



**AGENDA FOR THE**

**ORDINARY MEETING OF**  
**SELWYN DISTRICT COUNCIL**

**TO BE HELD IN THE**  
**COUNCIL CHAMBERS**

**SELWYN DISTRICT COUNCIL**  
**ROLLESTON**

**ON WEDNESDAY 25 MARCH 2020**

**COMMENCING AT 1 PM**

## REPORT

**TO:** Chief Executive

**FOR:** Council Meeting – 25 March 2020

**FROM:** Group Manager Property

**DATE:** 18 March 2020

**SUBJECT: SELWYN HUTS LICENCE AND OTHER CHARGES  
FEE REVIEW FROM 1 JULY 2020**

---

### RECOMMENDATION

*“That Council;*

- a) receives the report on the Selwyn Huts Licence and Other Charges Fee Review from 1 July 2020 for information.*
- b) approves that Selwyn Huts licence fee and other charges be increased to \$977 (incl GST) per hut from 1 July 2020.”*

### 1. PURPOSE

This purpose of this report is to inform Council on proposed changes to the Upper Selwyn Huts licence and other charges fee from 1 July 2020.

The process of the fee review is governed by the Deed of Licence agreement. Under the licence, a fee review cannot not be notified earlier than three months before the 30 June. Accordingly the notification of the fee review is approved by the Council, that notification process can only commence after 1 April.

It should be noted that changes to the licence agreement which expires on 30 June 2020 will be the subject of a separate report to the Council meeting on 25 March 2020. This report replates to the \$ value that Council needs to charge to fund the licence fee and the other costs that are incurred annually in servicing the Upper Selwyn Huts community that are located on the Springston South Reserve.

### 2. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

Setting the licence fee would be viewed a low significance item for the Council due to the minor impact on Council finances.

It must be noted though that the impact on individual hut owners is significant due to the dollar value of the fee level records in this report.

Consultation on the fee will occur during the 2020/2021 draft Annual Plan process as the operating costs referred to in this report and income from licence fees are included in the annual plan. The licence fee review process though must follow the process as outlined in clause 7 of the licence agreement. This clause is attached Appendix 1.

### 3. PROPOSAL

The current licence fee for the Upper Selwyn Huts is set at \$582 and has been at this level for a number of years.

The fee has not been changed due to the uncertainty about whether the huts licence would continue to be offered into the future due to challenges for the Council and the community in being able to secure:

- Either an extension of the current wastewater consent which expires in June 2020
- A new wastewater consent from 30 June 2020 or the proposed commencement date of 30 June 2023/2024
- Whether the community would be prepared to pay the cost of any upgraded wastewater system that would be installed as a result of either consent being obtained
- What the community would be prepared to pay for the operating costs of both the upgraded water and wastewater systems
- Noting that the cost of operating the water and wastewater systems would be a fee for just the huts community alone which with only 97 hut licence to fund the costs of capital and operating the systems, could be argued as a significant financial imposition on each licence holder.

Council staff have prepared budgets for the services that are provided at the huts.

There are also a number of other costs that need/should be recovered and a description of each cost and the reason for recovery is explained as follows:

Cost description	Commentary
Maintenance costs	Cost of maintaining annually the water and sewer (wastewater) systems servicing the Upper Selwyn Huts
Future removal of huts	<p>A bond account for hut removal is proposed to ensure that at the end of the licence period, if a hut owner does not remove their hut then the Council holds cash funds which it either uses to remove the hut.</p> <p>If the licence holder has removed the hut and made good the site to the Council's satisfaction, then the bond is paid to the licence holder.</p> <p>The Council needs financial protection from hut owners leaving at the end of the licence period and not removing their huts thus leaving that as a cost to the Council.</p> <p>Similarly the hut owners by paying into a sinking fund/bond with the Council, will have in effect a savings scheme (albeit with no interest accruing) from which the cost of their hut removal can be funded at the end of the licence period.</p>

Trucking sewerage costs	For the first 3 years from 1 July 2020 prior to the new wastewater plant being installed, trucking of effluent above the level that can be treated by the current sewer system is required. This will ensure that the existing system operates within its existing consent conditions.
Chlorination of water	The capital cost of installing the chlorinator that is required to improve the quality of water provided from the water supply.
Opening account deficit	This category is the recovery of costs incurred up until 30 June 2020 for the water, wastewater and reserve accounts.

#### 4. DISCUSSION ON PROPOSAL

The proposal involves significant increases to licence fees to recover costs of providing services to the upper Selwyn huts community.

Most of the cost elements are consistent with past years, but are at much higher dollar values. There is also a recovery of some costs incurred in past years on the basis that they would be recovered at a point when the licence fee was to be reviewed as to the appropriate dollar value.

To provide some form of 'consistency of charge' from year to year, all costs be they operating or capital costs have been added up over a 15 year period and then annualised.

This spreading of cost over a 15 year period avoids a "spike" in the licence fee for say just a couple of years e.g. sewer trucking costs.

The fee can be broken into two distinct parts being:

1. Annual operating/maintenance costs
2. Loan cost related to wastewater upgrade

Some key points to note about this fee:

1. The full dollar value of the fee does not need to be charged from 1 July as the capital cost of the wastewater plant upgrade will not be incurred by Council until the resource consent is obtained.
2. The bond account for hut removal is proposed to ensure that at the end of the licence period, if a hut owner does not remove their hut then the Council holds cash funds which it either uses to remove the hut. If the licence holder has removed the hut and made good the site to the Council's satisfaction, then the bond is paid to the licence holder. The demolition fee felt appropriate to collect for this bond is \$5,000 per hut.
3. The objective of introducing this level of fee before the main cost of the wastewater upgrade are incurred is to ensure that the hut owners are aware of the cost and in knowing so will support the consent being obtained not from just a perspective of keeping their licence but because they will be aware of the annual costs that will be payable under the licence agreement.

4. As of the date of this report, each hut is levied annual rates of approximately \$1,250. Those rates does not include any contribution to the cost of operating/maintaining water supplies or sewer systems.
5. The interest rate charged on the loan for this example is 3%. The interest rate is subject to movement. It is not fixed for the 15 years of the loan. Accordingly the licence and other charges dollar value fees referred to in this report are subject to annual review and change.
6. The fee referred to in this report does not actually include any form of financial return on the land area that the Council is providing for a hit to be located. This is consistent with previous financial charges at the huts but is noted for transparency that the fee being recovered is only to recover the cost of providing the services that are provided for this community.
7. A discount for early payment of \$40 per annum has been previously provided. The fees calculated in this report do not make any allowance for this discount. The discount is not identified or included in the licence agreement documentation. Accordingly staff propose that the discount arrangement be discontinued from 1 July 2020.
8. At the end of the licence period, the water and sewer systems remain in council ownership. Any residual life in the assets at that time, is held by the Council and will not be the subject of a financial claim by licence holders.

The calculation of the licence and other charges fee is noted below.

