drains waste, fittings and pipes on the Land are not blocked and are used for their designed purposes only and are regularly inspected, cleaned and maintained and repaired and replaced as necessary;

5.2 The Organisation shall at all times during the Term in a proper and workmanlike manner, and in such proportions as required by the Council where there is shared use of the Land by other organisations or persons:

- a) keep all open areas of the Land, whether utilised as open space, paths or tracks, bush or planted areas or carparking in a clean and tidy condition repairing and replacing (including replanting) as necessary; and
- b) regularly cause all rubbish and garbage to be removed from the Land and keep all rubbish bins and containers in a tidy condition. The Organisation will also, at the Organisation's own expense, cause to be removed all trade waste, boxes and other goods or rubbish not removable in the ordinary course by any Authority including the Council.

5.3 If this Agreement provides in Schedule 1 for Further Extension/s, the Organisation shall as a condition for any such Further Extension to be granted by the Council:

- a) have replaced or renewed all or some items of the Improvements on the Land during the initial Term or Extension Term/s provided for in this Agreement so that in the opinion of the Council their useful life extends into the Further Extension;
- b) prepare and provide to the Council a development plan for the Further Extension to include the replacement of those items of the Improvements which the Council has notified to the Organisation in writing require replacement and any new or additional items of Improvements which the Organisation wishes to construct on the Land; and
- c) obtain the approval of the Council to the development plan, such approval not to be unreasonably withheld.

## **6 Insurances**

6.1 The Organisation shall keep the Improvements together with all fixtures, fittings, plant, equipment and chattels on the Land insured against loss, damage or destruction by fire, earthquake, flood, lightning, storm, aircraft, electric fusion, machinery breakdown, malicious damage, inevitable accident and other usual risks for the value specified in Schedule 1 or such other value as is approved by the Council.

6.2 In the event the Improvements or any part of the Improvements at any time during the Term

being partially destroyed or damaged by fire or other insurable extraneous peril then and so often as the same shall happen all moneys received in respect of such insurance shall be expended by the Organisation with all reasonable speed in repairing the damage sustained.

- 6.3 In the event of the Improvements being totally destroyed or damaged by any cause as to render the Improvements unusable or in the reasonable opinion of the Council to require demolition or reconstruction, the Organisation shall, if the Council consents to rebuilding or reinstating and so requires, rebuild or reinstate the Improvements provided that the Organisation shall not be required to expend more than the available proceeds of insurance towards such rebuilding and reinstatement. If the Council should not permit rebuilding or reinstating the Term shall immediately cease and determine and the Organisation will at its own cost demolish and clear the debris and have the Land cleared to the satisfaction of the Council.
- 6.4 The Organisation shall during the Term at its own cost take out and keep in full force and effect at all times a public liability insurance policy for a sum of not less than the sum set out in Schedule 1 for any single event or such greater sum required by the Council from time to time and shall within 30 days of the execution of this Agreement or request for additional cover produce to the Council a copy of the policy or certificate of currency.

## **7 Nature of Licence/Public Use**

- 7.1 The licence to use and occupy the Improvements and the licence to use the balance of the Land in common which is granted by this Agreement is subject to a right of use of the Land by the public but subject to the following provisions of this clause.
- 7.2 It shall be lawful for any person to enter and for any reasonable period of time to remain as a spectator upon the Land at all times and any person so entering or remaining on the Land shall not so long as he/she conducts and behaves himself/herself in an orderly and seemly manner and refrains from hindering and obstructing the activities of the Organisation be deemed to be a trespasser provided however that this authority shall not be deemed to authorise any person to enter or be within or upon any buildings or structures situated on the Land without the previous consent of the Organisation or person duly authorised by the Organisation.
- 7.3 The right of public entry on the Land is subject in all respects to the right, and obligation, of the Organisation to control the Improvements as licensee and occupier and the Organisation shall be entitled at all times to require compliance by the public with all legislation and bylaws relating to the Improvements and the Land and its use and in particular the provisions of the Health and Safety in Employment Act 1992.
- 7.4 The Council shall at any time during the Term be entitled to undertake, or permit other organisations to undertake, another development or developments on the Land (excluding that part of the Land on which the Improvements are situated together with necessary curtilage and access) and the Organisation consents to any such development or developments, provided that the Council will use reasonable endeavours to ensure that as little interruption as possible is caused to the Organisation in its undertaking of the Permitted Use during the undertaking of

such developments.

## **8 Permitted Use**

- 8.1 The Organisation shall use and occupy the Improvements and use the Land in common with others for the Permitted Use and shall provide the Community Benefits in accordance with the Performance Measures provided for in clause 9, all as set out and described in Schedule 1.
- 8.2 If at any time the Council is of the opinion that the Improvements and the Land are not being used or are not being sufficiently used for the Permitted Use or are being used for activities other than on a not-for-profit basis the Council, after making such enquiries as it thinks fit and giving the Organisation the opportunity of explaining the use of the Improvements and the Land, if the Council is satisfied that the Improvements and the Land are not being used or not being sufficiently used for the Permitted Use or are being used for activities other than on a not-for-profit basis, may terminate this Agreement by notice in writing to the Organisation.
- 8.3 The Organisation shall not:
- a) carry on on the Improvements or the Land any noxious, noisome or offensive act, trade, business, occupation or any act, matter or thing which may cause annoyance, nuisance, grievance, damage or disturbance to the occupiers or owners of any adjoining land or any other licensee, occupier or user of any other part of the Land;
  - b) bring or permit to be brought on to the Improvements or the Land any item of a flammable, volatile or explosive nature or any contaminant (as defined in s2 of the Resource Management Act 1991) without first complying with the provisions of all laws then in force relating to the handling and storage or such materials and the requirements of the insurers of the Improvements;
  - c) allow, carry on on the Improvements or the Land any use or activity which may cause loss or damage to the Improvements or the Land or any adjoining land, or become an annoyance, nuisance or disturbance to the Council or any other user or occupier of the Land on any adjoining land;
  - d) release into the environment, discharge, deposit, place or dispose of on or near the Land any contaminant referred to in clause 8.3(b) except in accordance with an approval given under environmental health and safety legislation;
  - e) carry on any illegal or immoral activity; or
  - f) carry on any use which is not a permitted use under the District Plan.

