

Memorandum of Licence

Relating to

A Boardwalk to be erected on the bed of Lake Rotorua

Lake Rotorua Lake Holding No 1 Limited

("Licensor")

Rotorua District Council

("Licensee")

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This **Memorandum of Licence** is made on 20th June 2020.

Parties

1. **Rotorua Lake Holding No 1 Limited ("Licensor")**
2. Rotorua District Council, trading as Rotorua Lakes Council ("**Licensee**")

Together, "**the Parties**"

Background

- A. The Parties are key strategic partners in regard to activities in and around Rotorua.
- B. The Licensor is the Settlement entity recognised by the Crown in the Te Arawa Lakes Settlement Act 2006 which acknowledges the cultural, spiritual, historical and traditional association of Te Arawa with the Rotorua lakes and vests in the Licensor the titles to 13 Rotorua lakes including Record of Title 319271 encompassing the bed of Lake Rotorua (the Lake Bed).
- C. As owner of the Lake Bed, the Licensor wishes to ensure any new Structures constructed on the Lake Bed are strictly controlled, consistent with the Licensor's ownership imperatives and the environmental and cultural aspirations of Te Arawa for Lake Rotorua and the Lake Bed, and in a manner consistent with Te Tūāpapa o ngā wai o Te Arawa / Te Arawa Cultural Values Framework.
- D. The Licensee is a territorial local authority and the administrator of the Rotorua Lakefront Reserve (a reserve gifted by Ngāti Whakaue and managed in accordance with the Gifted Reserves Protocol).
- E. The Licensee wishes to redevelop the Rotorua Lakefront Reserve, including constructing the Boardwalk. In the context of the anticipated benefits to the community and to Te Arawa, the Licensor wishes to support the Licensee's desire to establish a Boardwalk.
- F. The Parties wish to enter into this Licence so as to authorise the Boardwalk to occupy the Lakebed. The Parties acknowledge that the Licensor has significant landholdings, some of which the Licensee has existing structures upon and the Licensee is likely to wish to apply for further new structures in the future. Any such structures will require separate applications and each such application shall be considered on its own merits by the Licensor. Nothing in this licence requires the Licensor to permit the Licensee to construct any further structures on its landholdings.
- G. The Parties therefore enter into this License Agreement to authorise the Boardwalk to occupy the Lakebed on the terms and conditions set out herein.

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Operative Provisions

1. License

- 1.1. The Licensor Licences to the Licensee and the Licensee takes on Licence the Land for the Term and at the Annual Rent and subject to the terms and conditions set out in the Schedules to this Licence.

Schedule 1 – Reference Schedule

Item 1: Licensor

Rotorua Lake Holding No 1 Limited

Item 2: Licensee

Rotorua District Council, trading as Rotorua Lakes Council

Item 3: Land

That Area of the Lake Bed marked in red on the attached plan in Schedule A, and identified as areas A (444m²) , B (291m²) and C (78m²).

Item 4: Commencement Date

The date on which the conditions in Schedule C are confirmed as satisfied by the Licensor.

Item 5: Term of Licence

Fifty (50) years.

Item 6: Rights of Renewal

Nil.

Item 7: Expiry Date

The date 50 years from the Commencement Date.

Item 8: Annual Rent and payment dates

- a) **Annual Rental:** \$10,000.00 per annum.
- b) **Rent Payment Dates:** 1 July in every year.

Item 9: CPI Rent Adjustment Dates

Every three years, on 1 July.

Item 10: Establishment Fee

\$20,000.00.

Item 11: Permitted Use

The erection, maintenance and use of the Boardwalk provided for in Schedule B for non-commercial pedestrian recreational access. Subject to clause 8.2 of Schedule 2.

Item 12: Public Risk Insurance Cover

\$10,000,000.00.

Schedule 2 – General Terms and Conditions**2. Definitions, Interpretation and Exclusions****2.1 Definitions**

Adjoining Land means the area marked in blue on the attached plan in Schedule A.

Annual Rent or Rent means the Annual Rent specified in Item 8 of Schedule 1 and as reviewed from time to time pursuant to the provisions of this Licence.

Approved Boardwalk means the boardwalk structures or improvements erected on the Land and on the Adjoining Land, as are approved by the Licensor pursuant to this Licence and includes any alterations or additions to any structures, or improvements, preliminary plans for which are set out in Schedule B.

Authority means each and every local body, government or other authority having jurisdiction or authority over or in respect of the Licensor's Land and/or the Boardwalk or the use thereof and includes where appropriate, any utility supplier.

CPI Rent Adjustment Date means the applicable CPI rent adjustment date specified in Item 9 of Schedule 1.

Commencement Date means the date specified in Item 4 of Schedule 1.

Commercial Use includes any use of the Approved Boardwalk that does or could result in commercial revenue or advantage for any person, including but not

limited to photography, filming, commercial recreation and sporting events, use of the space for events such as weddings, guiding and tourism activities.

Expiry Date means the expiry date specified in Item 7 of Schedule 1.

Fixed Rent Adjustment Date means the applicable fixed rent adjustment date specified in Item 9 of Schedule 1.

GST means Goods and Services Tax payable in terms of the Goods and Services Tax Act 1985 or any tax in the nature of a goods and services tax.

Lake Bed means the lake Bed of Lake Rotorua comprising 8088ha more or less being Section 1 SO 338985 comprised in Record of Title 319271 and subject to s30 of the Te Arawa lakes Settlement Act 2006.

Land means the land described in Item 3 of Schedule 1 and, where not repugnant to the context, includes the Approved Boardwalk.

Licence means this Licence as amended or varied from time to time in writing and signed by both parties.

Licensee means the Licensee, the executors, administrators or successors and permitted assigns of the Licensee and where not repugnant to the context the employees and agents of the Licensee.

Licensor means the Licensor and its successors and assigns and, where not repugnant to the context, includes the employees and agents of the Licensor (including for the purpose of giving notice any management agent appointed from time to time by the Licensor).

Permitted Purpose means the construction and use of the Approved Boardwalk for non-commercial, public pedestrian recreational use, subject to the express terms of this Licence.

Plan means the plan of the Land annexed as Schedule A.

Relationship Agreement means the agreement established in accordance with clause 7.1(b).

Renewal Date means the applicable renewal date specified in Item 6 of Schedule 1.

Structure means the structures or improvements now or hereafter erected on the Land together with any part of such structures constructed on any adjoining land.

Working Days has the meaning given to it by the Property Law Act 2007.

