

**Development Agreement**

**(date)**

**Kaipara District Council**

**(Council)**

**(Organisation)**

**Development Agreement  
for Licence to Occupy**



## Development Agreement for Licence to Occupy

**AGREEMENT** dated the ..... day of ..... 2022

### PARTIES

- 1 **Kaipara District Council** ("Council")
- 2 ("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: )

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

**The Common Seal of** )

was affixed in the )

presence of: )

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

## Schedule 1

### Particulars Schedule

<b>Organisation</b>	
<b>Organisation Contact Details</b>	▪
<b>Council Contact Details</b>	<ul style="list-style-type: none"> <li>council@kaipara.govt.nz</li> <li>Kaipara District Council Private Bag 1001 <b>Dargaville 0340</b></li> <li>0800 727 059</li> </ul>
<b>Land</b>	
<b>Status of Organisation</b>	Incorporated Society
<b>Community Benefits</b>	▪
<b>Development</b>	
<b>Development Period</b>	2 years from <i>(insert date)</i>
<b>Annual License Fee</b>	\$1 per annum plus GST subject to conversion to a substantive Annual Licence Fee subject to reassessment
<b>Rates payable during Development Period</b>	[Yes/No]
<b>Public Risk Insurance Amount</b>	The Organisation shall take out and maintain during the period any service is performed under this Agreement, Public Liability Insurance cover of not less than \$2million. Such insurance shall be in a form and on terms acceptable to Council.
<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> <li><b>Further Extensions</b> - Three terms of 5 years</li> <li><b>Permitted Use</b> – [set out permitted use of the Land]</li> <li><b>Total Term</b> – 30 years</li> </ul>
<b>Substantial improvements to be affected by Organisation</b>	Yes
<b>Conditions/Special Terms</b>	▪ [Set out any preconditions or special terms not otherwise dealt with in the Agreement]
<b>Health and Safety</b>	<p>The Organisation shall at time during the Term comply 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 Organisation further agrees to:</p> <p>a) Provide the Council, immediately on request, with evidence of its programme to ensure compliance with HSWA); and</p>

	<ul style="list-style-type: none"> <li>b) Comply with any lawful instructions given by the Council in relation to health and safety; and</li> <li>c) Meet with 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; and</li> <li>d) Forthwith notify the Council in writing of any accident or near miss which takes place on the Improvements or the Land and of any actual or potential hazards which exist on the Improvements or the Land; and</li> <li>e) Ensure that the Organisation has in place systematic checks to ascertain any actual or potential hazards which exist on the Improvements or the Land and immediately notify the Council in writing of such actual or potential hazards; and</li> <li>f) Take immediately all practical steps to remove any actual or potential hazards where such are identified; and</li> <li>g) Indemnify (to the extent permitted by law) the Council for any legal costs and other expenses it incurs as a result of any non-compliance with the provisions of the HSWA.</li> </ul>
<b>Financial Year of Organisation</b>	
<b>Performance Measures</b>	<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 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>

## 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 but 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 owing 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 (which shall include payment of any development contributions levied in respect of the Development);
- (c) within the Project 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, but 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 but 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 element 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 Health and Safety**

- 15.1 The Organisation shall 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 Organisation 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) report to the Council on any accident or near misses which occur in the course of the Development and provide the Council with such further information as it may require in relation to such matters; and
  - (d) 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 course of the Development; and
  - (e) indemnify (to the extent permitted by law) the Council for any legal costs and other expenses it incurs as a result of any non-compliance with the provisions of the HSWA.

### **16 Indemnity**

- 16.1 In addition to the indemnity contained in clause 15.1(e) the Organisation shall indemnify and keep indemnified the Council from and against all claims, costs, damage, loss or penalties (excluding any fines or infringement fees under the Health and Safety at Work Act 2015) 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.

## **17 General**

### **Suitability**

- 17.1 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.

### **No Assignment**

- 17.2 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**

- 17.3 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**

- 17.4 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**

- 17.5 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**

- 17.6 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**

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

### **Amendment**

- 17.8 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

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## Schedule 4

### Licence to Occupy

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