## **9 Community Benefits and Performance Measures**

- 9.1 The Organisation and the Council acknowledge and agree that they enter into this Agreement in order to provide through the undertaking of the Permitted Use, for the Term, the Community Benefits as set out and described in Schedule 1 and that the achievement of the Community Benefits are an essential term of this Agreement.

- 9.2 The provision of the Community Benefits shall be measured against the Performance Measures and the Performance Measures applicable to this Agreement are as set out and described in Schedule 1.
- 9.3 The Performance Measures shall be continuing obligations of the Organisation throughout the Term and the Organisation shall report to the Council annually against the Performance Measures within three months following the end of the financial year of the Organisation, as set out in Schedule 1, or at any other time reasonably requested by the Council. Such report shall include the provision of the annual financial statements of the Organisation (audited if required by law or the constituting document of the Organisation) and otherwise the report shall be in writing in a format reasonably required by the Council, but as an alternative may be provided, at the discretion of the Council, at a meeting or meetings held between representatives of the Council and the Organisation.
- 9.4 The achievement or non-achievement of the Performance Measures or any one or more of them may be taken into account by the Council in making decisions concerning:
- a) whether the Community Benefits continue to be provided;
  - b) termination of this Agreement by the Council;
  - c) any extensions of this Agreement as provided by clause 2;
  - d) whether the Annual Licence Fee should be a substantive Annual Licence Fee;
  - e) any funding sought by the Organisation from the Council; or
  - f) any variation to this Agreement sought by the Organisation or by the Council.
- 9.5 Any failure by the Organisation to report to the Council in terms of clause 9.3 shall be a breach of this Agreement.

## **10 Legislation, Bylaws and Health and Safety**

- 10.1 The Organisation shall at all times during the Term at its own cost comply with all legislation, bylaws, regulations or directions (statutory or otherwise) made or issued by any Authority including the Council as relate to the Land or the Improvements and the undertaking of the Permitted Use.
- 10.2 The Organisation shall at all times during the Term:
- a) forthwith notify the Council in writing of any accident which takes place on the Improvements or the Land and of any actual or potential hazards which exist on the Improvements or the Land;
  - b) ensure that the Organisation has in place systematic checks to ascertain any actual or potential hazards which exist on the Improvements on the Land and immediately notify the Council in writing of such actual or potential hazards;
  - c) take immediately all practical steps to remove any actual or potential hazards where such are identified; and
  - d) indemnify the Council to the extent legally possible against all penalties, costs, damage,



loss, injury or death resulting from any failure on the part of the Organisation to carry out the above obligations.

## **11 Indemnity**

- 11.1 The Organisation shall indemnify and keep indemnified the Council from and against all claims, costs, damage, loss or penalties suffered or incurred by the Council directly or indirectly arising out of this Agreement, the undertaking of the Permitted Use or any use or activity on or about the Improvements or the Land whether on the part of the Organisation or the Organisation's officers, members, employees, customers, contractors, invitees, licensees and any persons, including members of the public, for whom the organisation is responsible with respect to the undertaking of the Permitted Use.
- 11.2 In particular the Organisation shall fully recompense the Council for any charges or expenses incurred by the Council in making good any damage to the Land or the Improvements notwithstanding such items may be owned by the Organisation.

## **12 Assignment or Subletting**

- 12.1 The Organisation shall not assign, charge or sub-licence this Agreement or part with possession of the Improvements or any part of the Land except as permitted by clause 12.2.
- 12.2 The Organisation may, during the Term permit use of the Improvements by other community organisations and members of the public for uses and activities which are within the Permitted Use.

## **13 Consequences on Termination**

- 13.1 On termination of this Agreement by effluxion of time or surrender the Organisation shall have the right to transfer the Improvements to any body or organisation approved by the Council having objects similar to the objects of the Organisation and which shall prohibit the distribution of its assets among its members and which body or organisation shall enter into a licence agreement with the Council for the use and enjoyment of the Improvements on the Land on such terms and conditions as determined by the Council.
- 13.2 The Organisation shall yield and deliver up to the Council the Improvements and to the extent applicable the Land in good, clean and substantial order, condition and repair, fair wear and tear or damage by fire earthquake tempest or other inevitable accident alone excepted.
- 13.3 On termination of this Agreement by effluxion of time or surrender, breach of conditions or otherwise the Improvements shall revert to the Council without any compensation whatsoever being payable to the Organisation by the Council.

## **14 Council's Right to Inspect and Undertake Work**

- 14.1 Any person authorised by the Council may at all reasonable times enter upon the Improvements and the Land and view and inspect the Improvements and upon receipt by the Organisation of a notice in writing from an officer or agent of the Council of any defect or want of repair or maintenance of the Improvements or the Land requiring the Organisation within a reasonable

time, to be specified in the notice, to repair or remedy the same the Organisation shall at the cost of the Organisation with all reasonable speed cause the defect to be remedied and/or the repair to be made to the satisfaction of the Council.

- 14.2 That if default shall be made by the Organisation in complying with any notice served by the Council pursuant to clause 14.1 the Council without prejudice to its other rights and remedies shall at its option be entitled by its representative/s together with workmen and professional or expert advisers with all necessary equipment and materials at all reasonable times to enter upon the Land and the Improvements to execute such works as may be specified in such notice and all moneys expended by the Council by reason of such default of the Organisation shall be payable by the Organisation to the Council upon demand together with interest at the rate charged by the Council's principal banker on overdraft until payment.

## **15 Alterations, Replacements or Construction of New Improvements**

- 15.1 The Organisation shall not alter or replace Improvements or construct new Improvements without first obtaining the consent in writing of the Council.

## **16 Sale of Liquor Act**

- 16.1 The Organisation shall be responsible for compliance with the provisions of the Sale of Liquor Act 1989 and shall ensure that all necessary licences are obtained and conditions met in relation to any liquor contained, consumed or supplied on the Land or the Improvements.

## **17 Council's Role as Statutory Authority**

- 17.1 The Organisation acknowledges that the Council is the territorial authority for the area in which the Land is situated and that any power, right, obligation or duty of the Council under this Agreement shall be subject to compliance by the Council with the Local Government Act 2002, Resource Management Act 1991, Public Works Act 1981, Building Act 2004, Reserves Act 1977 and any other legislation regulating the conduct of the Council.
- 17.2 Any consent given by the Council for the purposes of this Agreement is in addition to and not in satisfaction of any consent that may be required from the Council for regulatory purposes.

