

Kaipara District Council
(Council)

Paahi Regatta Club Incorporated
(Licensee)

Licence to Occupy
PAHI WHARF

BROOKFIELDS
LAWYERS

LICENCE TO OCCUPY

LICENCE dated the day of 2020

PARTIES

1. KAIPARA DISTRICT COUNCIL ("Council")
2. PAHI REGATTA CLUB INCORPORATED ("Licensee")

INTRODUCTION

- A. The Council is the owner of the Pahi Wharf and holds the Pahi Wharf for the benefit of the Kaipara community, which may allow for use of the Pahi Wharf for purposes consistent with Council's policies, plans and relevant legislation.
- B. Access ramps and supporting piles of the Pahi Wharf are situated on Council Land and extend into Coastal Marine Area which is controlled by the Northland Regional Council.
- C. The Licensee is registered on the Incorporated Societies Register under registration number 223837 and is known as the "Pahi Boating and Fishing Club", which is formed to promote, protect, extend, and advance all aquatic sports, launch, runabout, power boat and speed boat racing in particular, and to assist and advise members on all matters relating to such aquatic sports.
- D. Following completion of the Upgrade Works, Council has agreed to grant and the Licensee has agreed to accept the grant from Council of a non-exclusive licence for the use and occupation of the Pahi Wharf on the terms and conditions set out in this Licence.

1. LICENCE

Grant of Licence

- 1.1 As at the Commencement Date, the Council grants and the Licensee accepts a non-exclusive licence to use the Pahi Wharf for the Permitted Use.

Terms and Conditions

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

EXECUTION

SIGNED by)
KAIPARA DISTRICT COUNCIL)
as licensor by its duly authorised)
signatory acting under delegated)
authority in the presence of:)

(Signature of Witness)

(Name of Witness)

(Occupation of Witness)

(Address of Witness)

THE COMMON SEAL of)
PAHI REGATTA CLUB)
INCORPORATED was affixed)
in the presence of:)

(Signature of Commodore)

(Name of Commodore)

(Signature of Committee Member)

(Name of Committee Member)

PARTICULARS SCHEDULE

| | |
|-------------------------------------|---|
| Licensee | PAHI REGATTA CLUB INCORPORATED |
| Licensee Contact Details | [REDACTED] |
| Council Contact Details | Kaipara District Council Private Bag 1001 Dargaville 0340 09 439 1228 jreid@kaipara.govt.nz |
| Pahi Wharf | The structures which make up the Pahi Wharf located at the end of Pahi Road. |
| Licensed Area | The deck, piers, gangways and pontoons comprising the Pahi Wharf as shown in the plans attached as Annexure 1. |
| Status of Licensee | Registered as an incorporated society under registration number 223837 |
| Community Benefits | [REDACTED] |
| Annual Licence Fee | \$1 per annum plus GST |
| Outgoings payable | As set out in clause 4 of Schedule 1 of this Licence |
| Term | Starting on the Commencement Date and ending on the date the Licence is terminated in accordance with clause 13. |
| Commencement Date | The date being the later of: (a) five (5) Working Days from Practical Completion of the Upgrade Works (b) 3 February 2021 |
| Permitted Use | In common with members of the public the right to use the Pahi Wharf for purposes associated with the activities of the Club as provided in the Club's Rules provided that such activities are approved by Council. |
| Public Risk Insurance Amount | \$2,000,000.00 |
| Special Conditions/Terms | [REDACTED] |
| Financial Year of Licensee | 1 April each year to 31 March in the following year |
| Performance Measures | |

SCHEDULE 1

Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1. In this Licence, including the Background and all Schedules to this Licence, unless the context otherwise requires:

"**Administration Fee**" is the fee which the Council may require the Licensee 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 Licence, 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 Licensed Area.

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

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

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

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

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

"**Licensed Area**" means the licensed area set out and described in the Particulars Schedule.

"**Licensee**" means the Licensee named and described in the Particulars Schedule and includes the officers and members of the Licensee but does not include the Licensee's successors or assigns.