2.2 Interpretation

- (a) Words importing the singular number shall include the plural, the masculine gender shall include the feminine and neuter genders and persons shall include companies and vice versa.
- (b) Any provision of this Licence to be performed by two or more persons shall bind those persons jointly and severally.
- (c) The headings in this Licence have been inserted for convenience only and shall not in any way limit or govern the construction of the terms of this Licence.
- (d) Any references to a statute include references to regulations, orders or notices made under or pursuant to such statute or regulations made under the statute and references to a statute or regulation include references to all amendments to that statute or regulation whether by subsequent statute or otherwise and a statute or regulation passed in substitution for the statute or regulation referred to as incorporating any of the provisions.
- (e) Any reference in this Licence to a month or monthly shall mean respectively calendar month and calendar monthly.
- (f) Whenever terms appear in this Licence that also appear in Schedule 1, then these terms shall have and include the meaning set out in Schedule 1.
- (g) This Licence is a licence of land to which clause 206 of the Property law Act applies.

2.3 Exclusion of Statutory Provisions

- (a) To the extent permitted by law the application to this Licence of any moratorium or other law act or regulation having the effect of extending the term, reducing or postponing the payment of Rent or other moneys payable under this Licence or otherwise affecting the operation of the terms of this Licence is expressly excluded and negatived.

3. Conditions precedent to grant of Licence

This Licence is conditional on the satisfaction of the conditions set out in Schedule C.

4. Licence Term

4.1 Term

The term of this Licence shall commence on the Commencement Date and will expire at midnight on the Expiry Date.

5. Annual Rent

5.1 Annual Rent and establishment fee

- (a) The Licensee will pay without setoff or deduction the Establishment Fee and Annual Rent, and any increased Annual Rent pursuant to this Licence, to the Licensor (or as the Licensor may in writing otherwise direct) without demand from the Licensor.
- (b) The Annual Rent shall be paid annually in advance as set out in Schedule 1 with the first instalment to be paid on the Commencement Date of this Licence.
- (c) The Annual Rent due under this Licence from time to time shall be paid by automatic bank authority or in such other manner as the Licensor may from time to time direct.

5.2 CPI Rent Adjustment

- (a) On each CPI Rent Adjustment Date, the Annual Rent shall be increased in accordance with the following formula:

$$R = A \times \left(\frac{B}{C} \right)$$

Where:

R is the Annual Rent payable immediately following the CPI Rent Adjustment Date;

A is the Annual Rent payable immediately preceding the CPI Rent Adjustment Date;

B is the CPI last published before the applicable CPI Rent Adjustment Date;

C is the CPI last published before the later of the Commencement Date and the previous rent review date;

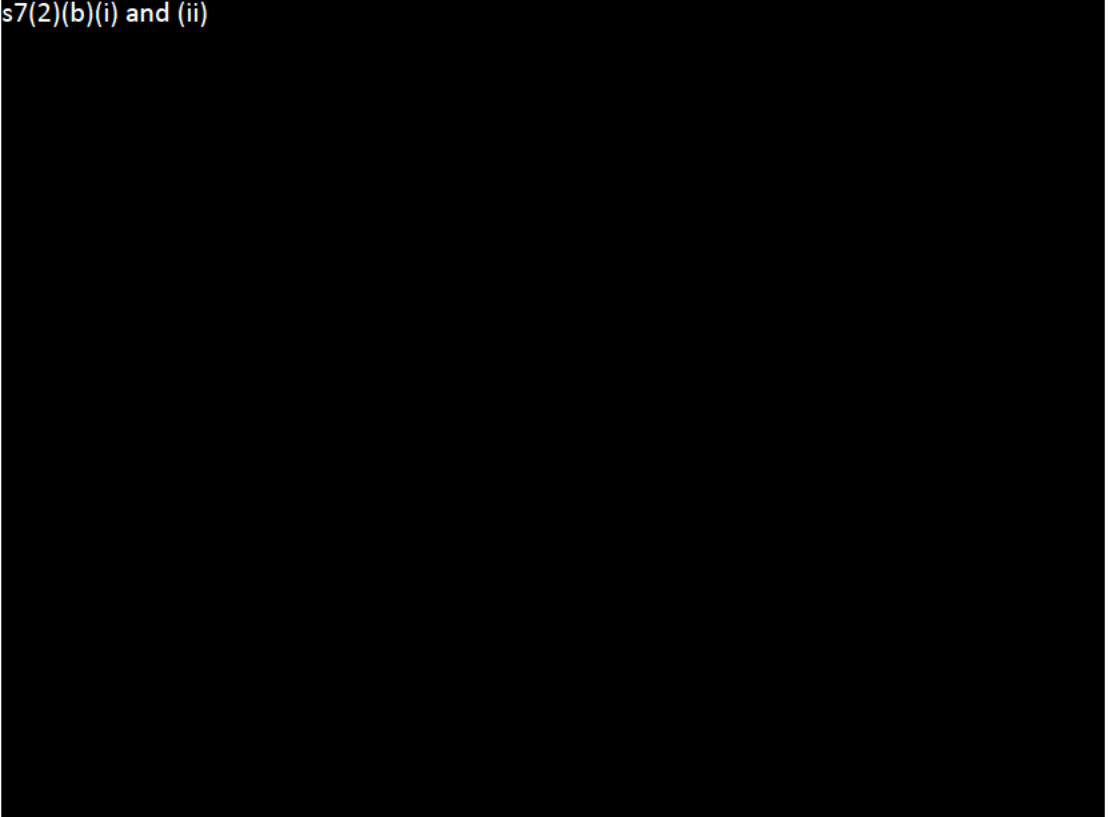
5.3 GST

- (a) The Licensee shall pay to the Licensor or as the Licensor shall direct, the GST payable by the Licensor in respect of the Annual Rent and any other payments payable by the Licensee under this Licence.
- (b) Any GST payable by the Licensee will be payable on the date on which the relevant supply is deemed to take place by virtue of the Goods and Services Tax Act 1985.
- (c) If the Licensee defaults in paying the Annual Rent, GST, or any other moneys due under this Licence, and as a result the Licensor becomes liable to pay any penalty or default GST, the Licensee will on demand pay the penalty or default GST.
- (d) As between the Licensor and the Licensee, the Licensor will not be obliged to pay any GST or default GST, or to take any other steps to minimise the liability in respect of such tax, until the corresponding payment is received from the Licensee.