## **18 Reserves Act 1977**

- 18.1 If the Land is classified as reserve land under the Reserves Act 1977 this licence shall be subject to the applicable provisions of that Act.

## **19 Disputes and Mediation**

- 19.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Agreement.
- 19.2 If the discussions referred to in clause 19.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator appointed by the Council and such appointee shall conduct the mediation at his/her discretion, including the determination of procedural rules and timetable.

19.3 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 19.1 and 19.2.

## **20 Quiet Enjoyment - Conduct**

20.1 The Organisation paying the Annual Licence Fee and observing all the covenants and agreements expressed and implied in this Agreement shall quietly hold and enjoy the rights of use and occupation conferred by this Agreement throughout the Term without any interruption by the Council or any person claiming under the Council.

20.2 The Organisation will conduct the Permitted Use on the Improvements and the Land in a quiet and orderly manner so as not to cause a nuisance or annoyance to the occupiers of any neighbouring properties or any other licensee, occupier or user of any other part of the Land and in particular the Organisation shall at all times during the Term comply with the conditions of noise control as set by any Authority including the Council.

## **21 Cancellation**

21.1 The Council may (in addition to the Council's right to apply to the Court for an order for possession) cancel this Agreement by re-entering the Improvements and the Land at the time or at any time thereafter if the Organisation:

- a) makes default for a period of 30 days in payment of any licence fee required to be paid pursuant to the terms of this Agreement; or
- b) makes default for a period of 30 days in payment of any of the moneys agreed to be paid by it under or by virtue of any loan the Council may have made or shall make to the Organisation for the purposes of the Improvements or the undertaking of the Permitted Use; or
- c) makes any default in performance of any other obligation whatsoever contained in this Agreement and such default continues for a period of 30 days; or
- d) suffers or permits this Agreement and the rights and privileges granted by this Agreement or the Land or the Improvements to be seized under any proceedings for execution issued in pursuance of any judgment; or
- e) passes any resolution to wind up; or
- f) becomes insolvent or its affairs or assets are placed under any sort of management or receivership; or
- g) ceases to undertake the Permitted Use on the Land;

and the Term shall terminate on such cancellation but without prejudice to the rights of either party against the other.

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**22 General****Goods and Services Tax (GST)**

- 22.1 The Organisation shall pay to the Council as the Council shall direct the GST payable by the Council in respect of the Annual Licence Fee and other payments payable by the Organisation under this Agreement. The GST in respect of the Annual Licence Fee shall be payable on each occasion when any payment of the Annual Licence Fee falls due for payment and in respect of any other payments shall be payable upon demand.
- 22.2 If the Organisation shall make default in payment of the Annual Licence Fee or other moneys payable under this Agreement and the Council becomes liable to pay additional GST then the Organisation shall on demand pay to the Council the additional GST.

**Suitability**

- 22.3 No warranty or representation expressed or implied has been or is made by the Council that the Land is now suitable or will remain suitable or adequate for use by the Organisation or that any use of the Land by the Organisation will comply with the bylaws or ordinances of the requirements of any Authority including the Council.

**Non-Waiver**

- 22.4 The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Agreement or the waiver by either party of any term or right under this Agreement or of any default by the other party shall not be deemed or construed as a waiver by such party of any such term right or default in the future.

**Costs**

- 22.5 The Organisation shall pay the Council's legal costs (as between solicitor and own client) of and incidental to the negotiation and preparation of this Agreement and any variation, extension or renewal or any document recording an assessment or reassessment of the Annual Licence Fee. The Organisation shall pay the Council's reasonable costs incurred in considering any request by the Organisation for the Council's consent to any matter contemplated by this Agreement and the Council's legal costs (as between solicitor and own client) of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers under this Agreement.

**Entire Agreement**

- 22.6 This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

**Amendment**

- 22.7 This Agreement shall not be amended or varied except in writing signed by both parties or as otherwise provided in this Agreement.

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**23 Notices**

23.1 All notices must be in writing and must be served by one of the following means:

- a) In the case of a notice under s245 or s246 of the Property Law Act 2007 in the manner prescribed by s353 of that Act; and
- b) In all other cases, unless otherwise required by s352 to s261 of the Property Law Act 2007;
  - i) in the manner authorised by s354 to s361 of the Property Law Act 2007; or
  - ii) by personal delivery or by posting by registered or ordinary mail, or by facsimile, or by email.