	Average cost per annum over 15 years	Average cost per annum per hut over 15 years
<b>1. Annual operating/maintenance costs</b>		
Water supply	\$23,644	\$244
Sewer system	\$53,885	\$556
Bond account for future hut removal	\$32,333	\$333
Sewer trucking costs until new system commissioned	\$10,000	\$103
Chlorination of water	\$3,333	\$34
Opening Account Deficit	\$28,302	\$292
Total Cost	\$151,497	\$1,562
GST	\$19,760	\$204
Total Cost GST Incl.	\$171,258	\$1,766

## 2. Sewerage Scheme Loan annual payment

Interest rate	3%
Cost of Loan to be Funded	\$3,000,000
Number of Huts	97
Cost per Hut (GST Excl.)	\$3,000,000
Number of Years	15
Cost per annum to be funded (GST Exc)	\$251,300
Total debt principle and interest to be recovered (GST Inc)	\$288,995

### Annual Fee per property

Licence fee to be charged (GST Incl.)	\$2,979
---------------------------------------	---------

The following highlights the impact on the loan charge if huts numbers drop

Number of huts licences	Annual Loan payment at 15 years and 3%
90	\$3,211
80	\$3,612
70	\$4,128

### 3. Future Upper Selwyn Huts Licence Fee

	Cost Per Year	Fee Per Hut
Annual operating/maintenance costs	\$ 171,258	\$ 1,766
Sewerage scheme loan costs	\$ 288,995	\$ 2,979
Total annual licence and other charges fee (GST Inc)	<u>\$ 460,252</u>	<u>\$ 4,745</u>

The annual licence and other charges fee is currently \$582. There is no need to lift the fee to \$4,618 from 1 July 2020 as the wastewater upgrade cost will not be incurred for 2-3 years but there is a need to increase the fee to start reflecting the additional costs of living at the Upper Selwyn Huts.

The fee could be staggered for increase as follows:

From 1 July 2020	\$ 977
From 1 July 2021	\$1,372
From 1 July 2022	\$1,766
From 1 July 2023	\$4,618

## 5. OPTIONS

The Council has three options:

Option 1 – Note and support the licence fee lifts to be included in the draft Annual Plan but also to be formally notified after 1 April 2020.

Option 2 – Request further information in relation to the budgets.

Option 3 – Select different levels of licence fee to be charged.

## 6. VIEWS OF THOSE AFFECTED/CONSULTATION

As noted above, consultation will occur via the draft 2020/2021 annual plan process and via direct engagement with each licence holder as outlined in clause 7 of the licence agreement.

## 7. FUNDING IMPLICATIONS

The proposed changes are of a magnitude that will have a significant impact on the level of fees charged from 1 July 2020 for a Selwyn Huts licence.

The level of fees though reflect what costs the Council needs to recover from licence holders in the future.

A handwritten signature in black ink, appearing to read 'DM', with a stylized, cursive script.

Douglas Marshall  
**Group Manager Property**

## **Appendix 1 – extract from Selwyn Huts licence agreement – clause 7**

### **7. LICENCE FEE REVIEW**

7.1 The Licensors will review the Licence Fee on the Licence Fee Review Dates in the following manner:

- (a) the Licensors will commence the review not earlier than 3 months before a Licence Fee Review Date and no later than 9 months following the Licence Fee Review Date by giving written notice to the Licensee.
- (b) subject to clause 00, the notice must specify the Licence Fee which the Licensors considers to be the market value for the licence of the Lot as at the Licence Fee Review Date.
- (c) if, within 28 days of receipt of the Licensors's notice, the Licensee gives written notice to the Licensors that the Licensee disputes the proposed new Licence Fee the new Licence Fee is to be determined in accordance with clause 0;
- (d) if the Licensee does not give notice to the Licensors under clause 00 the Licensee will be deemed to have accepted the Licence Fee specified in the Licensors's notice.
- (e) notwithstanding clause 00, the new Licence Fee so determined or accepted must not be less than the Licence Fee payable during the year preceding the particular Licence Fee Review Date and will be the Licence Fee payable by the Licensee from the Licence Fee Review Date.
- (f) until determination of the new Licence Fee, the Licence Fee payable by the Licensee from the Licence Fee Review Date is to be the Licence Fee specified in the Licensors's notice. On determination of the new Licence Fee an adjustment is to be made and paid, either by the Licensors or by the Licensee, whichever is applicable.

7.2 Immediately the Licensee gives notice to the Licensors under clause 0, the parties will endeavour to agree on a new Licence Fee. If the parties are unable to reach agreement within 28 days the new Licence Fee is to be determined as follows:

- (a) by registered valuers acting as experts and not as arbitrators as follows:
  - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Licence Fee by this means.
  - (ii) if the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Licence Fee and that valuer's determination will be binding on both parties.
  - (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
  - (iv) the valuers are to determine the new Licence Fee which they consider to be the market value for the licence of the Lot as at the Licence Fee Review Date but in no case is the new Licence Fee to be less than the Licence Fee payable during the year preceding the particular Licence Fee Review Date. If they fail to agree the Licence Fee is to be determined by the umpire and that determination will be binding on both parties..



- (v) each party is to be given the opportunity to make written or verbal representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vi) the valuers or the umpire must have regard to any such representations but will not be bound by them.
- (b) the valuers or umpire must give written notice to the parties once they have determined the new Licence Fee. The notice is to provide how the costs of the determination are to be borne and is to be binding on the parties.
- (c) each subsequent Licence Fee Review will take place in accordance with the procedure fixed in clause 0.

## REPORT

**TO:** Chief Executive

**FOR:** Council – 25 March 2020

**FROM:** Group Manager Property

**DATE:** 18 March 2020

**SUBJECT: UPPER SELWYN HUTS – DEED OF LICENCE RENEWAL**

---

### RECOMMENDATION

*“That Council agrees to:*

- a) circulate to all Selwyn Huts hut owners the revised ‘draft’ Deed of Licence for engagement, with comments being received no later than 14 May 2020.*
- b) undertake engagement with the hut owners, and present to Council the final Deed of Licence for adoption at its meeting on 27 May 2020.*
- c) send to all hut owners the final approved Deed of Licence for signing and returning to Council by 30 June 2020.”*

### 1. PURPOSE

The Upper Selwyn Huts licences expire as at 30 June 2020. Climate change impact reports identify that with sea levels rises of 70 cm over the next 100 years, the ability of the huts to remain long term at the huts is not possible or very limited at best.

The sea level lift means that the water table will also lift and this has an impact on the Council’s ability to have a functioning waste water plant using a land based discharge system.

The climate change impact of rising sea level also results in Lake Ellesmere (Te Waihora) not being able to be re-opened as regularly as is currently undertaken.

This report proposes changes to the current licence agreement which reflect the inevitable ending of the Council issuing of licences at the upper Selwyn Huts in 15-18 years.

### 2. SIGNIFICANCE ASSESSMENT/COMPLIANCE STATEMENT

This report is deemed to have a low significance assessment for Council activity.

From a huts licence holder, the impact would be assessed as high due to the hut being the principle or permanent dwelling for some as opposed to being a weekend or holiday hut.

This issue and decision that is the subject of this report has been assessed against the Significance and Engagement Policy. Consideration of the criteria in Council's Policy has been made, particularly in respect to:

- the potential effects on delivery of the Council's policy and strategies
- the degree to which the decision or proposal contributes to promoting and achieving particular community outcomes
- the level of community interest in the proposal, decision or issue
- the values and interests of Ngāi Tahu whānau, hapū and rūnanga, as mana whenua for the region.

The level of significance in respect to the issue is considered to be low due to the fact that all recommendations are within existing policy and budget guidelines.