6. Approved Boardwalk Removal Fund

6.1 Licensee to establish and contribute to Fund

s7(2)(b)(i) and (ii)



s7(2)(b)(i) and (ii)

7. Relationship Commitments

7.1 Expertise and Information Sharing

- (a) The Parties will enter in to a Relationship Agreement to provide for engagement on decisions in respect of the Lakefront Reserve and the adjoining lake. In this regard, the Licensee commits to actively working with the Licensor:
 - (i) to share expertise around lake health and increasing tourism potential of the Rotorua Lakes; and
 - (ii) to promote and develop the benefits of the parties' relationship.
- (b) The Relationship Agreement will set out a process for the Parties to develop a shared vision for the Rotorua lakefront. This will include how Te Tūāpapa o ngā wai o Te Arawa / Te Arawa Cultural Values Framework will be upheld, and other agreed amenity objectives and standards.
- (c) The Licensee will provide a liaison person for relationship purposes, and will commit to the collection and dissemination of data and resources, and engagement with the Licensor, in writing and in person by way of attending and contributing to meetings as is reasonably required to achieve the purposes set out in clauses 7, 8 and as contemplated by this licence.

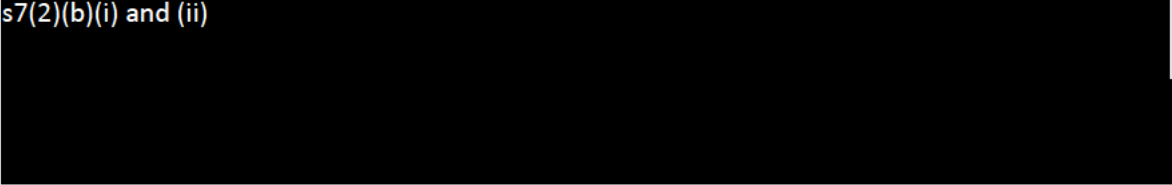
8. Use and Development of Approved Boardwalk

8.1 Development of the Approved Boardwalk

- (a) The Licensee will construct the Approved Boardwalk on the Land in accordance with the plans and description in Schedule B. Before commencing work, the Licensee must first obtain the prior written consent of the Licensor to the final plans and specifications of the Approved Boardwalk, which shall not be unreasonably withheld provided that:
 - (i) The Approved Boardwalk complies with any relevant Authority's requirements for the Licensee's use of the Land (including the application of Te Tūāpapa o ngā wai o Te Arawa / Te Arawa Cultural Values Framework through the conditions of resource consent);

- (ii) the design of the Approved Boardwalk and any construction materials used by the Licensee are consistent with Schedule B.
- (b) If the Approved Boardwalk is not completed within twenty-four months of the Commencement Date (the Boardwalk parts B and C as marked in Schedule A) and within forty-eight months for Boardwalk part A as marked in Schedule A), the Licensor may terminate this Licence on not less than 40 Working Days' notice to the Licensee. Such termination is without prejudice to the rights and obligations of the parties up to the date of termination. Completion for the purposes of this clause shall mean that the Approved Boardwalk is finished construction and is available for use for its intended purpose in accordance with any statutory or Authority requirements.
- (c) If at any time the Licensee desires to erect or construct any improvements or alteration to the Approved Boardwalk or to install or alter any services (Alterations) the Licensee must first obtain the prior written consent of the Licensor, which the Licensor may give in its sole discretion. Without limiting the Licensor's discretion in any manner, the Licensor may consider whether:
- (i) any Alterations comply with any relevant Authority's requirements for the use of the Land and Boardwalk;
 - (ii) the design of any Alterations and any construction materials used by the Licensee are consistent with the shared vision provided for in clause 7.1(b) ; and
 - (iii) the design of any Alterations will impede the use of the Lake or the Lake Bed by other users in any way.

s7(2)(b)(i) and (ii)



- (e) Subject to the Licensor's written approval being obtained, the Licensee shall at the Licensee's expense and to the satisfaction of the Licensor erect or construct the Approved Boardwalk and any Alterations in accordance with such approved plans, and specifications, in a proper and tradesmanlike manner and in strict accordance with all statutory requirements, including but not limited to the Resource Management Act 1991 and the regulations of any Authority. Additionally the Licensee must abide by all cultural practices and requirements (for example, karakia to begin the construction process and early notice to local marae and hapū) notified by the Licensor to ensure a safe construction and beneficial enjoyment phase.

- (f) The Licensee shall at its own expense take out contractor's all risk policy in respect of the Approved Boardwalk and any Alterations, with a reputable insurer to indemnify the Licensor, the Licensee and the Licensee's contractors, sub-contractors, builders, employees and agents against material damage to the full value of the Approved Boardwalk and any Alterations and any damage to any existing structure. In addition, the Approved Boardwalk and any Alterations are only to be carried out by reputable, appropriately qualified contractors who have public liability insurance for s7(2)(b)(i) and (ii)

8.2 Use of Approved Boardwalk

- (a) The Licensee will not use or permit to be used the Approved Boardwalk or Lake Bed otherwise than for the Permitted Purpose.
- (b) The Licensee will not operate any commercial activity from or in connection with the Approved Boardwalk and will refer and actively promote any enquiries in respect of such activities to the Licensor who is agreed to be the sole party entitled to undertake or authorise commercial use of the Approved Boardwalk, or any part of it or to take commercial benefit from its use.
- (c) The Licensee will, in conjunction with the Licensor develop a cultural narrative to be utilised by the Licensee in conjunction with the Approved Boardwalk.
- (d) The Licensee will take all lawful steps to co-operate with any operators who are authorised by the Licensor to use, by way of connection or otherwise, the Approved Boardwalk so as to ensure that all such operators are able to carry out their commercial operations safely, and without interference or undue restriction.

8.3 Security

- (a) The Licensee as occupier, may following notice to the Licensor, issue trespass notices to such persons as the Licensee considers necessary to provide for public safety. Any such notice must be notified to the Licensor prior to being served on the recipient of the notice.
- (b) The Licensee may, with the permission of the Licensor, prevent public access to any specified area of the Approved Boardwalk for specified purposes or during approved time periods where public safety requires.
- (c) Nothing in this clause shall permit the Licensee to exclude the Licensor from any part of the Approved Boardwalk, or conflict with any commercial use of the Approved Boardwalk.

8.4 Licensee's Maintenance/Repair Obligations

The Licensee will at all times during the continuance of the term of this Licence:

- (a) keep the Approved Boardwalk and the surrounding area clean and tidy and free of all hazardous substances and materials which may damage the Approved Boardwalk or the Lake Bed or the Lake or cause or threaten to cause a hazard to the health or safety of persons on or about the Approved Boardwalk;
- (b) maintain, repair, replace, renew and keep the Approved Boardwalk together with all conveniences, amenities and appurtenances relating thereto in good and substantial repair, order and condition in all respects to a level consistent with a premium tourism operation.
- (c) maintain in a good and useable condition all services installed by the Licensee including any connections to services that the Licensee has made (from the Approved Boardwalk to the approved connection points); and
- (d) immediately make good any damage to the Approved Boardwalk or the Lake Bed caused by the Licensee and persons under its control, to the Licensor's reasonable requirements.