"**Outgoings**" means the outgoings in respect of the Licenced Area and the Pahi Wharf which, as set out in the Particulars Schedule, shall be payable by the Licensee, and as provided for in clause 4 of this Schedule 1.

"**Pahi Wharf**" means the structures which make up the Pahi wharf located at the end of Pahi Road, which includes the Upgrade Works.

"**Permitted Use**" is the permitted use of the Pahi Wharf and the Licensed Area as set out and described in the Particulars Schedule.

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

“Practical Completion” means the practical completion of the Upgrade Works as notified by Council to the Club.

“Upgrade Works” means physical works required to construct upgrades to the Pahi Wharf including a pontoon and gangway as described in the Project Memorandum prepared by WSP dated 31 August 2020.

“Working Day” has the meaning ascribed to that term in the Property Law Act 2007.

Interpretation

1.2. In this Licence:

- (a) references to clauses and schedules are reference to clauses and to schedules to this Licence unless stated otherwise. Each such schedule forms part of this Licence;
- (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 Licence 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 Licence including the Introduction;
- (g) where any condition or special term set out in the Particulars Schedule is in conflict with or is inconsistent with any other term of this Licence the condition or special term shall prevail.

2. TERM OF LICENCE

- 2.1. The term of this Licence granted by the Council to the Licensee shall be for the Term set out in the Particulars Schedule and shall commence from the Commencement Date as set out in the Particulars Schedule.

3. ANNUAL LICENCE FEE

- 3.1. The Licensee shall pay the Council the Annual Licence Fee during each year of the Term on the date and the frequency set out in the Particulars Schedule.
- 3.2. The initial Annual Licence Fee shall be the amount, plus GST, set out in the Particulars Schedule.
- 3.3. Where the initial Annual Licence Fee is a peppercorn rent (for example \$1 per annum plus GST) the Council may at its discretion by notice in writing to the Licensee ("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 the Pahi Wharf plus an 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 the Particulars Schedule, 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 the Particulars Schedule.
- 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 Licensee by the Council in writing) shall be final and binding on the Licensee.

4. OUTGOINGS

- 4.1. The Licensee 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 Pahi Wharf and the Licensed Area 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 Licensee shall pay all Outgoings direct or otherwise as the Council directs and in respect of the Licensed Area shall pay a proportion of such Outgoings as are apportioned by the Council, which may include Outgoings which are shared with other Licensees or persons.
- 4.3. All Outgoings payable by the Licensee shall be paid by the Licensee 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 Licensee shall at all times during the Term in a proper and workmanlike manner and to the reasonable requirements of the Council:
- (a) Maintain those part of the Pahi Wharf which are principally used by the Licensee
 - (b) make good (by repairing or replacing as necessary) any damage caused by the Licensee.
- 5.2. The Licensee 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 Licensed Area by other Licensees or persons regularly cause all rubbish and garbage to be removed from the Licensed Area and keep all rubbish bins and containers in a tidy condition. The Licensee will also, at the Licensee'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. The Licensee shall on a regular basis monitor the condition of the Pahi Wharf and report to the Council:

- (a) immediately in the event of repairs or work required to be undertaken on an urgent basis for health and safety reasons; and
- (b) as soon as practicable in the event of repairs or work required to be undertaken for maintenance purposes.