### 3. HISTORY/BACKGROUND

Council in December 2017 received legal advice in relation to the feasibility of refusing to renew the Licences as at 30 June 2020 at the Upper Selwyn Huts due to the fact that climate change will mean that the ability of the huts to remain long term at the huts is not possible or very limited at best.

The legal advice was based on previous situations in New Zealand where authorities had endeavoured to remove huts with either inadequate reason or without an adequate period of notice to each licensee of the authorities intention.

In accepting that new licences would have to be offered post 30 June 2020, the Council commenced the process of considering alternate sewerage treatment and disposal systems for the huts community as the resource consent for the current sewerage treatment and disposal system expired on 30 June 2020.

The Council established a committee, consisting of the three Springs Ward Councillors, the Mayor and Chief Executive plus three members of the upper Selwyn Huts community.

Following a series of meetings during the period May-August 2019 with members of the Upper Selwyn Huts community, the outcome of these meetings was reported to Council at its meeting on 11 September 2019 through a report from the Asset Manager Water Services. The following is part of the resolution that was adopted by Council:

#### *"3. Endorses the following action plan*

- a) Complete and lodge the short term consent to continue with the operations of the existing Wastewater Treatment Plan by 20 December 2019;*
- b) Revise the licence agreement to have effect from 1 July 2020 as per Council resolution 20190612\_003. Cost incurred to date and reasonably expected in the short term to be recovered through the licence;*
- c) Operate the existing plant under the proposed short term consent. This may require optimized operation including trucking of some waste, cut and carry to reduce nitrogen loading etc;*
- d) Consult and agree on medium term solution based on the subcommittee recommendation above;*

- e) *Consent the medium term solution within the year 2022 and construct the medium term solution (by 2024)."*

As a result of these resolutions (highlighted section), staff have commenced the process of revision of the terms and conditions in the Deed of Licence. As previously advised the Deed of Licence expires on 30 June 2020.

#### **4. PROPOSAL**

Staff have had discussions with Council's legal advisers Buddle Findlay, with the objective of the meeting being that Buddle Findlay obtained an understanding of some of the challenges faced by staff in administering the terms and conditions of the existing Deed of Licence and to strengthen the licence prior to consultation with the Huts community.

It is proposed that in the first instance, this report and the draft Deed of Licence be circulated to all licence holders but that specific engagement to be held with the three licence holders who were members of the Working Party Members (Mr G Evans, Mr G Young, Mr R Hyde).

The timeline for this process proposed as follows:

- Circulate Draft Deed of Licence to all Selwyn Huts hut owners for comment (27 March 2020)
- Engagement/feedback required (14 May 2020)
- Prepare report on engagement/feedback and final recommendation to Council
- Council approves final Deed of Licence for Selwyn Huts (27 May 2020)
- Forward final Deed of Licence to all hut owners for signing
- Date expected to have Licences signed (30 June 2020)

Attached to this report is the following:

- Explanation of and reasons for proposed changes to the Deed of Licence – to be read in conjunction with the draft Deed of Licence (Appendix 1)
- Draft Deed of Licence which shows all 'marked up' changes (Appendix 2)

#### **5. OPTIONS**

The Council has three options available to it:

Option 1 – adopt the recommendation as provided by staff;

Option 2 – adopt but with amendments;

Option 3 – decline to adopt the recommendation.

Staff support option one and therefore put forward the recommendation for adoption.

## **6. VIEWS OF THOSE AFFECTED / CONSULTATION**

### **(a) Views of those affected**

The views of the huts owners will be considered and where appropriate and valid, changes to the Deed of Licence will be made accordingly.

### **(b) Consultation**

Consultation will be undertaken with all hut owners on the proposed new Deed of Licence.

### **(c) Māori implications**

No implications for Maori have been identified at this time although there may be future linkages with the local rūnanga.

## **7. FUNDING IMPLICATIONS**

There are no funding implications associated with the review process and renewal of the Deed of Licence.

In line with the recommendation from Council's meeting on 11 September 2019, staff have commenced a review of the hut licence fees which will include costs associated with the wastewater upgrade, together with other costs associated with the ongoing maintenance of the Reserve. As previously resolved any cost incurred to date and reasonably expected in the short term is to be recovered through the licence.

Consultation on any proposed increase in the hut licence fee is expected to be undertaken through the Annual Plan process but must also follow a specific process as outlined in the Deed of Licence.



Douglas Marshall  
**GROUP MANAGER PROPERTY**

## **NOTE FOR READERS OF DRAFT SELWYN HUTS LICENCE AGREEMENT**

Clauses/statements are being prepared for inclusion in this draft relating to:

- The initial period of licence being related to the extension of the existing resource consent to an expected 30 June 2023
- A 15 year licence period until 30 June 2038 which is expected to be the period of the resource consent for the new waste water treatment and disposal plant which will also be the termination date for issuing licences and thus the closure of the huts community
- If the ability of the huts community to pay the increased licence and other charges fee is in question prior to the wastewater plant being constructed, then that ability will raise questions for the Council as to the financial prudence of the Council committing to construction on behalf of the community
- These clauses/recitals will be circulated prior to the Council meeting.

<b>Deed of Licence Proposed Change</b>	<b>Clause Reference</b>	<b>Reason for proposed new clause/change (as advised by Buddle Findlay)</b>
Delete heading	Heading – Operative Parts	A few unnecessary/redundant provisions such as this have been removed throughout the Licence.
Amendments	1.1 and Schedule 1	The relationship between the Definitions and Schedule 1 has been consolidated throughout clause 1.1 and Schedule 1.
Delete clause	1.1 (b)	Removed as only used in relation to licence types, which have been removed (see below note for clause 1.1(f)).
New clause	1.1 (b)	Note that there was already an interest rate provided for in Schedule 1, so this is not new. The description has however been changed to 'Default' rather than 'Penalty', which is more accurate.
New clause	1.1 (d)	Discharge Consent expiry date to be inserted.
New clause	1.1 (e)	This definition has been introduced to give consistency to (and tighten up) references throughout to law.
Change in wording	1.1 (f)	The concept of a 'permanent' licence was only initially included to distinguish it from other licence types giving lesser rights (i.e. previously described as 'recreational' and 'non-permanent' licences). This distinction was previously removed from the Deed of Licence, leaving the references to 'permanent'. These references are redundant, and have accordingly been removed throughout.
Change in wording	1.1 (p)	This is more certain, and meshes better with existing references to the Property Law Act in the Licence.
Delete clause	1.2 (c)	Unnecessary, as all Schedule 1 provisions are included in the Definitions.
Change in wording	1.2 (f)	Amended to be clearer and more useful, using the new definition 'Law'.
New clause	1.2 (h)	Included for clarity, given many uses of 'including' throughout.
Change in wording	2.1	Amended along with the definition of Licence to give clarity. Upper case "Licence" refers to this document itself. Lower case "licence" refers to the type of right granted.
Amendments	3.2	This does not change the basic position under the present terms, given the use of the words 'may elect' in the next portion of the clause. It does however reinforce and give clarity to the discretion. It is better to keep this general, and then to link in the specific concern later in clause 3.3. Council could as part of its consideration require a compliance audit of the huts to ensure that they all continue to remain suitable for occupation.