8.5 Notice of damage and defects by Licensee

The Licensee must immediately give notice to the Licensor of:

- (a) any damage or accident to, or defects in, the Approved Boardwalk or in any; and
- (b) any circumstances occurring on or around the Approved Boardwalk likely to cause damage or injury.

8.6 Notice To Carry Out Repairs

The Licensor and the Licensor's agents, servants or contractors may at any time or times during the term of this Licence:

- (a) View the condition of the Approved Boardwalk and the following provisions shall apply:
 - (i) The Licensor may give notice in writing to the Licensee specifying any defects and breaches of covenant for which the Licensee may be liable.

- (ii) The Licensee shall within a reasonable time as shall be specified in such notice make good those defects and breaches of covenant for which the Licensee is liable.
- (iii) If the Licensee fails to comply with such notice within the time specified in accordance with subclause (ii) **Error! Reference source not found.**above, the Licensor may, at its option and without prejudice to any other rights, powers or remedies take such steps, expend such moneys and do such other acts and things as the Licensor considers necessary to make good such failure and any moneys expended by the Licensor in so doing, together with interest thereon at the rate specified clause 15.3 of Schedule 2 computed from the time or respective times of the moneys being actually expended by the Licensor until actual payment thereof by the Licensee to the Licensor, shall be payable on demand by the Licensee to the Licensor as if the same were Rent in arrears payable by the Licensee.

8.7 No Warranty as to Suitability

- (a) The Licensor does not in any way warrant or represent that the Land or Approved Boardwalk is, or will remain suitable or adequate for any of the approved uses of the Licensee and, to the full extent permitted by law, all warranties as to suitability and to adequacy implied by law are expressly negated.
- (b) Should any of the uses of the Licensee be permissible only with the consent of any Authority under or in pursuance of any statute, ordinance, regulation, by-law or other enactment or order of Court, the Licensee will obtain such consent at the sole cost and expense of the Licensee, including but not limited to any costs of complying with any conditions of any such consent.

8.8 Offensive Acts

The Licensee will not at any time during the continuance of this Licence do, exercise or carry on or permit or suffer any other person or persons to do, exercise or carry out on the Land or Approved Boardwalk or any part thereof any noxious, harmful or offensive act, or any act matter or thing whatsoever which shall or may be or become or cause annoyance, nuisance, grievance, damage or disturbance to the Licensor, or to any licensee of any other Boardwalk. For the avoidance of doubt actions that are incompatible with traditional Te Arawa beliefs and/or Te Tūāpapa o ngā wai o Te Arawa will be deemed offensive under this Licence (for example, scattering of human ashes or activities that denigrate Te Arawa peoples).

8.9 Compliance with Laws and Notices

The Licensee will at all times observe and comply with all statutes, ordinances, regulations, by-laws or other enactments (whether or not in place at the Commencement Date) affecting the Land and/or Approved Boardwalk or relating to the use, occupation or operation of the Land and/or Approved Boardwalk and with all requirements, notices or orders which may be given by any Authority. The Licensee will keep the Licensor indemnified from and against all actions, claims, demands, losses, damages, costs and expenses arising out of any non-compliance therewith by the Licensee and persons under the control of the Licensee.

8.10 Compliance with Fire Requirements

- (a) The Licensee will at all times and in all respects comply with the requirements of any Authority and with the requirements of any relevant statute, regulation by-law or other notice issued by any Authority relating to fires.
- (b) The Licensee shall not do or permit anything to be done on the Approved Boardwalk or keep unprotected in the Approved Boardwalk any materials which will in any way create a fire hazard.

9. Health and Safety

9.1 Licensee' obligations

- (a) The Licensee, in the design, construction and use of the Approved Boardwalk will be a PCBU and will ensure that it complies with all health and safety requirements and obligations under the Health and Safety at Work Act 2015 and all related or substituted legislation including all regulations and codes of practice approved under that legislation;
- (b) The Licensee is required to submit to the Licensor all documents, such as, for example, a safety management plan, a completed hazard identification and control register, maintenance plans, and confirmation of maintenance activity, Health and Safety audits, structural surveys and any associated job safety and environmental analysis, which the Licensor reasonably requests to demonstrate to the Licensor compliance with Health and Safety legislation. The Licensee agrees to provide the Licensor with access to these documents on an annual basis at the same time the annual rent payment is made, and otherwise as requested.
- (c) At all times the Licensee must have in place, implement and operate safety management systems which comply with Health and Safety legislation.

- (d) The acceptance by the Licensor of the documents referred to in clause 9.1(b) and the safety management systems referred to in clause 9.1(c) does not release the Licensee from its responsibilities and obligations under Health and Safety at Work Act 2015 or any of the requirements and conditions of this agreement.
- (e) The Licensee is responsible for ensuring that all of its employees and contractors are trained in the relevant health and safety requirements applicable to the Approved Boardwalk.
- (f) The Licensee is responsible for notifying the relevant authority of any incidents as required by the Health and Safety at Work Act 2015. Copies of any notifications to the Ministry of Business, Innovation and Employment by the Licensee are to be provided to the Licensor at the same time.
- (g) The Licensee will be responsible for including an emergency response plan in its safety management plan. The Licensee will ensure that all relevant personnel are aware of the emergency response requirements and it will submit this plan to the Licensor for review.
- (h) The Licensee will ensure that the Licensee, its employees, contractors and invitees comply with any safety rules or policies of the Licensor that are notified to the Licensee from time to time.
- (i) The Licensee will consult with all other authorised users, operators and licensees with regard to the safe use of the Approved Boardwalk, navigation issues and any other safety issue where such consultation is required under the Health and Safety at Work Act 2015 and will advise the Licensor of any agreed work processes or practices that the Licensor may need to be aware of in respect of the use of the Approved Boardwalk.

9.2 Signs

- (a) The Licensee will not apply to or paint or in any way place or erect on the Land or on the Approved Boardwalk any sign, name plate, signboard, advertisement, or placard nor permit or suffer the same to be done except:
 - (i) with the prior written consent of the Licensor for that purpose on every occasion, and then only of such colour, size and style and in such places agreed with the Licensor and being firstly in te reo Māori secondarily in English; and
 - (ii) in accordance with the requirements of and to the entire satisfaction of the relevant Authority.

- (b) The Licensee will maintain and keep in good order and repair all such signs erected by the Licensee and persons under its control.