6. INSURANCES

- 6.1. The Licensee 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 the Particulars Schedule 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 Licence 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 licensee shall use and occupy the Licensed Area in common with others subject to a right of use of the Licensed Area by the public but subject to the following provisions of this clause. This Licence does not grant exclusive use of the Pahi Wharf or the Licensed Area to the Licensee.
- 7.2. It shall be lawful for any person to enter and for any reasonable period of time to remain upon the Licensed Area at all times and any person, and so entering or remaining on the Licensed Area shall not so long as he/she conducts and behaves himself/herself in an orderly and seemly manner, complies with rules established by the Licensee under this Licence and approved by the Licensor, and refrains from hindering and obstructing the activities of the Licensee be deemed to be a trespasser.
- 7.3. The right of the public to enter onto and remain on the Licensed Area is subject in all respects to the right, and obligation, of the Licensee to control the Pahi Wharf as licensee. The Licensee shall be entitled at all times to require compliance by the public with all legislation and bylaws relating to the Pahi Wharf and the Licensed Area and its use and in particular, the provisions of the Health and Safety at Work Act 2015. The degree of control the Licensee is authorised to exercise over public access to and use of the Pahi Wharf will be determined from time to time by Council in its discretion.
- 7.4. The Licensee will manage access to the Pahi Wharf by members of the public. In managing access to the Pahi Wharf the Licensee will:
- (a) comply with the following principles:
 - (i) the health and safety of users shall be a paramount consideration;
 - (ii) any restriction on access to the Pahi Wharf shall be for the minimum time necessary;
 - (iii) the Licensee recognises the right of members of the public to free access to the Pahi Wharf on foot from Pahi Road at all reasonable times;
 - (iv) any fees and charges levied by the Licensee for the use of the Pahi Wharf by members of the public must be fair and reasonable and have the prior approval of Council.

- (b) establish and post in a prominent position rules for the use of the Pahi Wharf by members of the Licensee and the public. Such rules must have the prior approval of Council and Council is to have the sole right of enforcement of such rules.
- 7.5. The Council, shall at any time during the Term be entitled to undertake, or permit other Licensees to undertake, another development or developments on the Licensed Area and the Licensee 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 Licensee in its undertaking of the Permitted Use during the undertaking of such developments.

8. PERMITTED USE

- 8.1. The Licensee shall use the Pahi Wharf and the Licensed Area in common with others for the Permitted Use and shall permit the public to use the Pahi Wharf and shall provide the Community Benefits in accordance with the Performance Measures provided for in clause 9, all as set out and described in the Particulars Schedule.
- 8.2. If at any time the Council is of the opinion that the Pahi Wharf and the Licensed Area 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, and after making such enquiries as it thinks fit and giving the Licensee the opportunity of explaining the use of the Pahi Wharf and the Licensed Area, if the Council is satisfied that the Pahi Wharf and the Licensed Area 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 Licence by notice in writing to the Licensee.
- 8.3. Without limiting Council's discretion at clause 8.2 above, the Licensee will be deemed not to be sufficiently using the Pahi Wharf for the Permitted Use where the Licensee or each sublicensee of the Pahi Wharf pursuant to this licence has not used the Pahi Wharf for Community Benefits for at least 50 days in any twelve month period during the Term of this licence. If the Licensee fails to meet the obligations under this clause then the Council, in its sole discretion, shall have the right to either enforce this clause against the applicable sublicensee and/or may terminate this licence by notice in writing to the Licensee.
- 8.4. The Licensee shall not:
- (a) use the Pahi Wharf or the Licensed Area for 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 Licensed Area;
 - (b) bring or permit to be brought on to the Pahi Wharf or the Licensed Area 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 Pahi Wharf;
 - (c) allow, carry on the Pahi Wharf or the Licensed Area any use or activity which may cause loss or damage to the Pahi Wharf or the Licensed Area or any adjoining land, or become an annoyance, nuisance or disturbance to the Council or any other user or occupier of the Licensed Area on any adjoining land;
 - (d) release into the environment, discharge, deposit, place or dispose of on or near the Licensed Area 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 Licensee and the Council acknowledge and agree that they enter into this Licence in order to provide through the undertaking of the Permitted Use, for the Term, the Community Benefits as set out and described in the Particulars Schedule and that the achievement of the Community Benefits are an essential term of this Licence.
- 9.2. The provision of the Community Benefits shall be measured against the Performance Measures and the Performance Measures applicable to this Licence are as set out and described in the Particulars Schedule.
- 9.3. The Performance Measures shall be continuing obligations of the Licensee throughout the Term and the Licensee shall report to the Council annually against the Performance Measures within 3 months following the end of the financial year of the Licensee, as set out in the Particulars Schedule, or at any other time reasonably requested by the Council. Such report shall include the provision of the annual financial statements of the Licensee (audited if required by law or the constituting document of the Licensee) 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 Licensee.
- 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 Licence by the Council;
 - (c) any extensions of this Licence as provided by clause 2;
 - (d) whether the Annual Licence Fee should be a substantive Annual Licence Fee;
 - (e) any funding sought by the Licensee from the Council; or
 - (f) any variation to this Licence sought by the Licensee or by the Council.
- 9.5. Any failure by the Licensee to report to the Council in terms of clause 9.3 shall be a breach of this Licence.