<b>Deed of Licence Proposed Change</b>	<b>Clause Reference</b>	<b>Reason for proposed new clause/change (as advised by Buddle Findlay)</b>
Change in wording	3.2 end	These changes reinforce Council's ability to adapt to any future change in circumstance. We suggest the licence term is kept at a smaller period, which is then rolled over, even where a longer period is desired.
New clause	3.3	See comment above for clause 3.2(d).
Delete clause	4 (old numbering)	See comment above for clause 1.1(f).
Delete clause	5.1 (old numbering)	See new clause 6.2 – this has been generalised to clearly apply to all amounts payable under the Licence.
Amendments	4, 5 and 7	These clauses have been tidied up. See also new clause 7.1 – this has been generalised to clearly apply to all amounts payable under the Licence.
Change in wording	5.1 and 5.1 (b) (new numbering)	Amendments for clarity only.
New clause	5.2 (new numbering)	This is for the avoidance of doubt.
New clause	6.1(a) (new numbering)	The effect of this bond could be expanded, either to include other specific obligations, or to apply more generally to include all financial obligations of the Licensee. Note that this could link in with the behaviour provision in clause 12.1(d) and the ability to recover staff costs under clause 31 to create an effective behaviour bond. If this bond provision is used more generally, the clause will need amendment.
New wording	7.2 (new numbering)	Added for the avoidance of doubt.
Comment	8 (new numbering)	Query whether this process remains fit for purpose. Some other options might be: (a) A CPI or fixed rate increase; (b) A short form market review; or (c) A provision based on an external Council policy.
Amendments	9.6 (new numbering)	Slight change in wording removing a few unintentional limitations on these provisions.
Change in wording	11.1 (c) (new numbering)	This is a common (and sensible) requirement.
Change in wording	11.2 (new numbering)	Will apply to future bylaws under clause 1.2(f)
Change in wording	12.1 (d) and (e) (new numbering)	These are some behavioural requirements that are reasonably common in leases. An alternative would be to allow for a specific code of conduct/rules



Deed of Licence Proposed Change	Clause Reference	Reason for proposed new clause/change (as advised by Buddle Findlay)
		<p>similarly to say a campground, although these would then obviously need to be development and agreed. Either way, the real issue is likely to remain enforcement. In that regard:</p> <ol style="list-style-type: none"> <li>1. There is the potential for temporary suspension in clause 18 (see proposed amendment to widen scope).</li> <li>2. Costs of enforcement are potentially recoverable under clause 31. See also the comment in respect of the new bond in clause 6, with regard to an effective behaviour bond.</li> <li>3. A new fine regime may present enforceability issues in the context of the licence itself. In principle, bylaws could be made under the Reserves Act 1977 to a similar effect in terms of enforcing behavioural requirements, but this obviously requires its own further process.</li> <li>4. There remains the potential to pursue termination under clause 21.</li> </ol>
New clause	14.3 (new numbering)	Added to avoid doubt.
New wording	19.1 (b) (new numbering)	To assist with dilapidation (where sufficiently serious)
New wording	19.1 (c) (new numbering)	This adds a further tool to address antisocial behaviour.
Change and new wording	19.3 (b) (new numbering)	It would be unreasonable to expect an abatement where the suspension arose due to actions of the Licensee in breach of the License, particularly given the Lot cannot be occupied by anyone else in the meantime.
New clause	19.3 (c) (new numbering)	These will likely still need to be levied for fairness between licensees.
New clauses	20.2 to 20.5 (new numbering)	Further requirements can obviously be added (or the existing requirements softened) as Council determines to be appropriate.
Amendments	22 (new numbering)	Amendments to better accord with the requirements of the Property Law Act, and to remove redundancy and simplify.
Deletion of clause	24 (old numbering)	This is redundant.
Deletion of clause	25.2 (old numbering)	This has been generalised in clause 26.

<b>Deed of Licence Proposed Change</b>	<b>Clause Reference</b>	<b>Reason for proposed new clause/change (as advised by Buddle Findlay)</b>
Amendments	26.3 (old numbering)	Redundant as there is no surrender provision in the Licence. Provision included to avoid doubt regarding the Licensee's obligations respecting the state of the Lot following removal.
New clause	27 (new numbering)	Added for general clarification.
Amendments	29.2 (new numbering)	Restructured to better reflect the legal position.
Deletion of clause and new wording inserted	30 (new numbering)	Amended for ease of use.
Change in wording	31 (new numbering)	Adding in explicit provision for staff costs, removing redundancy and clarifying.
Change in wording	36 (c) (new numbering)	'LEADR' – This organisation has been superseded.
Change in wording	36 (e) (new numbering)	The amendment clarifies that the dispute resolution process could not be used to side-track debt recovery or enforcement in the event of serious breach. However, the remainder of the clause should also be considered. The clause could be deleted entirely with similar ultimate effect – the parties could then still choose to mediate if they were both amenable to it.
Change in wording	Schedule 1, clause 2	Updated, and added to in order to cover off the fact that the adjoining recreation reserve is technically no longer part of the same reserve (and that both are surrounded by Council administered legal road).
Change in wording	Schedule 1, clause 7	Given licence fees are likely to increase and payment of <i>Other Charges</i> and on account of the bond are to be paid on Licence Fee Payment Dates, it may be preferable to move to quarterly payments.
Change in wording	Schedule 1, clause 8	Potentially should be " <i>On the Commencement Date and thereafter on the 1<sup>st</sup> Day of October in each year</i> " to allow for the first portion of the year to October.
New clause	Schedule 1, clause 10	The structure here will need consideration. In the first instance, the assumption is it will coincide with Licence Fee payments, but it may make more sense to align with the Other Charges, on a more frequent basis.
Deletion of clause	Schedule 1, clause 12	See above clause 1.1(f).
Delete schedule	Permanent Licences	See above clause 1.1(f).

Dated

2020

**DEED OF LICENCE**

Upper Selwyn Huts

**SELWYN DISTRICT COUNCIL**

(~~the~~ "Licensor")

**THE PERSON(S) NAMED IN SCHEDULE 1 OF  
THIS LICENCE**

(~~the~~ "Licensee")

## CONTENTS

1. DEFINITIONS AND INTERPRETATION	1
2. GRANT OF LICENCE	2
3. TERM	2
4. LICENCE FEE	3
5. OTHER CHARGES	4
6. BOND AND STATUTORY REQUIREMENTS	4
7. PAYMENT	5
8. LICENCE FEE REVIEW	5
9. BUILDING WORKS	6
10. EXISTING HUT AND STRUCTURES	7
11. LICENSEE'S FURTHER OBLIGATIONS	7
12. PROTECTION OF THE ENVIRONMENT	7
13. FIRE	8
14. WATER, SEWER AND SANITARY	8
15. TREES AND SHRUBS	9
16. ADVERTISING	9
17. HEALTH AND SAFETY	9
18. VEHICLES, BOATS AND TRAILERS	9
19. TEMPORARY SUSPENSION	9
20. CONSENT TO OCCUPATION OR TRANSFER	10
21. DAMAGE OR DESTRUCTION	11
22. TERMINATION	11
23. LICENSOR MAY REMEDY LICENSEE'S DEFAULT	12
24. QUIET ENJOYMENT	12
25. INDEMNITY	12
26. EXPIRY OF LICENCE	13
27. SURVIVAL	13
28. FORCE MAJEURE	13
29. OWN RISK	13
30. NOTICES	14
31. COSTS	14
32. WAIVER	15
33. SEVERABILITY	15
34. ENTIRE UNDERSTANDING	15
35. THE LICENSOR ACTING AS TERRITORIAL AUTHORITY	15
36. DISPUTE RESOLUTION	15
SCHEDULE 1	18

DATED

2020

**PARTIES:**

1. SELWYN DISTRICT COUNCIL (~~the "Licensor"~~)
2. THE PERSON(S) NAMED IN SCHEDULE 1 (~~the "Licensee"~~)

**BACKGROUND**

- A. The Licensor manages the Reserve.
- B. The Licensor wishes to grant, and the Licensee wishes to accept, a licence to occupy the Lot on the Reserve subject to the terms and conditions of this Licence.