9.3 Compliance with Covenants, Easements and Services

- (a) For the avoidance of doubt, the parties record that the Licensor has made no representations as to the availability of utility services and shall be under no obligation to make services available to the Licensee.
- (b) The Licensee shall be responsible for and pay for all costs:
 - (i) of connecting to such services and any related certification costs or fees charged by the relevant Authority or supplier of the utility or services; and
 - (ii) associated with installing, maintaining and connecting the Approved Boardwalk to such services.
- (c) The Licensee shall allow the Licensor and commercial operators authorised by the Licensor to connect to all utility services without charge as required.

9.4 No Removal of Earth / sand etc

The Licensee shall not remove or excavate any soil or sand from the Land or Lake Bed except so far as shall be expressly approved in writing as part of the construction or operation of the Approved Boardwalk or otherwise. Any such works will be carried out subject to any necessary consents or licences or other regulations of any Authority, which is the responsibility of the Licensee to obtain.

9.5 No Contamination/Storage of Hazardous Substances

- (a) The Licensee shall not contaminate the Approved Boardwalk, the Lake, or any part of the Lake Bed and shall undertake all works necessary to remove any contamination caused by the actions of the Licensee or persons under the control of the Licensee. Contamination means any change to the physical chemical or biological condition of the Licensor's Land or Approved Boardwalk by a "contaminant" as that word is defined in the Resource Management Act 1991.
- (b) The obligations in clause 9.5(a) apply to existing as well as future lakefront structures owned by the Licensee, or that the Licensee has previously authorised but are for all intents and purposes have been abandoned by their owners, including existing jetties that the Licensee is to remove as contemplated in schedule C herein.

- (c) The Licensee shall, without limiting clause 9.5(a), comply strictly with the relevant statutes and regulations governing the storage and handling of dangerous goods.

10. Licensor's Right to Deal with Approved Boardwalk and Lake Bed

10.1 Further Structures

- (a) The Licensor reserves the right at any time to construct or permit the construction of other structures or works on any part or parts of the Lake Bed and to vary, alter or reduce or permit to be varied, altered or reduced any structures, erections, improvements or works on the Lake Bed from time to time but in accordance with the Relationship Agreement created pursuant to clause 7.1(b).

s7(2)(i)



- (d) Nothing in this clause permits the Licensor to frustrate the Permitted Purpose or the Licensee's rights under this licence.

11. Control of and Assignments

The Licensee is not to sublicense, mortgage or charge this Licence to any person.

12. Insurance, Damage and Destruction

12.1 Licensee to Insure

The Licensee will insure the Approved Boardwalk and any other improvements and keep the same insured to the s7(2)(b)(i) and (ii), s7(2)(i) with an insurance company approved by the Licensor, such insurance to include without limitation, insurance against destruction or damage by fire, earthquake and fire consequent upon earthquake, flood, lightning, storm and tempest, water damage, electric fusion, and such other risks as the Licensor may deem necessary or desirable (including consequential loss). The Licensee shall upon demand produce to the Licensor from time to time particulars of insurance cover and proof of payment of premiums and all other sums of money necessary to keep such insurance cover current and in full force and effect. Despite the foregoing the Licensor's approval of the insurance company will not be required under this clause 12.1 if the insurance company has a financial strength rating from an approved rating agency (as defined in the Insurance (Prudential Supervision) Act 2010) of at least A.

12.2 Public Risk/Fire Authorities Insurance

The Licensee shall keep current at all times during the continuance of this Licence a policy of public risk insurance applicable to the Land and the Approved Boardwalk constructed and the use thereof (noting thereon the interest of the Licensor) for an amount not less than the amount specified in Item 12 of Schedule 1 (being the amount which may be paid out arising out of any one single accident or event) or such higher amount as the Licensor and Licensee agree may from time to time be reasonably required.

12.3 Destruction or Damage

In the event of the Approved Boardwalk being destroyed or damaged then provided:

- (a) the Licensee is not prevented by any act, ordinance, regulation or by-law then in force from so doing; and
- (b) the Licensee is able to obtain all planning permission, permits and consents necessary to execute such repairs or reinstatement or rebuild; and
- (c) the Licence is not frustrated or the repairs or reinstatement or rebuild prevented for any other reason beyond the control of the Licensee,

then the Licensee must, with all convenient speed, either:

- (i) repair and reinstate the Approved Boardwalk substantially in accordance with its original design or such other design as the Licensor may approve; or
- (ii) at the Licensee's expense and to the satisfaction of the Licensor remove the Approved Boardwalk from the Land, repair any damage caused by such removal and, upon such dismantling and removal, the materials comprised in the Approved Boardwalk shall remain the sole and exclusive property of the Licensee.

12.4 No Limitation to Insurance Moneys

The obligations of the Licensee pursuant to clause 12.3 shall not be limited to the insurance moneys received or available. To the extent that any insurance moneys received or available are insufficient to comply with clause 12.3, the Licensee shall be obliged to carry out such repairs or reinstatement from the Licensee's own moneys.

12.5 Inability to Reinstate or Repair

In the event that the Licensee is prevented from repairing or reinstating having regard to the provisions of clause 12.3, then the Licensee shall demolish the Approved Boardwalk and clear the lake bed of all improvements, structures, rubbish and debris and make good any damage to the entire satisfaction of the Licensor (to be certified in writing) and thereafter this Licence may be terminated by mutual agreement but, for the avoidance of doubt, the Licensor shall not be required to accept a surrender of this Licence.

12.6 No Compensation Following Destruction

In the event of any destruction or damage to the Approved Boardwalk or any other Licensee chattels or fixtures whatsoever the Licensee or anyone claiming under the Licensee shall not be entitled to any compensation or payment whatsoever from the Licensor.

13. Indemnities

13.1 Licensee to Occupy at Own Risk

The Licensee agrees to use the Approved Boardwalk and all access thereto at the Licensee's risk and hereby releases the Licensor 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 the Licensee or any other person or any property in or about the Approved Boardwalk or access thereto.

13.2 Indemnity by Licensee

The Licensee will indemnify the Licensor and at all times hereafter keep the Licensor indemnified from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor shall or may be or become liable in respect of and arising from the Licensee's negligence or failure to comply with the terms of this Licence.

14. Termination

14.1 Removal of Approved Boardwalk

Upon the expiration of the term or sooner determination of this Licence the Licensee will vacate the Land and remove the Approved Boardwalk from the Land and, repair any damage caused by such removal leaving the Land and surrounding Lake Bed clear of all improvements, structures, rubbish and debris.