23.2 In respect of the means of service specified in clause 23.1(b)(ii), a notice is deemed to have been served:

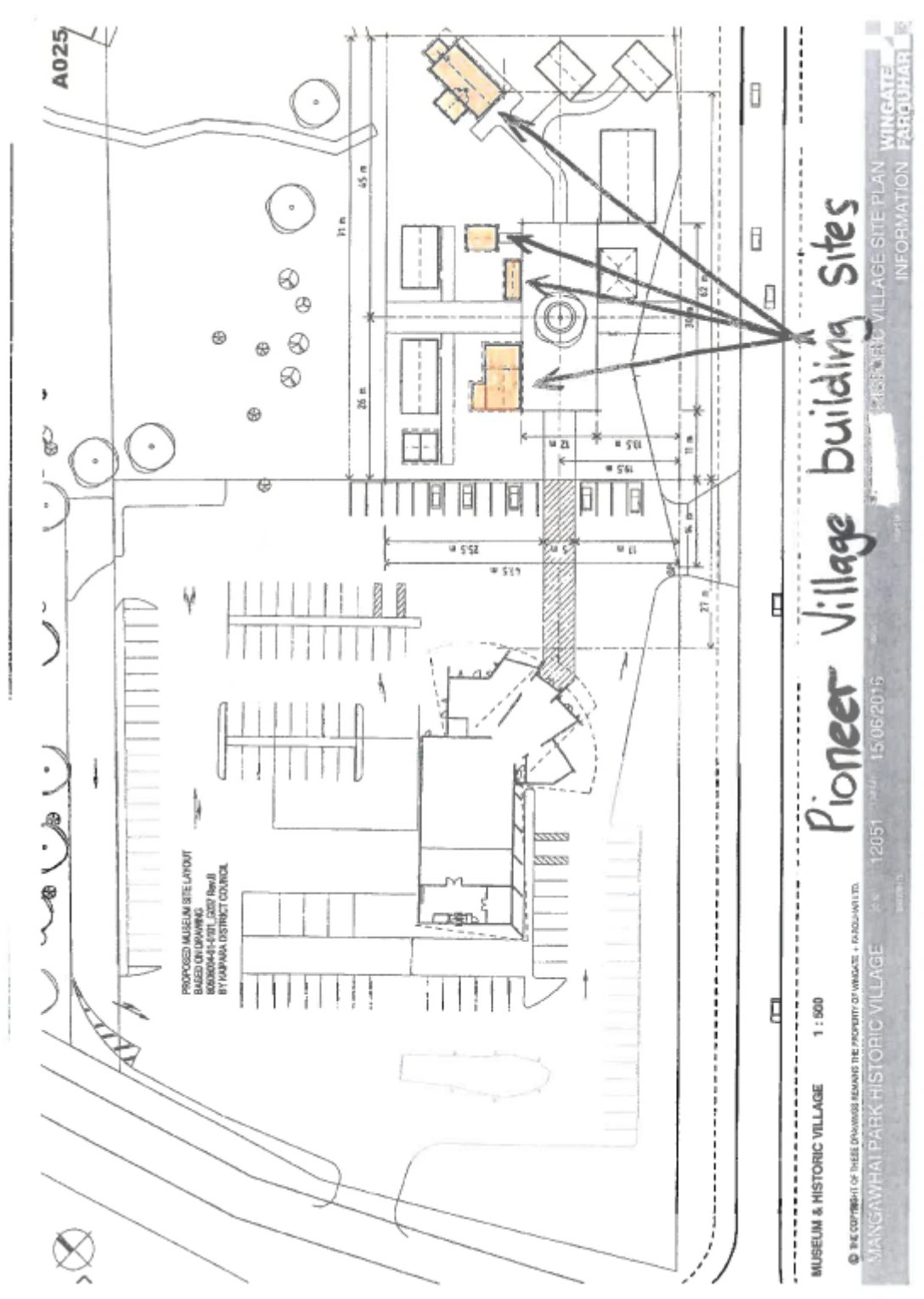
- a) in the case of personal delivery, when received by the addressee;
- b) in the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand;
- c) in the case of facsimile transmission, when sent to the addressee's facsimile number; or
- d) in the case of email, when acknowledged by the addressee by return email or otherwise in writing.

23.3 In the case of a notice to be served on the Organisation, if the Council is unaware of the Organisation's last known address in New Zealand or the Organisation's facsimile number or email address, any notice placed conspicuously on any part of the Land or the Improvements shall be deemed to have been served on the Organisation on the day on which it is affixed.

23.4 A notice shall be valid if given by any chief executive, director, general manager, solicitor or other authorised representative of the party giving the notice.

Schedule 3

Site Plan





**Development Agreement**

**October 2016**

**Kaipara District Council**

(Council)

**The Pioneer Village Trust**

(Organisation)

**Development Agreement  
for Licence to Occupy**

**Molesworth Drive**

**Pioneer Village**



## Development Agreement for Licence to Occupy

**AGREEMENT** dated the ..... day of ..... 2016

### **PARTIES**

- 1 **Kaipara District Council** ("Council")
- 2 **The Pioneer Village Trust** ("Organisation")

### **INTRODUCTION**

- A The Council is the registered proprietor of the Land described in Schedule 1 and holds such Land for the benefit of the Kaipara community, which may allow for community organisations to use and develop the Land for community purposes.
- B The Organisation has made application to the Council pursuant to the Council's policy for occupying public land and/or buildings to undertake a Development on the Land, as set out and described in Schedule 1.
- C The Council and the Organisation enter into this Agreement to, first, enable the Organisation to undertake the Development on the Land pursuant to the Project Plan approved by the Council and second, to make provision for the Council to grant the Organisation a Licence to Occupy the Land on completion of the Development.

**1 Agreement**

**Agreement to undertake Development**

1.1 The Organisation agrees to undertake and complete the Development in accordance with:

- a) the particulars set out in Schedule 1;
- b) the terms and conditions as set out in Schedule 2; and
- c) the Project Plan set out in Schedule 3.

**Agreement to grant Licence to Occupy**

1.2 In consideration of the Organisation undertaking and completing the Development as provided for in clause 1.1 the Council agrees to grant the Organisation a Licence to Occupy the Land the principal particulars of which are set out in Schedule 1 and in accordance with the relevant terms and conditions as set out in Schedule 2.

**Terms and Conditions**

1.3 The Council and the Organisation agree to observe and perform their respective obligations under this Agreement as set out in the Schedules to this Agreement.

**Signed** on behalf of )

**Kaipara District Council** )

in the presence of: ) .....

.....

.....

Date .....

**The Common Seal** of )

**The Pioneer Village Trust** )

was affixed in the )

presence of: ) .....

.....

.....

Date .....