**OPERATIVE PARTS****TERMS AND CONDITIONS****1. DEFINITIONS AND INTERPRETATION**

1.1 In this Licence, unless the context otherwise requires:

- (a) **"Commencement Date"** means the date specified in Schedule 1 ~~as being the effective date of the grant of Licence. It includes, where relevant, the date of any renewal;~~
- (b) ~~"Day" means a 24 hour period, or part thereof, during which time the Lot is used for recreational accommodation or permanent residential purposes;~~
- (b) "Default Interest Rate" means the interest rate specified in Schedule 1;
- (c) Discharge Consent means the discharge consent from the Canterbury Regional Council relating to sewage treatment and disposal from the Reserve;
- (d) Discharge Consent Expiry Date means the date on which the Discharge Consent expires, being ;
- (e) "Law" includes all statutes, bylaws, regulations, orders, district and regional plans, other subordinate legislation of any type, and all common law, in force in New Zealand;
- (e)(f) ~~"Licence" means the permanent licence (as described in Schedule 1) granted by the Licensor to the Licensee under this~~ Deed of Licence;
- (g) "Licence Fee Instalments" means the instalments specified in Schedule 1;
- (d)(h) ~~"Licence Fee" means the amount specified in Schedule 1 and charged by the Licensor for the Licensee's right to occupy the Lot on the Reserve. It includes any variation in that amount following a Licence Fee Review;~~
- (e)(i) "Licence Fee Payment Dates" means the dates specified in Schedule 1 ~~on which each instalment of the Licence Fee falls due for payment;~~
- (f)(i) ~~"Licence Fee Review" means a review of the Licence Fee determined in accordance with clause 8 of this Licence;~~

~~(g)~~(k) **"Licence Fee Review Date"** means the date specified in Schedule 1 ~~on which the Licence Fee Review occurs;~~

~~(l)~~ **"Lot"** means the area of land ~~more particularly~~ described in Schedule 1;

~~(h)~~(m) **Other Charges** means the charges listed in clause 5.1;

~~(i)~~(n) **"Reserve"** means the reserve ~~more particularly~~ described in Schedule 1;

~~(j)~~(o) **"Term"** means the period of time specified in Schedule 1 ~~during which this Licence operates. It and~~ includes, where relevant, any period of renewal of the Term; and

~~(k)~~(p) **"Working Days"** means working day as defined by the Property Law Act 2007 ~~s on which the registered banks are open for general banking business in Christchurch.~~

1.2 In this Licence, unless the context otherwise requires:

(a) a reference to a party is a reference to a party to this Licence and includes that party's successors ~~in title;~~

(b) schedules and annexures form part of this Licence and have effect accordingly;

~~(c) words appearing in this Licence which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;~~

~~(d)~~(c) a provision of this Licence to be performed by two or more persons binds those persons jointly and severally;

~~(e)~~(d) words in a singular number include the plural and vice versa;

~~(f)~~(e) words importing a gender include all other genders;

~~(g)~~(f) ~~references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Licence~~ any reference to any Law includes any Law which amends or replaces it, as well as any subordinate Law made under it;

(g) where the Licensor's consent or approval is expressly required under a provision of this Licence, the Licensee must seek the consent or approval of the Licensor for each separate occasion it is required notwithstanding that the Licensor has granted consent or approval for a like purpose on a prior occasion; and

(h) the word "including" and other similar words in this Licence do not imply any limitation.

1.3 Words used in the Background to this Licence have the same meaning given to them in clause 1.1.

## 2. GRANT OF LICENCE

2.1 Pursuant to ~~S~~section 61 of the Reserves Act 1977, the Licensor grants, and the Licensee accepts, a ~~L~~Licence to occupy the Lot subject to the terms and conditions contained in this Licence.

## 3. TERM

3.1 The Licence commences on the Commencement Date and continues for the Term unless terminated early in accordance with the terms of this Licence.

### 3.2 On the expiry of the Term, and provided:

- (a) the Licensee has observed the terms and conditions contained in this Licence;
- ~~(a)~~(b) the Licensors are satisfied, at its sole discretion, that the Licensee and his or her family and associates have the right to occupy no more than one lot on the Reserve;
- (c) the Licensee has given to the Licensors written notice of the Licensee's desire to continue to occupy the Lot beyond the Term at least 3 months before the end of the Term; and
- ~~(b)~~(d) the Licensors consider in its sole discretion that it is both feasible and desirable in all the circumstances as they exist at the time for occupation of the Reserve and the Lot to continue.

the Licensors may elect to renew ~~the Term of~~ this Licence for such duration and incorporating such terms (if any) as the Licensors in its sole discretion considers appropriate in the circumstances.

### 3.3 The Licensee acknowledges that:

- (a) the Discharge Consent is of critical importance for the continued occupation of the Reserve, and will expire on the Discharge Consent Expiry Date; and
- ~~(e)~~(b) the Licensors consider that it is unlikely that continued occupation of the Reserve will be considered to be appropriate for the purpose of clause 3.2(d) following the Discharge Consent Expiry Date, and it is, accordingly unlikely, the Licence will be renewed following the Expiry Date unless equivalent sewage treatment and disposal arrangements can be established and consented.

## ~~4. TYPE OF LICENCE~~

### ~~4.1 The various lots on the Reserve have been set aside by the Licensors to be granted to Licensees as:~~

- ~~(a) permanent licences,~~
- ~~and the type of Licence granted to the Licensee is specified in Schedule 1.~~

## ~~5.4. LICENCE FEE~~

### 4.1 The Licensee must pay:

- (a) the Licence Fee to the Licensors in advance ~~and in the manner directed by the Licensors the Licence Fee~~ in the Licence Fee Instalments;
- (b) any accrued Other Charges invoiced by the Licensors; and
- (c) any sums payable in accordance with clause 6.

on the Licence Fee Payment Dates ~~specified in Schedule 1.~~

### ~~5.1 If the Licensee defaults in payment of the Licence Fee for 10 days after a Licence Fee Payment Date, the Licensee is to pay interest on the unpaid Licence Fee from the Licence Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Schedule 1.~~

## **6.5. OTHER CHARGES**

**6.15.1** In addition to the Licence Fee the Licensee must pay ~~the following charges ("Other Charges") on demand and in the manner directed by the Licensor:~~

- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Licensee's occupation of the Lot; ~~or~~ and
- (b) all costs in relation to the supply/disposal of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Licensor~~:-~~.

on the next Licence Fee Payment Date following receipt of invoice.

**5.2** The Licensor may apportion all Other Charges between the Licensee and the other relevant persons as it sees fit in its reasonable discretion.

