

DATED the

day of

2021

PARTIES:

1. TARARUA DISTRICT COUNCIL
2. []

DEED OF LICENCE

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PARTIES:

1. **TARARUA DISTRICT COUNCIL** (“the Licensor”)
2. (“the Licensee”)

BACKGROUND:

- A. The Licensor is the administering body of the Mangatainoka Recreation Reserve pursuant to the Reserves Act 1977.
- B. The Licensor has agreed to grant a non-exclusive licence to the Licensee and its invitees to use that part of the Licence Area, for the Permitted Activity/Use and on the terms and conditions set out in this Licence. Mangatainoka Recreation Reserve outlined in red on the Plan **attached** (“the Licence Area”).
- C. The parties have entered into this Licence to record the terms and conditions on which the Licensee may use the Licence Area.

NOW THIS DEED WITNESSES:

Definitions

1. (a) “Licence” means the within Deed of Licence.
- (b) “Licence Area” means such area as described within Background clause B above.
- (c) “Licensee” means and includes any employee, agent, contractor or invitee of the Licensee.
- (d) “Licensor” means the Tararua District Council
- (e) “Licensee Improvements” means any improvements constructed, placed or located on the Licence Area by the Licensee.
- (f) “Licensor Improvements” means any improvements located on the Licence Area other than those which constitute Licensee Improvements.
- (g) “Permitted Activity or Use” means the grazing of the Licence Area

- (h) "Working Day" means any weekday excluding weekdays that fall due on a public holiday.

Grant of Licence

2. The Licensor grants to the Licensee, and the Licensee takes and accepts from the Licensor, a non-exclusive Licence to use or occupy the Licence Area for the Permitted Activity or Use. The Licensor and Licensee agree that the within Licence does not give the Licensee exclusive rights to the Licence Area and the Licensor may at any time during the term of this Licence require the Licensee to vacate the Licence Area or any part of the Licence Area for a stipulated period of time by giving (5) Working Days' notice to the Licensee for such events or purposes as determined at the sole discretion of the Licensor.

PERMITTED ACTIVITY

3. The Licensee may only utilise the Licence Area for the purpose of conducting the Permitted Activity or Use or such other activity as notified in writing from time to time by the Licensor.

TERM OF LICENCE

- 4.
- (a) The term of the Licence shall be five (5) years and will commence on the Commencement Date and continue in force until the Expiry Date or as determined pursuant to clause 9 below.
- (b) Notwithstanding the term of the Licence referred to in clause 4(a) above the Licensor may, by giving one 120 Working Days' notice in writing to the Licensee, terminate this Licence, in which case the Licence shall terminate at the end of that notice period.
- (c) If this Licence continues with the consent of the Licensor past the expiration of the term then this Licence shall be determinable on one (1) month's written notice given at any time by either party to the other.

IMPROVEMENTS

5. The Licensee shall not construct, place or locate on the Licence Area any improvements unless the Licensor first gives consent to the Licensee in writing.

LICENCE FEE

6. (a) The Licensee shall pay to the Licensor a Licence Fee of [] per annum, including GST (if demanded by the Licensor).
- (b) If the Licensee defaults in payment of the Licence Fee or other monies payable pursuant to this Licence for twenty (20) Working Days then the Licensee shall pay on demand interest at the default interest rate of twelve (12) percent per annum on the monies unpaid from the due date for payment to the date of payment.

LICENSEE TO COMPLY WITH LEGAL REQUIREMENTS

7. The Licensee will comply with the provisions of all statutes, ordinances, regulations and by-laws and will comply with the provisions of all requisitions and notices issued by any competent authority in respect of the rights under this Licence. This shall include, without limitation any obligations pursuant to the Building Act 2004 and the Health and Safety at Work Act 2015.

ASSIGNMENT

8. The Licensee shall not assign the rights granted pursuant to this Licence.

TERMINATION

- 9.1 The Licensor may cancel the Licence by notice in writing to the Licensee if:
 - (a) The Licence Fee has been in arrears for not less than ten (10) working days and the Licensor has served on the Licensee a notice pursuant to Section 206(3) and Section 246 of the Property Law Act 2007, such notice being not less than fourteen (14) working days.
- 9.2 Termination pursuant to clause 9.1 above shall not be subject to clause 21 below.

COSTS

10. The Licensee shall be responsible for the Licensor's solicitor's reasonable costs of and incidental to the preparation of this Licence and any variation or renewal and the Licensor's reasonable costs (as between solicitor and client) of and incidental to the enforcement or attempted enforcement of the Licensor's rights, remedies and powers under this Licence.

LIABILITY FOR LOSS

11. The Licensee will exercise its rights pursuant to this Licence entirely at the Licensee's own risk and the Licensor shall not be liable for any loss or damage sustained by the Licensee exercising any right pursuant to this Licence including any damage or loss resulting from any employee, agent, licensee or contractor of the Licensee entering onto any part of the Licence Area.