## Schedule 1

## Particulars Schedule

<b>Organisation</b>	The Pioneer Village Trust
<b>Organisation Contact Details</b>	<ul style="list-style-type: none"> <li>• Jim Wintle</li> <li>• wintlejim-lynda@xtra.co.nzl</li> <li>• 09-4314766</li> </ul>
<b>Council Contact Details</b>	<ul style="list-style-type: none"> <li>• Parks and Community Manager</li> <li>• <a href="mailto:council@kaipara.govt.nz">council@kaipara.govt.nz</a></li> <li>• Private Bag 1001, Dargaville 0340</li> <li>• 09 439 3123 or 0800 727 059</li> </ul>
<b>Land</b>	Land situated at Mangawhai Community Park on Molesworth Drive, Mangawhai (Pt Lot 3, DP 108638) as shown on the plan attached as Schedule 3.
<b>Status of Organisation</b>	Incorporated Society Registered Charitable Entity – No
<b>Community Benefits</b>	The historical buildings are to be placed on a site adjacent to the Museum as they will complement the Museum. They will be restored and their historical significance will be appreciated by both the residents of Mangawhai and visitors to the District and used as community facilities available as meeting venues, spaces for displays and education purposes.
<b>Development</b>	Construction of a Historical Village to be used as meeting venues, spaces for displays and education purposes.
<b>Development Period</b>	Two years from October 2016. Upon completion sign off from the Kaipara District Councils Regulatory Team the Licence to Occupy will come into effect.
<b>Administration Fee</b>	N/A
<b>Rates payable during Development Period</b>	No
<b>Public Risk Insurance Amount</b>	\$2,000,000
<b>Licence to Occupy Particulars</b>	<ul style="list-style-type: none"> <li>• <b>Term</b> – 5 years from Practical Completion of Development.</li> <li>• <b>Further Terms</b> - Two terms of 5 years.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Further Extensions</b> - Three terms of 5 years.</li> <li>• <b>Annual Licence Fee</b> - \$1.00 per annum plus GST, subject to conversion at the discretion of Council to a licence fee comprising Council administration costs plus ground rent type payment, plus GST, following such conversion to be subject to reassessment by Council at 5 yearly intervals and at the commencement of extension terms.</li> <li>• <b>Permitted Use</b> – Restoration of historic buildings.</li> <li>• <b>Total Term</b> – 30 years.</li> <li>• See Schedule 5 for Licence to Occupy document</li> </ul>
<p><b>Substantial improvements to be effected by Organisation</b></p>	<p>Yes - Restoration of historic buildings</p>
<p><b>Conditions/Special Terms</b></p>	<p>As each building constituting part of the Improvements is placed on the Land it shall be insured for the amount and on the terms and conditions set out in the FMG insurance proposal dated 10 October 2016 a copy of which is attached provided that upon completion of the restoration/renovation of each building the Council may require the Organisation to review whether the value of each such building should be reassessed and the maximum insurance cover increased accordingly. A copy of the current policy for each year shall be provided to the Council.</p> <p>The Pioneer Village Trust will comply with the vision, principles and objectives of the Mangawhai Community Park Master Plan.</p> <p>These objectives have been created to:</p> <ul style="list-style-type: none"> <li>• Enhance the natural character through re-vegetation and increased biodiversity;</li> <li>• Ensure the natural character of the Park dominates;</li> <li>• Improve the ability for people to experience the natural values of the Park by maintaining and developing access and connections through the Park.</li> </ul> <p>With regards to buildings:</p> <ul style="list-style-type: none"> <li>• They require existing and new buildings to have and implement a landscape plan;</li> <li>• They will use good urban design practice to maximise safety, to build an attractive aesthetic and no buildings on the skyline;</li> </ul>

	They will need approval of a registered architect appointed by the "Friends" group.
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## Schedule 2

### Terms and Conditions

#### 1 Definitions and Interpretation

##### Definitions

1.1 In this Agreement, including the Introduction and all Schedules to this Agreement, unless the context otherwise requires:

"**Administration Fee**" is the fee which the Council may require the Organisation to pay for the administration costs of the Council relating to this Agreement and the Development, the amount of which is set out in Schedule 1.

"**Authority**" means any local body, government or other authority having jurisdiction or authority over or in respect of the Land, the Development or the use or occupation of either of the foregoing.

"**Community Benefits**" are as set out and described in Schedule 1.

"**Council**" means the Kaipara District Council its successors and assigns and includes any Government body, local authority or other organisation that takes over the responsibility of Kaipara District Council in respect of the Land.

"**Development**" means the Organisation's development to be undertaken by the Organisation on the Land as set out and described in Schedule 1 in accordance with the Project Plan.

"**Development Period**" means the period of time for the undertaking and completion of the Development as set out in Schedule 1 and such further period or periods as may be permitted by the Council pursuant to clause 2.

"**Land**" means the land set out and described in Schedule 1.

"**Licence to Occupy**" means the Licence to Occupy the Land the principal particulars of which are set out in Schedule 1 and otherwise on terms and conditions contained in a standard form of licence agreement as required by the Council. A copy of the Council's current standard form of licence agreement is attached as Schedule 4.

"**Organisation**" means the organisation named and described in Schedule 1 however does not include the organisation's successors or assigns.

"**Permitted Use**" is the permitted use of the Land as set out and described in Schedule 1 (Licence to Occupy particulars).

"**Practical Completion**" means the stage of construction of the Development when, in the opinion of the Council, the Development has been substantially completed in compliance with the Project Plan and plans and specifications approved by the Council so as to be capable of being utilised for the Permitted Use in compliance with clause 4.4 and pursuant to the Licence to Occupy provided for by this Agreement without material inconvenience notwithstanding that there may be items of a minor nature that require finishing, alteration or remedial action.

"**Project Plan**" means the Organisation's plan for the undertaking of the Development a copy of which is attached to this Agreement as Schedule 3 and as more particularly provided for in clause 5.

"**Rates**" means the Council and Regional Council rates payable in respect of the Land or a proportion of such rates, as determined by the Council.

### **Interpretation**

#### 1.2 In this Agreement:

- a) references to clauses and schedules are reference to clauses and to schedules to this Agreement unless stated otherwise. Each such schedule forms part of this Agreement;
- b) where the context permits the singular includes the plural and vice versa;
- c) all references to legislation are (unless stated otherwise) references to New Zealand legislation and include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation;
- d) where the context permits references to a "**person**" include an individual, firm, company, corporation or unincorporated body or persons, any public authority, territorial or regional council, any government or any governmental agency;
- e) references to a "**party**" means a party to this Agreement and any reference to a party, to the extent applicable, includes the successors, executors and administrators (as the case may be) of that party;
- f) defined words and expressions bear the defined meaning throughout this Agreement including the Introduction;
- g) where any condition or special term set out in Schedule 1 is in conflict with or is inconsistent with any other term of this Agreement the condition or special term shall prevail.

## **2 Licence for the Development Period**

- 2.1 The Council grants and the Organisation accepts a licence to enter upon and use the Land for the purposes of undertaking and completing the Development in accordance with the provisions of this Agreement and the Project Plan.
- 2.2 This Agreement confers no right of use and occupation of the Land and any improvements erected on the Land beyond the expiry of the Development Period provided that the Council, in its absolute discretion, may extend the Development Period for such period of time it considers necessary to enable completion of the Development.