**5.3** The Licensee must pay all charges for electric power, water supply, telephone rental and other utilities supplied to the Lot. The Licensor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

## **6. BOND AND STATUTORY REQUIREMENTS**

**6.1** In addition to the Licence Fee and Other Charges, the Licensee must pay:-

- (a) a sum on account of a bond to be held by the Licensor at the amounts and intervals, and to the maximum limit, specified in Schedule 1, to be administered as follows:
  - (i) the Licensor shall adjust the amount payable, and/or refund any amount paid, to ensure that the bond held does not exceed the specified maximum limit:-
  - (ii) the Licensor may deduct any amount payable by the Licensee under clause 26.5 from the bond and apply such sum towards the cost of completing such works and operations (and the Licensee shall, for the avoidance of doubt, remain liable to the Licensor for the cost of completing such works and operations if, and to the extent that, the bond held by the Licensor is insufficient for these purposes);
  - (iii) any balance of the bond held by the Licensor following deduction by the Licensor under clause 6.1(a)(ii) shall be refunded to the Licensee:-
  - (iv) the Licensee shall not purport to transfer or assign this bond to any person without the written consent of the Licensor; and
  - (v) this clause 6 shall not in any way limit, or prejudice the enforcement by the Licensor of, any obligation of the Licensee under this Licence:- and
- (b) 10% per annum of:
  - (i) any capital expenditure in respect of the Lot; or
  - (ii) the proportion of capital expenditure in respect of the Reserve reasonably attributable to the Lot,



required by any legislation or requirement to expend moneys on any improvement, addition or alteration to the Lot or the Reserve.

## **7. PAYMENT**

7.1 If the Licensee defaults in payment of the Licence Fee or other moneys payable under this Licence for 10 Working Days then the Licensee shall pay on demand interest at the Default Interest Rate on the moneys unpaid from the due date for payment until the date of payment.

6.27.2 The Licence Fee and all other moneys payable under this Licence shall be paid in the manner directed by the Licensor and without any deductions or set-off.

## **7.8. LICENCE FEE REVIEW**

7.18.1 The Licensor will review the Licence Fee on the Licence Fee Review Dates in the following manner:

- (a) the Licensor will commence the review not earlier than 3 months before a Licence Fee Review Date and no later than 9 months following the Licence Fee Review Date by giving written notice to the Licensee.
- (b) subject to clause 8.1(e), the notice must specify the Licence Fee which the Licensor considers to be the market value for the licence of the Lot as at the Licence Fee Review Date.
- (c) if, within ~~28 days~~20 Working Days of receipt of the Licensor's notice, the Licensee gives written notice to the Licensor that the Licensee disputes the proposed new Licence Fee the new Licence Fee is to be determined in accordance with clause 8.2(a);
- (d) if the Licensee does not give notice to the Licensor under clause 8.1(c) the Licensee will be deemed to have accepted the Licence Fee specified in the Licensor's notice.
- (e) notwithstanding clause 8.1(b), the new Licence Fee so determined or accepted must not be less than the Licence Fee payable during the year preceding the particular Licence Fee Review Date and will be the Licence Fee payable by the Licensee from the Licence Fee Review Date.
- (f) until determination of the new Licence Fee, the Licence Fee payable by the Licensee from the Licence Fee Review Date is to be the Licence Fee specified in the Licensor's notice. On determination of the new Licence Fee an adjustment is to be made and paid, either by the Licensor or by the Licensee, whichever is applicable.

7.28.2 Immediately the Licensee gives notice to the Licensor under clause 8.1(c), the parties will endeavour to agree on a new Licence Fee. If the parties are unable to reach agreement within ~~28 days~~20 Working Days the new Licence Fee is to be determined as follows:

- (a) by registered valuers acting as experts and not as arbitrators as follows:
  - (i) each party will appoint a valuer and give written notice of the appointment to the other party within ~~44 days~~10 Working Days of the parties agreeing to determine the new Licence Fee by this means.

- (ii) if the party receiving a notice does not appoint a valuer within the ~~14-day~~10 Working Days period the valuer appointed by the other party is to determine the new Licence Fee and that valuer's determination will be binding on both parties.
  - (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
  - (iv) the valuers are to determine the new Licence Fee which they consider to be the market value for the licence of the Lot as at the Licence Fee Review Date but in no case is the new Licence Fee to be less than the Licence Fee payable during the year preceding the particular Licence Fee Review Date. If they fail to agree the Licence Fee is to be determined by the umpire and that determination will be binding on both parties.
  - (v) each party is to be given the opportunity to make written or verbal representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vi) the valuers or the umpire must have regard to any such representations but will not be bound by them.
- (b) the valuers or umpire must give written notice to the parties once they have determined the new Licence Fee. The notice is to provide how the costs of the determination are to be borne and is to be binding on the parties.
  - (c) each subsequent Licence Fee Review will take place in accordance with the procedure fixed in clause 8.1.

## **8.9. BUILDING WORKS**

**8.19.1** The Licensee must not carry out any alterations, additions, removals or demolition works on the Lot without the prior written consent of the Licensor.

**8.29.2** The Licensee must, upon request by the Licensor, submit written building plans and other details to the Licensor for approval before commencing any works.

**8.39.3** In giving approval under clause 9.1 the Licensor may, in the Licensor's sole and absolute discretion, impose any reasonable terms and conditions as the Licensor considers appropriate.

**8.49.4** The Licensee must pay ~~the Licensee's~~all costs (including any cost reasonably incurred by the Licensor) associated with applications for consent and approval to carry out works under this clause.

**8.59.5** When undertaking any building works, the Licensee must comply with all statutory requirements including obtaining building consents and code compliance certificates as required under the Building Act 2004.

**8.69.6** If, ~~during the Term,~~ the Licensee (~~with the Licensor's prior written approval~~) removes any improvements from the Lot the Licensee will, unless the Licensor ~~indicates~~approves otherwise in writing, repair and make good at the Licensee's own expense all damage which may have been done by the removal and will leave the Lot in a clean and tidy condition.

~~8.7~~9.7 Should the Licensee fail to ~~repair and restore the damage~~ comply with clause 9.6, the Licenser may undertake whatever works and operations are necessary to effect the same and ~~may recover from the Licensee any~~ all costs and expenses incurred in doing so shall be payable ~~it as a debt due~~ by the Licensee to the Licenser upon demand.

## ~~9.10.~~ EXISTING HUT AND STRUCTURES

~~9.1~~10.1 The Licensee shall maintain the existing hut and any improvements together with any fences, gates or other structures now existing or which may be erected on the Lot in good order and repair and in a neat ~~and~~ tidy and sanitary condition to the satisfaction of the Licenser.

~~9.2~~10.2 Subject to the Licenser providing to the Licensee reasonable notice, the Licenser and the Licenser's employees and agents may, at all reasonable times, enter the Lot to view its condition and the condition of the hut and any improvements.

## ~~10.11.~~ LICENSEE'S FURTHER OBLIGATIONS

~~10.1~~11.1 The Licensee must at the Licensee's expense:

- (a) take all steps necessary to control any pest, insect or rodent infestation occurring in or emanating from the Lot, and if required by the Licenser, engage a pest exterminator approved by the Licenser; ~~and~~
- (b) hold and maintain all approvals, authorities and consents required to occupy and use the Lot including, where required, any discharge consents; and
- (c) comply with all requirements of the Licenser, any competent authority and with all ~~relevant~~ Laws applicable to the occupation and use of the Lot, including all bylaws and fire safety requirements.