10. LEGISLATION, BYLAWS AND HEALTH AND SAFETY

- 10.1. The Licensee 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 Licensed Area or the Pahi Wharf and the undertaking of the Permitted Use.
- 10.2. The Licensee shall at all times during the Term comply with the Health and Safety at Work Act 2015 (HSWA) and relevant codes of practice and shall take all steps necessary to ensure that its actions or that of its employees and contractors do not endanger the health and safety of any person. The Licensee further agrees to:

- (a) provide the Council, immediately on request, with evidence of its compliance with the HSWA (including details of its programme to ensure compliance with the HSWA); and
- (b) comply with any lawful instructions given by the Council in relation to health and safety; and
- (c) meet with the Council as reasonably required to consult with each other in relation to compliance with the HSWA and any health and safety issues which may arise during the Term;
- (d) forthwith notify the Council in writing of any accident or near miss which takes place on the Pahi Wharf or the Licensed Area and of any actual or potential hazards which exist on the Pahi Wharf or the Licensed Area;
- (e) ensure that the Licensee has in place systematic checks to ascertain any actual or potential hazards which exist on the Pahi Wharf or the Licensed Area and immediately notify the Council in writing of such actual or potential hazards;
- (f) take immediately all practical steps to remove any actual or potential hazards where such are identified; and
- (g) indemnify (to the extent permitted by law) the Council for any legal costs, fees and other expenses it incurs as a result of any non-compliance with the provisions of the HSWA.

11. INDEMNITY

- 11.1. In addition to the indemnity contained in clause 10.2(g) the Licensee 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 Licence, the undertaking of the Permitted Use or any use or activity on or about the Pahi Wharf or the Licensed Area whether on the part of the Licensee or the Licensee's officers members, employees, customers, contractors, invitees, licensees and any persons, including members of the public, for whom the Licensee is responsible with respect to the undertaking of the Permitted Use.
- 11.2. In particular the Licensee shall fully recompense the Council for any charges or expenses incurred by the Council in making good any damage to the Licensed Area or the Pahi Wharf notwithstanding such items may be owned by the Licensee.

12. ASSIGNMENT OR SUBLETTING

- 12.1. The Licensee shall not assign, charge or sub-licence this Licence or part with possession of the Pahi Wharf or any part of the Licensed Area.

13. SUSPENSION AND TERMINATION

- 13.1. The Council may, by providing written notice to the Licensee, cancel or suspend this Licence for a temporary period at the discretion of the Council if:
- (a) any applicable resource consents, permits or licences required for the use and operation of the Pahi Wharf has been cancelled or suspended; or
 - (b) there is a health risk to the public.

- 13.2. The Council may (in addition to the Council's right to apply to the Court for an order for

possession) terminate this Licence by re-entering the Licensed Area at the time or at any time thereafter if the Licensee:

- (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 Licence; 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 Licensee for the purposes of the Pahi Wharf or the undertaking of the Permitted Use; or
- (c) makes any default in performance of any other obligation whatsoever contained in this Licence and such default continues for a period of 30 days; or
- (d) suffers or permits this Licence and the rights and privileges granted by this Licence or the Licensed Area or the Pahi Wharf 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 Licensed Area;

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

14. CONSEQUENCES ON TERMINATION

- 14.1. On termination of this Licence or surrender, the Licensee shall ensure that the Licensed Area is left in a good, clean and substantial order condition and repair fair wear and tear or damage by fire earthquake tempest or other inevitable accident alone excepted.
- 14.2. On termination of this Licence or surrender, breach of conditions or otherwise the Pahi Wharf shall revert to the Council without any compensation whatsoever being payable to the Licensee by the Council.