## **3 Warranties**

- 3.1 The Organisation warrants to the Council as follows:
  - a) that it is a not-for-profit organisation and has the status as set out in Schedule 1 which status will be a continuing status for the Development Period and the term or terms of the Licence to Occupy;

- b) that the Community Benefits of the Development are as set out and described in Schedule 1 and will continue for the term or terms of the Licence to Occupy;
- c) that the contents of the Project Plan are correct in all material respects;
- d) that the Organisation has or will have in a timely manner the financial resources to undertake and to complete the Development in accordance with the Project Plan;
- e) that the Development is reasonably capable of completion within the Development Period.

3.2 The Organisation acknowledges to the Council and accepts that the Council enters into this Agreement in reliance on the warranties set out in clause 3.1 being materially correct in all respects. A breach of any of such warranties shall be a default under this Agreement.

#### **4 Development**

4.1 The Organisation shall with all reasonable speed undertake and complete construction of the Development in a good and workmanlike manner:

- a) in accordance with plans and specifications approved by the Council (in the Council's land owning capacity) acting reasonably prior to the commencement of construction of the Development which plans and specifications shall be consistent with the Project Plan;
- b) in accordance with all required consents and proper requirements of all relevant Authorities, including this Council, (which shall include payment of any development contributions levied in respect of the Development);
- c) within the Development Period.

4.2 The Organisation shall report progress of the construction of the Development to the Council at such intervals as are reasonably required by the Council and as provided for in the Project Plan. The reporting of progress shall be against the timelines and milestones as set out in the Project Plan and shall at all times be relative to the Development Period.

4.3 In undertaking the construction of the Development the Organisation:

- a) shall use its best endeavours to ensure that as little inconvenience and disruption as possible is caused to occupiers of nearby properties or any other occupier or users of the Land or nearby Land owned by the Council;
- b) shall take out and keep in full force and effect during the Development Period and any extension of that period the following insurance covers:
  - i) public liability insurance cover for a sum of not less than the sum set out in Schedule 1 for any single event or such greater sum required by the Council from time to time;
  - ii) contractors all risks insurance cover;

and shall provide a copy of the policies or certificates of currency to the Council prior to the commencement of construction of the Development;



- c) shall comply with all requirements of the Council in respect of occupational health and safety, access to and through the Land for workmen, materials and machinery ensuring reasonable access and use of the Land is preserved for other users and occupiers of the Land;
  - d) shall at its own cost comply with all legislation, bylaws, regulations or directions (statutory or otherwise) made or issued by any Authority, including the Council, as relate to the Land and the construction of the Development; and
  - e) shall permit the Council (by its officers, agents or contractors) to access the Land at any time for the purpose of inspecting the progress of construction of the Development and any other matter relating to this Agreement or relating to the Land (including the use and occupation of the Land by other persons).
- 4.4 The Organisation shall provide the Council with copies of all Code Compliance Certificates or certificates for public use for the Development prior to any commencement of use or occupation of the improvements the subject of the Development pursuant to the Licence to Occupy.
- 4.5 The Council shall not be under any liability nor shall the Organisation have any right to claim damages or compensation against the Council where any delay in achieving Practical Completion is caused by adverse weather conditions, strikes, lockouts, accidents, unavailability of materials, fire, earthquake or any other cause including the Council performing any function in its regulatory capacity.
- 4.6 The Organisation shall be entitled to make variations or alterations to the Development and the plans and specifications for the Development (including substitution of unavailable materials) with the consent of the Council provided that such variations or alterations are of a minor nature and do not appreciably reduce or adversely affect the value, appearance or usefulness of the Development. The Council's consent shall not be unreasonably or arbitrarily withheld.
- 4.7 In the event that Practical Completion is not achieved within the Development Period or additional minor works or remedial works are required to be carried out to the Development the Council (and its contractors, agents and workmen) shall be entitled, however shall be under no obligation to do so, to enter upon the Land and the Development at all reasonable times to carry out all such works as may be required in the circumstances and to carry out such other works as may be required to any part of the Development. The costs incurred by the Council to undertake any such work shall be payable by the Organisation to the Council upon demand being made by the Council together with interest at the rate charged by the Council's principal banker on overdraft until payment.
- 4.8 In carrying out any works under clause 4.7, the Council will use its best endeavours to ensure that as little inconvenience and disruption is caused or results as is reasonable in the circumstances however the Council shall not be liable to the Organisation for any loss of enjoyment, disturbance or interference caused to the Organisation (or to any members, staff, contractors, workmen or agents employed or engaged in any way by the Organisation) as a consequence of carrying on any of the works contemplated by clause 4.7, nor shall the Organisation have any right to claim damages or compensation (including the reduction, suspension or abatement of any of the Organisation's monetary obligations arising under this Agreement) by reason of such works.

## 5 Project Plan

- 5.1 The parties acknowledge to each other that elements of the Project Plan may not be achieved in whole or in part and that as a result the Organisation may wish to revise, vary or alter the Project Plan during the Development Period. The parties agree to follow a process to deal with any proposed revision variation or alteration to the Project Plan which may:
- a) adversely affect the availability of funding for the Development;
  - b) extend the Development Period; or
  - c) otherwise adversely affect the Development in a material respect.
- 5.2 The Organisation shall notify the Council in writing of any circumstance which may fall within any of the possible consequences set out in clause 5.1 immediately the Organisation becomes aware of the circumstance and shall provide the Council with all relevant details together with the Organisation's proposal ("variation proposal") for revision, variation or alteration to any element of the Project Plan.
- 5.3 The Council will consider the Organisation's variation proposal in good faith acting reasonably and will consult with the Organisation as it considers necessary. However the Council shall be under no obligation to agree to the Organisation's variation proposal and the Council, acting in its discretion, shall be entitled to:
- a) agree to the variation proposal;
  - b) agree to a modification of the variation proposal; or
  - c) not agree to the variation proposal.
- 5.4 In the event of the Council not agreeing to the variation proposal the circumstance giving rise to the variation proposal shall be deemed to be a default under this Agreement on the part of the Organisation.
- 5.5 For the avoidance of doubt, if the Organisation wishes to revise, vary or alter the Project Plan where none of the circumstances set out in clause 5.1 will apply, the Organisation may amend the Project Plan following consultation with the Council and will give full and proper consideration to the views of the Council before proceeding with any proposed revision, variation or alteration.
- 5.6 The Organisation shall provide the Council with a full copy of any revised, varied or altered Project Plan.