~~10.2~~11.2 The keeping of dogs on the Lot is not permitted, in accordance with ~~all and any the~~ Selwyn District Dog Control Bylaw 2012.

~~10.3~~11.3 The Licensee must ensure that it or its invitees do not carry out any acts prohibited under this Licence. The Licensee must immediately report to the Licenser any act in contravention of this Licence and wherever possible the names and addresses of any person carrying out such acts; ~~and~~ and must provide the Licenser with details of the circumstances surrounding such incidents.

## ~~11.12.~~ PROTECTION OF THE ENVIRONMENT

~~11.1~~12.1 Except as approved in writing by the Licenser, the Licensee will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Reserve; ~~or~~
- (b) deposit on the Reserve debris, rubbish or other dangerous or unsightly matter, or contaminate ~~any water body on~~ the Reserve or any water body in or under the Reserve; ~~or~~
- (c) pile or store materials in any place on the Reserve where it may obstruct the public or create a nuisance; ~~or~~

(d) conduct any noxious, noisome, dangerous, illegal or offensive activity on the Reserve, and generally the Licensee shall utilise its rights under this Licence in a clean, quiet and orderly manner free from damage, nuisance, disturbance or annoyance to any persons; or-

~~(d)~~(e) carry out any business occupation on the Reserve.

~~11.2~~12.2 The Licensee shall dispose of all refuse and recycling material in the receptacles provided or otherwise in accordance with the reasonable directions of the Licensor.

### ~~12.13.~~FIRE

~~12.4~~13.1 The Licensee must:

- (a) take all reasonable precautions to ensure no fire hazards arise from its occupation or use or from any act or neglect of its invitees;
- (b) not light or permit to be lit any fire on the Reserve without the written permission of the Licensor; and
- (c) not store or permit to be stored fuels or other combustible materials on the Reserve without the written permission of the Licensor. In that event storage of fuels and combustible materials is approved it must be in accordance with the provisions of all Laws including the Hazardous Substances and New Organisms Act 1996.

### ~~13.14.~~WATER, SEWER AND SANITARY

~~13.4~~14.1 The Licensee shall:

- (a) obtain the Licensor's approval to connect a lateral pipeline from a Lot to any of the sewer or potable water main pipelines before any connection works are commenced;
- (b) meet the Licensor's costs of, or incidental to, approving any application or undertaking any works on behalf of the Licensee;
- (c) undertake any works affecting the lateral pipelines in accordance with required consents or conditions of consent including any building consents;
- (d) keep any lateral pipelines which service the Lot in a state of good order and repair, free of any infiltration and obstructions; and
- (e) ensure that storm water is not discharged from the Lot into the waste water system.

~~13.2~~14.2 The costs of resolving any problems relating to a lateral pipeline shall be:

- (a) shared equally between licence holders where the issue relates to a shared section of lateral pipeline from the common junction to the main pipeline; and
- (b) individually the responsibility of the licence holder where the issue relates to a licence holder's section of lateral pipeline above the common junction.

~~13.3~~14.3 For the avoidance of doubt, all reticulated water and sewage systems servicing the Reserve and the Lot, are and shall remain, the sole and unencumbered property of the Licensor, irrespective of the grant of, or the payment of any amount required under, this Licence.

#### ~~14.15.~~ TREES AND SHRUBS

~~14.4~~15.1 Any trees, shrubs or hedge plants which have the potential to shade adjoining lots shall not be allowed to grow beyond a height of 2.2 metres. The planting of willow, poplar and cabbage trees is expressly prohibited.

#### ~~15.16.~~ ADVERTISING

~~15.4~~16.1 The Licensee must not erect or display any signs or advertising on the Lot or Reserve without the prior written approval of the Licensor. At the expiry or termination of this Licence the Licensee must remove all signs and advertising material and make good any damage caused by the removal.

#### ~~16.17.~~ HEALTH AND SAFETY

~~16.4~~17.1 The Licensee must notify the Licensor of anything on the Reserve or the surrounding area which may endanger the public or the environment.

~~16.2~~17.2 The Licensee must:

- (a) take all reasonable steps to protect the safety of all persons present on the Lot/Reserve; and
- (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Licensee is aware.

#### ~~17.18.~~ VEHICLES, BOATS AND TRAILERS

~~17.4~~18.1 There are to be no more than two motor vehicles parked on the Lot at any time. This excludes the motor vehicles belonging to any visiting invitees of the Licensee.

~~17.2~~18.2 All motor vehicles brought onto the Lot are to have a current warrant of fitness and vehicle registration, unless an exemption through ~~LTNZ~~TA has been issued.

~~17.3~~18.3 Any caravans, buses, boats or trailers brought onto the Lot are to have a current electrical certificate, current warrant of fitness and registration.

~~17.4~~18.4 The subleasing or hiring of motor vehicles, caravans and buses on the Lot is prohibited, provided that they may be used for temporary/holiday accommodation by ~~non-permanent or permanent~~ Licensees or their invitees on a non-payment basis for a period not exceeding 4 weeks in any 52 week period.

#### ~~18.19.~~ TEMPORARY SUSPENSION

19.1 Without prejudice to any other rights or remedies under this Licence, ~~t~~The Licensor may temporarily suspend the grant of ~~L~~licence under this Licence if, in the reasonable opinion of the Licensor, ~~t~~:

- (a) there is a temporary risk to public safety or the safety of the Licensee or any other licence holders whether arising from natural events such as earthquake or flood or whether arising in any other way including the activities of the Licensee or its invitees ~~t~~;
- (b) there is a serious breach of clauses 10, 11 and/or 12 such that the hut and/or the Lot should not be occupied; or

~~(a)~~(c) the activities of the Licensee or its invitees in breach of clause 12.1(d) ~~unreasonably interfere with the quiet enjoyment of other licence holders.~~

~~18.2~~19.2 The Licenser may suspend the Licence while the Licenser investigates any of the circumstances contemplated in clauses 19.1 and also where reasonably required while the Licenser investigates any potential breach by the Licensee or its invitees of which the Licenser has become aware.

~~18.3~~19.3 During any period of temporary suspension:

(a) the Licensee shall vacate the Lot and not re-enter the Lot unless and until directed to do so by the Licenser (acting reasonably); ~~and~~

(b) except where the temporary suspension is due to acts or omissions of the Licensee or its invitees, the Licence Fee payable by the Licensee is to abate in fair proportion to the loss of use by the Licensee; ~~and~~

~~(b)~~(c) Other Charges and amounts payable in accordance with clause 6 shall in all cases continue to be payable unless and to the extent the Licenser decides otherwise in its reasonable discretion.

~~18.4~~19.4 The Licenser is not to be liable to the Licensee for any loss sustained by the Licensee by reason of the suspension of the Licence under clause 19.