NOTICE

- 12.1 (a) Any notice or document required or authorised to be delivered or served under this Deed may be delivered or served:
 - (i) In the manner provided within the Property Law Act 2007;
 - (ii) E-mail;
- (b) Any notice or other document will be treated as delivered or served and received by the other party as follows:
 - (i) Personal Delivery. On personal delivery; or

- (ii) Post. 3 days after being posted by pre-paid registered post; or
- (iii) E-mail. On completion of successful transmission.

For the Purpose of this Licence until changes are notified in accordance with this clause 13.1 notice may be served using the notice details contained in the Schedule hereto.

- 12.2 Any changes to the notice details of either party as recorded in the Schedule hereto shall be notified in writing to the other by the party changing their notice details and such change shall not be effective until five (5) working days after the notification.

BINDING WHEN SIGNED BY BOTH PARTIES

13. This Licence shall not be binding until signed by both the Licensor and the Licensee.

UTILITIES

14. The Licensee will pay directly to the relevant utility supplier all charges for utilities consumed by the Licensee in relation to the Licence Area including, however not limited to, telecommunications, water and electricity.

MAINTENANCE & REPAIR

15.

- (a) The Licensee will at all times maintain the Licence Area in the state which it was on the Commencement Date.
- (b) The Licensee will repair to the reasonable satisfaction of the Licensor any part of the Land that is damaged directly or indirectly by the Licensee, its employees, agents, contractors or invitees at any time during the Term of this Licence.
- (c) The Licensee will at all times keep any Licensor Improvements in good order, repair and condition.
- (d) The Licensee will at all times keep any Licensee Improvements in good order, repair and condition.
- (e) The Licensor and the Licensor's employees, agents, contractors and invitees may at all reasonable times enter the Licence Area to inspect the Licensor Improvements, Licensee Improvements and Land. If the Licensor gives the Licensee written notice of any failure on the part of the Licensee to comply with any requirement relating to the Licensor Improvements, Licensee Improvements and/or Land pursuant to this Licence then the Licensee will, with all reasonable speed and at the sole cost of the Licensee, remedy those defaults.
- (f) In the event notice is given by the Licensor to the Licensee in accordance with clause 15(e) above and the default is not remedied within ten (10) working days of the date of such notice then the Licensor together with the Licensor's employees, agents, contractors and invitees may enter the Licence Area to remedy the default. The Licensor's costs of

remedying the default will be payable by the Licensee. The Licensee will pay such costs to the Licensor immediately upon demand being made in writing by the Licensor to the Licensee and if payment is not so made then the Licensee shall pay to the Licensor interest on the outstanding sum in accordance with clause 6(b) above from the date the Licensor notifies the Licensee of the costs incurred by the Licensor until the date of payment.

- (e) In the event that the Licensor considers that urgent work is required to be carried out in order to protect the safety of any person or property then the Licensor may without notice together with the Licensor's employees, agents, contractors and invitees enter the Licence area to carry out such urgent work. The Licensor's costs of carrying out the work will be payable by the Licensee. The Licensee will pay such costs to the Licensor immediately upon demand being made in writing by the Licensor to the Licensee and if payment is not so made then the Licensee shall pay to the Licensor on the outstanding sum due interest in accordance with clause 6(b) above from the date the Licensor notifies the Licensee of the costs incurred by the Licensor until the date of payment.

OBLIGATIONS ON TERMINATION

16.

- (a) On termination of this Licence the Licensee shall leave the Licensor's improvements in good order, repair and condition similar to the condition they were in at the commencement of this Licence (fair wear and tear excepted).
- (b) On termination of this Licence the Licensee shall within twenty (20) working days of such termination and at the sole cost of the Licensee remove from the Licence Area any Licensee Improvements and return the surface of the Licence Area to the same condition to which it was in prior to any Licensee Improvements being constructed, placed or located on the Licence Area.
- (c) In the event the Licensee does not comply with its obligations pursuant to clause 15(b) above then the Licensor may remove the Licensee Improvements and dispose of the same as determined by the Licensor. The Licensee will pay to the Licensor any costs incurred in the removal and disposal of the Licensee improvements immediately upon demand being made in writing by the Licensor. If payment is not so made then the Licensee shall pay to the Licensor interest on the outstanding sum in accordance with clause 6(b) above from the date the Licensor notifies the Licensee of the costs incurred by the Licensor until the date of payment.
- (d) In the event the Licensee does not comply with its obligations pursuant to clause 15(c) above then rather than exercising the right pursuant to clause 15(c) above the Licensor may give notice in writing to the Licensee that the Licensor assumes ownership of the Licensee Improvements.

LICENSOR AS LOCAL AUTHORITY

17. The Licensor's position as territorial authority will not be compromised by virtue of the fact that it is a party to this Licence and it is acknowledged by the Licensee that no representation, warranty, or undertaking is made as to the success or otherwise of any application for resource consent, building consent, or any other application made to the Tararua District Council.

SIGNAGE

18. The Licensee shall not erect, paint, display or allow on the Licence Area any signs, notices or advertising material unless the Licensee first obtains the consent in writing of the Licensor which consent may be declined. It will be a condition of any consent that the consented signs must comply with any relevant by-laws and the District Plan. The Licensor may, notwithstanding giving consent to any signage pursuant to this clause, require at any time the signage to be removed within ten (10) working days of receiving such notice.