## 6 Payments

- 6.1 In addition to all other moneys which may be payable by the Organisation to the Council under this Agreement, including payments by the Organisation to the Council in the Council's regulatory capacity, the Organisation shall pay to the Council during the Development Period:
- a) the Administration Fee set out in Schedule 1 at the frequency set out in Schedule 1;
  - b) Rates unless remitted by operation of any policy implemented by the Council in relation to the remission of Rates;
  - c) all utilities and services relating to the Land and the Development (unless paid direct to suppliers);

- d) the Council's legal costs (as between solicitor and client) of and incidental to the negotiation, preparation and completion of this Agreement. The Organisation shall also pay the Council's legal costs (as between solicitor and client) of and relating to any variation of this Agreement, the Council's consent to any matter contemplated by this Agreement, and of and incidental to the enforcement or attempted enforcement of the Council's rights, remedies and powers under this Agreement.

## **7 Grant of Licence to Occupy**

- 7.1 With effect from the date of Practical Completion as determined by the Council or other date agreed by the parties, and provided the Organisation is not in default of any obligation under this Agreement in any material respect, the Council agrees to grant and the Organisation agrees to accept the Licence to Occupy.
- 7.2 The Council will prepare the Licence to Occupy (in duplicate), together with any modifications required by reference to this Agreement and such minor additions, alterations or modifications required by the Council which do not materially affect the rights and obligations of the Organisation, and forward it to the Organisation. The Organisation agrees to execute the Licence to Occupy in accordance with its constituting documents and return both copies to the Council within 14 days of receipt from the Council or its solicitor. The Council will execute the Licence to Occupy document in accordance with its policies and procedures for executing such documents and will forward a fully executed copy of the Licence to Occupy document to the Organisation following such execution.

## **8 Cancellation**

- 8.1 The Council may (in addition to the Council's right to apply to the Court for an order for possession) cancel this Agreement by entering the Land at the time or at any time thereafter if the Organisation:
- a) makes default for a period of 30 days in payment of any Administration Fee required to be paid pursuant to the terms of this Agreement; or
  - b) makes default for a period of 30 days in payment of any of the moneys agreed to be paid by it under or by virtue of any loan the Council may have granted or shall grant to the Organisation for the purposes of the Development or the undertaking of the Permitted Use; or
  - c) makes any default in performance of any other obligation whatsoever contained in this Agreement (including any deemed default) and such default continues for a period of 30 days; or
  - d) suffers or permits this Agreement and the rights and privileges granted by this Agreement or the Land or the Development to be seized under any proceedings for execution issued in pursuance of any judgment; or
  - e) passes any resolution to wind up; or
  - f) becomes insolvent or its affairs or assets are placed under any sort of management or receivership;

and the Development Period shall terminate on such cancellation, but without prejudice to the rights of either party against the other.

- 8.2 In the event of this Agreement being cancelled for any reason the Organisation shall at its own cost in all respects, if requested to do so by the Council, remove such improvements and materials the Organisation has erected or placed on the Land, as directed by the Council, and shall leave the Land in a clean and tidy condition.

## **9 Council's Role as Statutory Authority**

- 9.1 The Organisation acknowledges that the Council is the territorial authority for the area in which the Land is situated and that any power, right, obligation or duty of the Council under this Agreement shall be subject to compliance by the Council with the Local Government Act 2002, Resource Management Act 1991, Public Works Act 1981, Building Act 2004, Reserves Act 1977 and any other legislation regulating the conduct of the Council.
- 9.2 Any consent given by the Council for the purposes of this Agreement is in addition to and not in satisfaction of any consent that may be required from the Council for regulatory purposes.

## **10 Reserves Act 1977**

- 10.1 If the Land is classified as reserve land under the Reserves Act 1977 this Agreement shall be subject to the applicable provisions of that Act.

## **11 Disputes and Mediation**

- 11.1 The parties shall meet and discuss in good faith any dispute between them arising out of this Agreement.
- 11.2 If the discussions referred to in clause 11.1 fail to resolve the relevant dispute, either party may (by written notice to the other party) require that the dispute be submitted for mediation by a single mediator appointed by the Council and such appointee shall conduct the mediation at his/her discretion, including the determination of procedural rules and timetable.
- 11.3 Neither party may issue any legal proceedings (other than for urgent interlocutory relief), in respect of any such dispute, unless that party has first taken reasonable steps to comply with clauses 11.1 and 11.2.

## **12 Goods and Services Tax ("GST")**

- 12.1 The Organisation shall in addition to any consideration payable by the Organisation under this Agreement pay to the Council all GST paid or payable by the Council as a consequence of the receipt of the consideration or other moneys or the provision of services or other taxable supplies under this Agreement.
- 12.2 Any GST payable by the Organisation under this Agreement shall be paid on the date on which the relevant supply is deemed to have taken place by virtue of the Goods and Services Tax 1985.
- 12.3 If the Organisation shall make default in payment of the consideration or other moneys payable under this Agreement and the Council becomes liable to pay additional GST then the Organisation shall on

demand pay to the Council the additional GST.

### **13 No Compensation**

13.1 On termination of this Agreement by effluxion of time, default, breach of conditions or otherwise the Land together with the improvements comprising the Development (whether wholly or partly completed) shall revert to the Council without any compensation whatsoever being payable to the Organisation by the Council.

### **14 No Objection**

14.1 The Organisation acknowledges that, excepting the footprint of the improvements comprising the Development, the Organisation will be sharing the balance of the Land with other users and occupiers.

14.2 The Organisation will not object to nor join or be associated with objectors to other uses of the balance of the Land, whether in the context of resource consent applications or the grant of occupation and use rights to other organisations.

### **15 Indemnity**

15.1 The Organisation shall indemnify and keep indemnified the Council from and against all claims, costs, damage, loss or penalties suffered or incurred by the Council directly or indirectly arising out of this Agreement, the undertaking of the construction of the Development or any use or activity on or about the Land whether on the part of the Organisation or the Organisation's members, staff, customers, workmen, contractors, invitees or licensees.