14.2 Removal of Signs

Upon vacating the Land and Approved Boardwalk or otherwise at the request of the Licensor the Licensee will at the Licensee's expense remove any signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon the Approved Boardwalk by or on behalf of the Licensee and make good any damage or disfigurement caused by reason of such erection, painting, displaying, affixing, exhibiting or removal thereof.

14.3 Failure to Comply with Obligations

If the Licensee fails to comply with obligation to remove the Approved Boardwalk in accordance with clause 14.1 **Error! Reference source not found.** above within 90 days of the Licensor's notice to that effect, then the Licensor may remove the Approved Boardwalk from the Land and recover all costs of doing so from the Licensee and will be entitled to receive all moneys in the Removal Fund held on trust for the Licensor under clause 6. For the sake of clarity, the Approved Boardwalk shall be deemed to be part of the Land on the expiry of the said notice period with no compensation payable to the Licensee on that occurrence.

15. Default

15.1 Default

If at any time during the term of this Licence:

- (a) any Rent is in arrears for ten (10) Working Days;
- (b) there is a default by the Licensee in respect of any obligation of the Licensee other than payment of Rent (including, but not limited to the

payment of other moneys) and that default is not remedied within 30 days after notice has been given to the Licensee;

- (c) execution is levied against any of the assets of the Licensee and remains unsatisfied;

subject to the Licensor having served, in accordance with section 353 of the Property Law Act 2007, a valid notice pursuant to section 245 or 246 (as the case may be) of that Act, it will be lawful for the Licensor to take possession of the Approved Boardwalk and cancel this Licence and remove or otherwise deal with any goods fittings, fixtures and effects found on the Land without releasing the Licensee from any liability in respect of any antecedent breach and without prejudice to any action or other remedy which the Licensor has or could have in respect of arrears or breach of covenant or damages as a result of the Licensee's default.

15.2 Default by Licensor

- (a) If at any time during the term of this Licence and after the parties have, in good faith, carried out the mediation process in clause 19:there is a default by the Licensor in respect of the observance of any of its material obligations under this Licence; and
- (b) the Licensor fails to remedy such default within 30 days of receiving written notice of the default from the Licensee,

the Licensee may terminate this Licence on not less than 30 Working Days' notice to the Licensor. Such termination is without prejudice to the rights and obligations of the parties up to the date of termination.

15.3 Interest on Unpaid Moneys

Without prejudice to the other rights, powers and remedies of the Licensor under this Licence, if any Rent or other moneys owing by the Licensee to the Licensor on any account whatsoever pursuant to this Licence are in arrears and unpaid for fourteen (14) days after the due date for payment (whether or not any formal or legal demand has been made) such moneys shall bear interest compounded on quarterly rests and computed in respect of each quarter from such due date until the date of payment in full of such monies at the rate of interest being four per cent (4%) above the highest overdraft interest rate charged by the Licensor's bankers as at the due date of payment, and such interest shall be recoverable as if it was Rent in arrears.

15.4 Licensor May Remedy Licensee's Default

Without prejudice to the other rights, powers and remedies of the Licensor the Licensor may elect to remedy at any time any default by the Licensee under this Licence if the Licensee has failed to remedy such default within 30 days of

receiving written notice of such default from the Licensor and whenever the Licensor so elects all costs and expenses incurred by the Licensor (including legal costs and expenses) in remedying such default shall be paid by the Licensee to the Licensor on demand.

s7(2)(i)



s7(2)(i)

15.7 Repudiation

The Licensee shall compensate the Licensor and the Licensor shall be entitled to recover damages for any loss or damage suffered by reason of any acts or omissions of the Licensee constituting a repudiation of the Licence or the Licensee's obligations under the Licence. Such entitlement shall subsist notwithstanding any determination of the Licence and shall be in addition to any other right or remedy which the Licensor may have.

16. Costs


In addition to the rental and other money reserved by this Lease, the Licensee must pay:

- (a) all costs and charges for which the Licensor becomes liable due to the breach or default by the Licensee in executing the covenants in this Licence; and
- (b) all costs and charges (including actual legal costs as between solicitor and client) that may be incurred by the Licensor in enforcing any of the Licensee's covenants, or any of the Licensor's rights, under or arising out of this Licence.
- (c) The Licensee will pay the Licensor's third party costs for the negotiation, preparation and completion of this Licence.

17. Licence not an Interest in Land

The Licensee has no interest in the Land or Lake Bed other than the right to construct and to have the non-exclusive use of the Approved Boardwalk as set out in this Licence for the Term. The legal right to possession and control over the Land and the Lake Bed remains vested in the Licensor throughout the Term.

s7(2)(b)(i) and (ii)

**19. General Provisions****19.1 Licensor's Consent**

Where the Licensor's consent or approval is required pursuant to any provision of this Licence:

- (a) unless otherwise stated, that consent or approval will not be unreasonably withheld or delayed;
- (b) consent or approval will be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion; and

- (c) Consent must be obtained in writing from the CEO of the Licensor, or such other officer delegated this role by the CEO as notified to the Licensee in writing.

19.2 **Non-Waiver**

No waiver by the Licensor of any breach of this Licence will operate as a waiver of any similar or subsequent breach. No custom or practice which may exist or develop between the parties will be construed to waive or lessen any rights, powers or privileges at law or in equity for the Licensor to insist upon the strict observance by the Licensee of this Licence.

19.3 **Relationships of Parties**

Nothing in this Licence, nor the method of computation of Rent, nor any other provisions or any acts of the parties will be deemed or construed by the parties or by any third party as creating the relationship of partnership or of principal or agent or of joint venture between the parties, other than the relationship of Licensor and Licensee upon the terms provided in this Licence.

19.4 **Severability**

If any provision of this Licence is held to be illegal, invalid or unenforceable this will not affect the other provisions of this Licence, which will remain of full force and effect.

19.5 **Non-Merger**

The covenants, conditions, agreements and obligations of the parties in this Licence shall not merge with or be extinguished by the grant of any further or other Licence but shall remain in full force and effect and operative according to their tenor.

19.6 **Service of Notices**

Any notice or other document required to be given delivered or served under this Licence:

- (a) must be in writing and must, to the extent applicable, comply with the provisions of Part 7 of the Property Law Act 2007;
- (b) must be signed by the sender or if a company, by its authorised officer;
- (c) must be served in accordance with section 353 of the Property Law Act 2007 if given pursuant to sections 245 or 246 of that Act; and
- (d) in all other cases (unless otherwise required by sections 352 to 361 of the Property Law Act 2007) will be taken to have been served:

- (i) in the case of delivery in person, when delivered to or left at the address of the recipient shown in this Licence (as the case may be) or at any other address which the recipient may have notified to the sender;
- (e) For the avoidance of doubt, notices by other means are not permitted pursuant to this Licence.