15. COUNCIL'S RIGHT TO INSPECT AND UNDERTAKE WORK

- 15.1. Any person authorised by the Council may at all reasonable times enter upon the Pahi Wharf and the Licensed Area and view and inspect the Licensed Area and the Pahi Wharf and upon receipt by the Licensee of a notice in writing from an officer or agent of the Council of any defect or want of repair or maintenance of the Pahi Wharf or the Licensed Area requiring the Licensee within a reasonable time, to be specified in the notice, to repair or remedy the same the Licensee shall at the cost of the Licensee with all reasonable speed cause the defect to be remedied and/or the repair to be made to the satisfaction of the Council.
- 15.2. That if default shall be made by the Licensee in complying with any notice served by the Council pursuant to clause 15.1 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 Licensed Area and the Pahi Wharf 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 Licensee shall be payable by the Licensee to the Council upon demand together with interest at the rate charged by the Council's principal banker on overdraft until payment.

16. ALTERATIONS, REPLACEMENTS OR CONSTRUCTION OF IMPROVEMENTS

- 16.1. The Licensee shall not alter or construct improvements to the Pahi Wharf without first obtaining the consent in writing of the Council.

17. COMPLIANCE WITH CONSENTS

- 17.1 The Licensee will ensure that at all times it complies with all consents, permits and licences required for the use and operation of the Pahi Wharf.
- 17.2 The Licensee shall notify the Council if the Licensee becomes aware of any breach of a consent, licence or permit, and immediately take all reasonable steps necessary to remedy the breach.

18. COUNCIL'S ROLE AS TERRITORIAL AUTHORITY

- 18.1. The Licensee acknowledges that the Council is the territorial authority for the area in which the Licensed Area is situated and that any power, right, obligation or duty of the Council under this Licence 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.
- 18.2. Any consent given by the Council for the purposes of this Licence is in addition to and not in satisfaction of any consent that may be required from the Council for regulatory purposes. For avoidance of doubt an application for a Building, Resource or other consent shall not be made until the Licensee has obtained approval for the works from Council as licensor.

19. RESERVES ACT 1977

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

20. DISPUTES AND MEDIATION

- 20.1. The parties shall meet and discuss in good faith any dispute between them arising out of this Licence.
- 20.2. If the discussions referred to in clause 20.1 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.
- 20.3. 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 20.1 and 20.2.

21 GENERAL

Goods and Services Tax ("GST")

- 21.1 The Licensee 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 Licensee under this Licence. 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.

- 21.2 If the Licensee shall make default in payment of the Annual Licence Fee or other moneys payable under this Licence and the Council becomes liable to pay additional GST then the Licensee shall on demand pay to the Council the additional GST.

Suitability

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

Non-Waiver

- 21.4 The failure of either party to insist in any one or more instances upon the strict performance of any of the terms of this Licence or the waiver by either party of any term or right under this Licence 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

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

Entire Agreement

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

Amendment

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

22. NOTICES

- 22.1 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.

- 20.4. In respect of the means of service specified in clause 22.1(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.

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

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

21. COUNCIL POLICIES

21.1. The Licensee shall comply with all Council policies relevant to the use of the Pahi Wharf and Licensed Area including, but not limited to the Smokefree Kaipara Policy adopted in 2018 and shall take reasonable steps to maintain the Licensed Area as a Smokefree area.

ANNEXURE 1
Plans of Pahi Wharf

APPENDIX B
PLAN SHOWING LOCATION OF PAHI WHARF