INSURANCE AND INDEMNITY

- 19.1 The Licensee will keep current a policy of public liability insurance for not less than \$1,000,000.00 for the duration of the Term.
- 19.2 The Licensee, at the Licensee's expense, shall insure any Licensee's Improvements for full replacement value, including all professional and consent fees, and costs of demolition, site clearance and for any works required by statute.
- 19.3 In the event that there are any Licensor Improvements on the Licence Area then the Licensor will arrange such insurance as the Licensor considers necessary.
- 19.4 The Licensee agrees to occupy and use the Licence Area at the Licensee's risk and releases to the full extent permitted by law the Licensor, its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Licence Area.
- 19.5 The Licensee will, unless specifically prohibited by law, indemnify the Licensor against all damages or losses incurred by the Licensor resulting from the Licensee exercising any rights pursuant to this Licence including any damage or loss resulting from any employee, agent, licensee, invitee or contractor of the Licensee entering onto any part of the Licence Area.

GENERAL

- 20.1 The Licence does not create any Lease, Tenancy or interest in the Licence Area.
- 20.2 The covenants and provisions required to be included in this Licence by the Reserves Act 1977 and by any regulations made under the Reserves Act 1977 shall to the extent that they are compulsory in their application to this Licence be binding on the Licensor and Licensee in the same manner as if such provisions had been set out fully in this Licence.
- 20.3 No warranty or representation expressed or implied has been or is made by the Licensor that the Licence Area is now suitable or will remain suitable or adequate for the Permitted Activity or Use by the Licensee or that any use of the Licence Area by the Licensee will comply with the by-laws or ordinances or other requirements of any authority having jurisdiction.

- 20.4 No waiver or failure to act by either party in respect of any breach by the other shall operate as a waiver of another breach.
- 20.5 This Licence is not registrable, and the Licensee may not register a caveat against the title for the Land of which the Licence Area forms part.

ARBITRATION / MEDIATION

21. If any dispute or difference arises between the parties, the parties shall enter into negotiations in good faith to resolve the dispute or difference. If the dispute or difference is not resolved within one month of the date on which the parties began their negotiations, either party may invoke a mediation process as follows:

- 21.1 Either party may by written notice to the other party require that the dispute between the parties be referred to mediation. A mediation notice shall set out the nature of the dispute but need not detail the background or the parties' position in relation to the same.
- 21.2 A mediation shall not derogate from the obligation of the parties to seek resolution of the dispute by consultation and negotiation.
- 21.3 The parties shall in good faith endeavour to agree upon and appoint a person as mediator to consult with the parties and to assist the parties to reach agreement in respect of the dispute no later than seven (7) days from the date upon which a mediation notice was given.
- 21.4 If a mediator is appointed he or she shall in consultation with the parties settle a timetable and the procedures to be adopted during the mediation. The decision of the mediator on any such timetabling and procedural matters shall be binding on the parties and in particular the mediator shall be entitled to call any meeting between the parties at such time and place as the mediator considers appropriate.
- 21.5 The parties shall attend all meetings called by the mediator and at such meetings shall conduct the negotiations in good faith and use their best endeavours to reach an agreed solution which is acceptable to both parties. Subject to the provisions of this clause, if any dispute is not resolved by written agreement between the parties upon the expiration of twenty (20) business days from the date upon which the mediation notice was given the question or difference shall be resolved by the arbitration of a single arbitrator to be appointed by the President for the time being of the Hawkes' Bay Branch of the New Zealand Law Society and every arbitration shall be conducted under and in accordance with the Arbitration Act 1996 or any amendment or re-enactment thereof. Pending resolution of any dispute or difference the parties shall continue to perform their respective obligations pursuant to the provisions of this Licence.

DATED this day of

2021

THE COMMON SEAL OF THE TARARUA DISTRICT COUNCIL

Was hereto affixed in the presence of:

_____ Mayor

_____ Chief Executive

SIGNED by _____

As Licensee in the presence of:

FIRST SCHEDULE

LICENCE AREA	That part of the Mangatainoka Recreation Reserve outlined in red on the plan attached as the Second Schedule.
LAND	8.93 hectares more or less situated at State Highway 2, Mangatainoka 1.11 hectares more or less situated on the corner of Cemetery Road and State Highway 2, Mangatainoka 1.15 hectares more or less situated at 81310 State Highway 2, Mangatainoka
TERM	The term commencing on the Commencement Date and continuing in force until the Expiry Date or such earlier date determined under clause 9.
COMMENCEMENT DATE	19 November 2021
EXPIRY DATE	18 November 2026
LICENCE FEE	\$() (including GST) annually
CONTACT DETAILS FOR LICENSOR	Tararua District Council Carrie Newell 06 374 4080 carrie.newell@tararuadc.govt.nz
CONTACT DETAILS FOR LICENSEE	
PERMITTED ACTIVITY OR USE	Grazing of cattle

SECOND SCHEDULE

PLAN OF LICENCE AREA