19.7 Entire Agreement

Except as may be provided in a written agreement to Licence this document comprises the entire agreement between the parties and any previous representations, warranties, arrangements and statements whether expressed or implied with reference to the Land are excluded from this Licence and do not form part of the agreement between the parties.

19.8 Negative Obligations

Any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done.

19.9 Governing Law

This Licence is governed by the laws of New Zealand.

20. Settlement of Disputes

20.1 Direct Negotiation

- (a) In the event of any dispute arising between the parties in respect of this Licence (**Dispute**), then the parties will seek to resolve the matter by direct discussion in good faith.

20.2 Mediation

- (a) If the dispute is not resolved under clause 19.1 within ninety (90) working days then the Dispute must be referred in the first instance to non-binding mediation. The non-binding mediation procedure is:
 - (i) the party wishing to resolve a dispute by mediation must give notice in writing of the dispute to the other party(s);
 - (ii) the notice must state that a dispute has arisen and provide sufficient particulars as to the nature and ambit of the dispute so as to permit the other party(s) to formulate a response;
 - (iii) when a notice of dispute is given in accordance with this agreement the parties will appoint a mediator by agreement within

10 Working Days of receipt of a notice. If the parties do not agree on a mediator to be appointed within 5 Working Days of receipt of a notice, any party may request that the President for the time being of the New Zealand Law Society (or his or her nominee) (**President**) to appoint a mediator. The nomination of the **President** will be final and binding on the parties, and a mediator will only be disqualified in case of actual or presumed bias, manifest inadequacy (having regard to the subject matter of the dispute), or actual or presumed conflict of interest;

- (iv) the parties will actively and expeditiously engage with the mediator, and in the mediation process in an effort to resolve the dispute;
 - (v) if the dispute is settled then the terms of settlement will be written up by the mediator and signed by the parties to the dispute;
 - (vi) subject to any written agreement to the contrary, any such mediation settlement agreement must encompass the whole subject of the notice and must comprise a full final and binding settlement of the same; and
 - (vii) if the dispute is not settled within 20 Working Days of the appointment of the mediator, or within any extended time that the parties agree to in writing then the parties will no longer be bound by this mediation provision.
- (b) The parties acknowledge that all written statements given to the mediator or to each other and any discussions between the parties, or any of them, and/or between any of the parties and the mediator during the mediation are inadmissible in legal or arbitral proceedings by any party other than the party that made them.
- (c) The parties to any dispute will share equally the cost of the mediator's fees and costs including travel, room hire and refreshments.

-

Execution

Executed as a Memorandum of Licence

Signed by the Licensor
Rotorua Lake Holding No 1 Limited
in the presence of:

s7(2)(a)
[Redacted]

Witness Signature

s7(2)(a)
[Redacted]

Witness Name

s7(2)(a)
[Redacted]

Witness Occupation

ROTORUA
Witness Address

Signed by the Licensee
Rotorua Lakes District Council
in the presence of:

[Signature]
Witness Signature

Witness Signature

Moana Petre
Witness Name

Witness Name

Executive Assistant
Witness Occupation

Witness Occupation

Rotorua
Witness Address

Witness Address

s7(2)(a)
[Redacted]

Signature of Licensor

s7(2)(a)
[Redacted]

Print Full Name

(For a Company specify Description
Director/Attorney/Authorised Signatory)

s7(2)(a)
[Redacted]

Signature of Licensor

s7(2)(a)
[Redacted]

Print Full Name

(For a Company specify Description
Director/Attorney/Authorised Signatory)

[Signature]

Signature of Licensee

Steve Chadwick
Print Full Name

Print Full Name

(For a Company specify Description
Director/Attorney/Authorised Signatory)

[Signature]
Signature of Licensee

Signature of Licensee

Geoff Williams
Print Full Name

Print Full Name

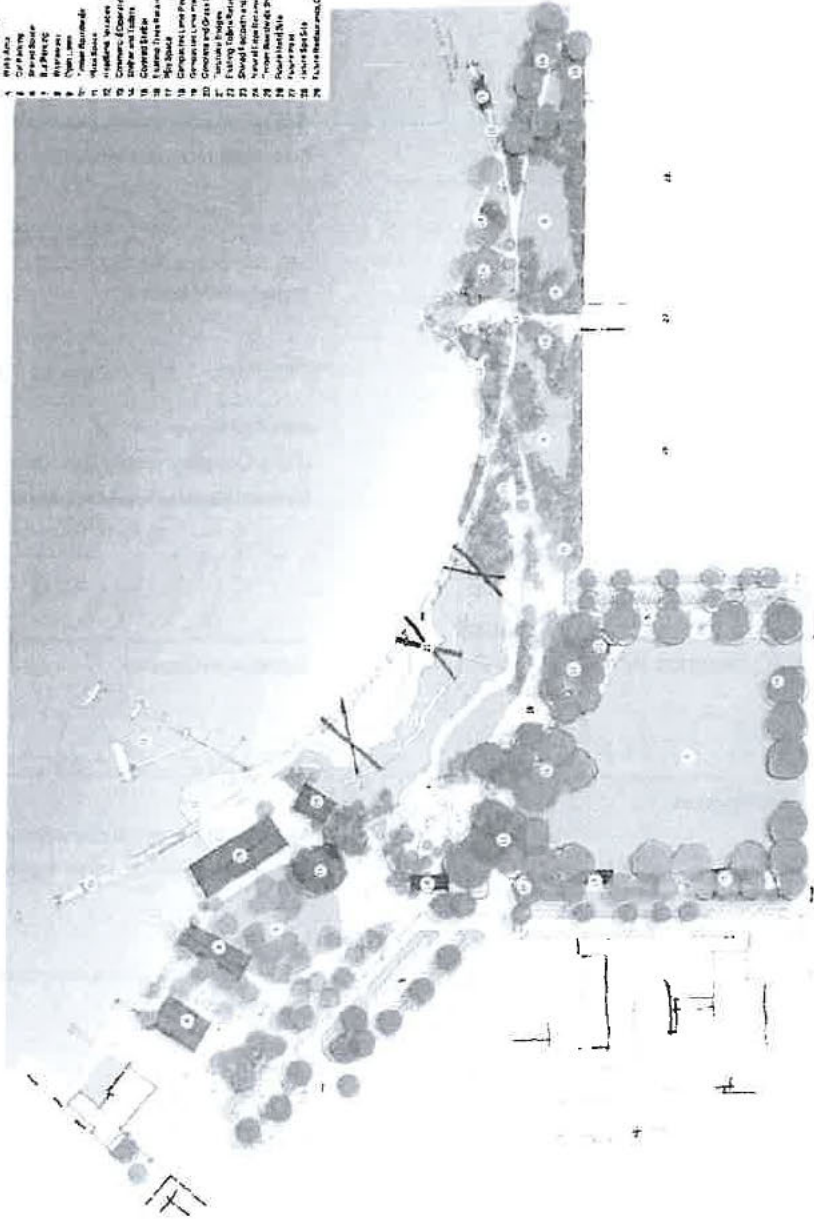
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Director/Attorney/Authorised Signatory)

Schedule A
Plan of Land

Isthmus.