### **16 General**

#### **Suitability**

16.1 No warranty or representation expressed or implied has been or is made by the Council that the Land is now suitable or will remain suitable or adequate for use by the Organisation or that any use of the Land by the Organisation will comply with the bylaws or ordinances of the requirements of any Authority, including this Council.

#### **No Assignment**

16.2 The rights conferred by this Agreement are personal to the Organisation and the Organisation shall not assign or agree to assign this Agreement or the Organisation's interest under this Agreement.

#### **No Warranty**

16.3 The Organisation enters into this Agreement entirely in reliance on its own judgment and not in reliance on any statement, representation or warranty made by the Council or any agent of the Council or any other person.

#### **Non-Merger**

16.4 The obligations and warranties of the parties contained in this Agreement shall not merge upon execution of the Licence to Occupy and shall remain in full force and effect after the Licence to Occupy has been executed.

**Non-Waiver**

16.5 The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Agreement or the waiver by either party of any term or right under this Agreement or of any default by the other party shall not be deemed or construed as a waiver by such party of any such term right or default in the future.

**Entire Agreement**

16.6 This Agreement records the entire arrangement between the parties relating to the matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

**Relationship between the Parties**

16.7 Nothing expressed or implied in this Agreement shall constitute either party as the partner, agent, employee or officer of, or as a joint venturer with, the other party, and neither party shall make any contrary representation to any other person.

**Amendment**

16.8 This Agreement shall not be amended or varied except in writing signed by all parties or as otherwise provided in this Agreement.

### **Schedule 3**

#### **Project Plan**

The Church is currently on site and remedial works are currently underway. The Church will be ready for use in October 2016.

The Tara School, Old Post Office and Library will be situated on site by November 2016.

The Tara School and the Library will be fit for purpose once it is situated as all remedial works have been done off site.

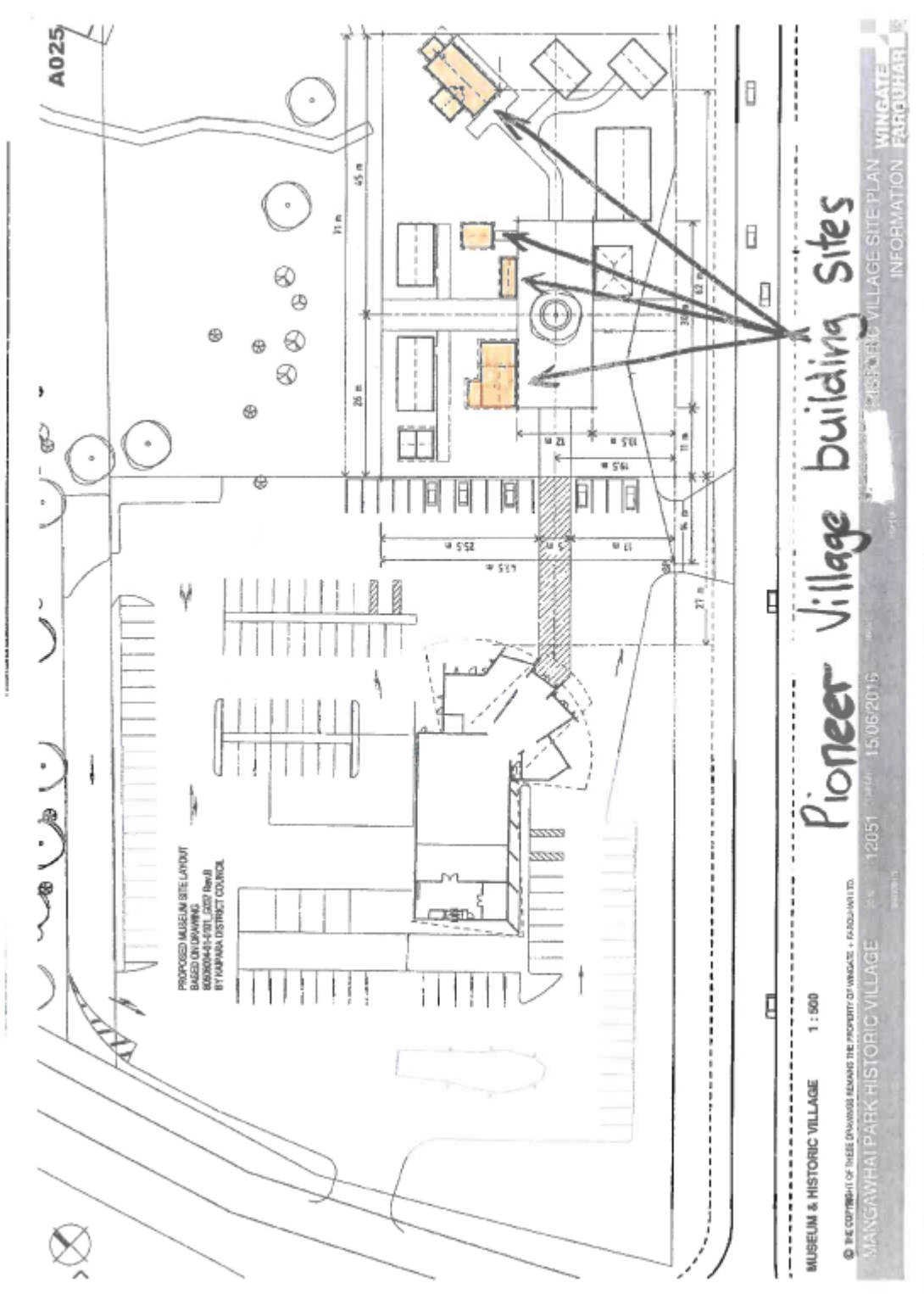
The Old Post Office / Phone Exchange building will be undertaking remedial works and will be fit for purpose by February 2017.

The area around the buildings will be levelled out and grassed by December 2017.

Power will be brought in via an underground cable with the main terminal being held in the Tara School building. This will be done by December 2016.

Schedule 4

Site Plan





**Schedule 5**  
**Licence to Occupy**

## **4 Closure**

**Kaipara District Council  
Dargaville**