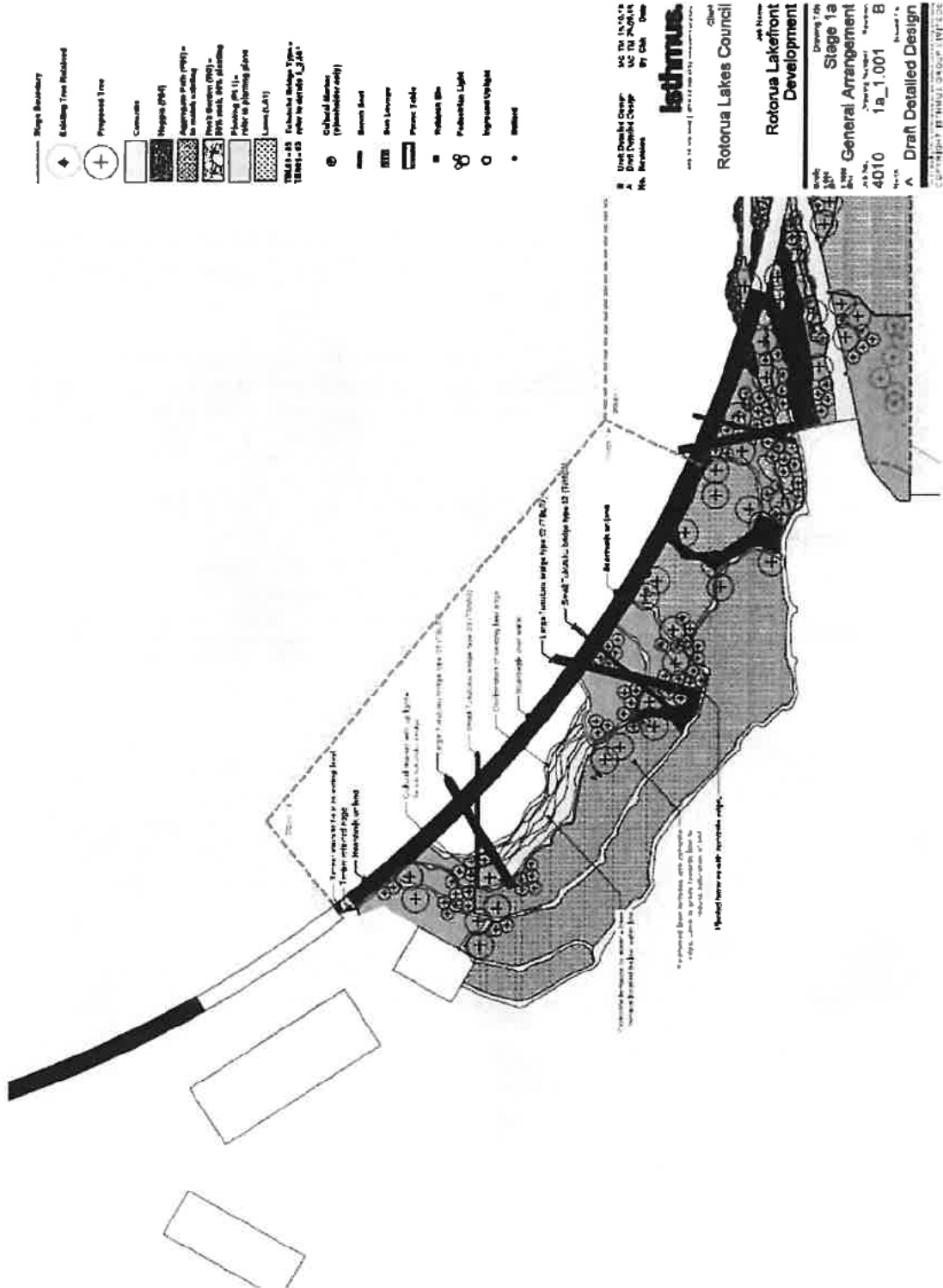
Layout.
Masterplan.

- 1. Entrance
- 2. Reception
- 3. Parking and Water Sports
- 4. Office
- 5. Clubhouse
- 6. Bar and Store
- 7. B.P. Pitch
- 8. Reception
- 9. Reception
- 10. Reception
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- 100. Reception



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Landscape Re-development (Isthmus Lakes Concept) 20 July 2018

Schedule B Approved Boardwalk Initial plans



The above is a pictorial summary of the Isthmus Draft Detailed Design totalling 33 pages dated 19 October 2018 provided by the Licensee to the Licensor.

Schedule C – Conditions

This Licence is conditional upon the following matters being agreed to the satisfaction of the Licensor within six months of signing this agreement:

1. The Licensee taking all lawful steps to support the grant to the Licensor of a Lakefront Reserve concession or other authority to provide for:
 - a. The Licensor and any commercial operator authorised by the Licensor to be exclusively entitled to connect all new and existing lake structures to the Lakefront Reserve; and
 - b. The Licensor to have sole decision making powers in respect of whether commercial operators may connect to the Lake, with the Licensee (in consultation with the Gifted Reserves Board) having authority in respect of the connection to the Reserve.
2. The Licensee providing to the Licensor:
 - a. A plan for all existing Council-owned jetty structures on the Lakefront Reserve (marked on the map in Schedule D), (with the exception of the most western jetty, marked E in Schedule D) that may remain for ongoing recreational access to be removed within twenty-four months of the Commencement Date; and
 - b. A binding commitment to remove abandoned structures on the Land and Adjoining Land that connect to the Lakefront Reserve.
3. That the Reserves Management Plan for the Lakefront Reserve recognises the importance of Te Arawa values and Te Tūāpapa o ngā wai o Te Arawa, and to ensure that concessions granted are for activities consistent with those values.

The conditions in this schedule are for the sole benefit of the Licensor and may be satisfied or waived in the Licensor's sole discretion.