## ~~19.~~20. **CONSENT TO OCCUPATION OR TRANSFER**

20.1 The Licensee is not to transfer, sublicense, rent or hire out, assign, mortgage or otherwise dispose of the Licensee's interest under this Licence or any part of it without the prior written consent of the Licenser, which shall only be available in respect of a transfer or occupation and in accordance with the requirements of this clause 20 ~~(such consent not to be unreasonably withheld).~~

~~Where the Licenser's consent is given, the Licensee shall procure that the transferee enter into a new licence with the Licenser for the balance of the current Term, such new licence to otherwise be on the same terms and conditions as contained in this Licence.~~

20.2 The consent of the Licenser to the occupation of the Lot by a person other than the Licensee will only be available where the intended occupant is a family member of the Licensee, and the Licenser is satisfied in its sole discretion that:

(a) the number of persons occupying the Lot will remain appropriate;

(b) the transferee or assignee (together with their family members and associates) will not, following the transfer or assignment, occupy or have the right to occupy more than one lot on the Reserve; and

(c) the occupant is likely to be able to comply with all obligations of the Licensee under this Licence.

and the occupant has, where required by the Licenser, entered into a document required by the Licenser under which it agrees to be bound by all obligations of the Licensee under this Licence.

20.3 The Licensee shall ensure that any occupant of the Lot complies at all times with all obligations of the Licensee under this Licence. For the avoidance of doubt, any obligations owed by an occupant directly to the Licenser are additional to, and not in substitution for, the obligations of the Licensee under this Licence, and the Licenser may accordingly enforce any breach by an occupant against the Licensee, the occupant, or both.

20.4 The consent of the Licenser to a transfer by the Licensee of the Licensee's interest under this Licence will only be available where the Licenser is satisfied, in its sole discretion, that the intended transferee is likely to be able to comply with all obligations of the Licensee under this Licence, and has entered into a new licence with the Licenser for the balance of the current Term, such new licence to otherwise be on the same terms and conditions as this Licence.

~~19.4~~20.5 In addition to the other requirements of this clause 20, the Licenser may, in considering whether to grant consent, require such inspection(s) of the hut and/or the Lot as it sees fit to establish whether the hut and/or the Lot are compliant with this Licence, with particular regard to clauses 10, 11 and 12. Where the hut and/or the Lot are not compliant, the Licenser may, for the avoidance of doubt, require that such non-compliances are rectified.

~~19.2~~20.6 The Licensee must pay any ~~transfer~~-consent fee prescribed by the Licenser and any costs reasonably incurred by the Licenser in relation to any consent under clause 20.1~~the transfer and the new licence~~.

## ~~20-21~~21. DAMAGE OR DESTRUCTION

~~20.4~~21.1 If the hut or any proportion of it is damaged or destroyed, the Licensee will notify the Licenser of its intentions to rebuild or remove the structures from the Lot. In any event the Licensee will, at its own cost, repair the damage or demolish and rebuild/reinstate the hut to a similar or improved standard of repair and condition.

~~20.2~~21.2 Any repair or rebuild/reinstatement in accordance with clause 21.1 shall be undertaken by the Licensee in accordance with clause 9~~the terms of this Licence and for the avoidance of doubt, in accordance with such consents and permits as may be required by the Licenser and by Council or its successor (acting in its capacity as territorial authority in carrying out its statutory consent functions under the Resource Management Act 1991 or the Building Act 2004).~~

## ~~21-22~~22. TERMINATION

~~21.4~~22.1 If:

- (a) ~~any money due~~the Licence Fee under this Licence is unpaid and remains unpaid for 10 Working Days after ~~receipt~~service on the Licensee of a written notice pursuant to ~~S~~section 245 of the Property Law Act 2007; or
- (b) the Licensee has not complied with the Licensee's obligations in this Licence after service on the Licensee ~~receipt~~ of a written notice pursuant to ~~S~~section 246 of the Property Law Act 2007 specifying the default and requiring the default to be remedied within ~~one month~~a period which the Licenser considers to be reasonable in the circumstances,

then the Licenser may by notice in writing ~~terminate~~ cancel this Licence and re-enter the Lot. The Term shall terminate upon the cancellation but without prejudice to the rights of either party against the other ~~Upon termination, the Licensee's rights will cease immediately, but the Licensee will still be liable for any money due under this Licence up to termination or for damages for any breach committed prior to termination.~~

~~21.2 If the Licenser terminates the Licence under this clause all rights of the Licensee are to cease absolutely; but the Licensee is not to be released from any liability to pay the Licence Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.~~

~~21.3 The Licenser may exercise the Licenser's right under this clause to terminate the Licence notwithstanding any prior waiver or failure to take action by the Licenser or any indulgence granted by the Licenser for any matter or default.~~

## ~~22.~~ 23. LICENSOR MAY REMEDY LICENSEE'S DEFAULT

~~22.1~~ 23.1 The Licenser may elect to remedy at any time without notice any default by the Licensee under this Licence at the Licensee's cost provided that where it is able and safe to do so in the circumstances, the Licenser shall first endeavour to give the Licensee notice of such election.

~~22.2~~ 23.2 The Licensee must pay to the Licenser forthwith on demand all reasonable costs and expenses incurred by the Licenser, including legal costs and expenses as between solicitor and client, in remedying such default.

## ~~23.~~ 24. QUIET ENJOYMENT

~~23.1~~ 24.1 The Licensee, while paying the Licence Fee and performing and observing the terms and conditions of this Licence, is entitled peaceably to hold and enjoy the Lot without hindrance or interruption by Licenser or by any person or persons claiming under the Licenser until the expiry~~ation~~ or ~~earlier~~ determination of this Licence.

## ~~24.~~ LICENSOR'S DIRECTIONS

~~24.1 The Licensee must comply with all reasonable notices and directions of the Licenser under the authority of this Licence.~~

## 25. INDEMNITY

25.1 The Licensee will indemnify and keep indemnified the Licenser against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Licensee or its invitees or otherwise caused as a consequence of its occupation of the Lot.

~~25.2 This indemnity is to continue after the expiry or other determination of this Licence in respect of those acts or omissions occurring or arising before its expiry or determination.~~



## 26. EXPIRY OF LICENCE

- 26.1 If the Licenser permits the Licensee to remain in occupation of the Lot after the expiry or ~~earlier~~ termination of the Term, the occupation is to be on the basis:
- (a) of a monthly tenancy only, terminable by 1 month's written notice by either party; ~~and~~
  - (b) at the Licence Fee then payable; and
  - (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Licence.
- 26.2 At the expiry or ~~earlier~~ determination of the Term, the Licensee must quietly yield up the hut and any improvements on the Lot in the same good and substantial repair and condition as they were in at the Commencement Date, fair wear and tear excepted.
- 26.3 The Licenser may direct that the hut and any improvements remaining on the Lot at the expiry, ~~surrender~~ or termination of this Licence, be removed by the Licensee at the Licensee's cost. The Licensee will in complying with such direction repair and make good at the Licensee's cost all damage which may have been done by the removal and will leave the Lot in a clean and tidy condition.
- 26.4 Where the Licenser does not make a direction under clause 26.3, the hut and any improvements remaining on the Lot at the expiry, ~~surrender~~ or termination of this Licence will be deemed to be fixtures and property in them will vest absolutely in the Licenser and the Licenser will not be liable to pay compensation to the Licensee for the hut and improvements.
- 26.5 Where the Licensee fails to comply with a direction under clause 26.3, ~~then,~~ the Licenser may ~~remove or destroy or otherwise dispose of anything otherwise remaining on the Lot, and recover the costs and expenses of their removal or destruction from the Licensee as a debt due to the Licenser~~ undertake whatever works and operations are necessary to effect the same and all costs and expenses in doing so shall be payable by the Licensee to the Licenser upon demand.

## 27. SURVIVAL

- 27.1 Following expiry or termination of this Licence, clauses 6, 7, 25 and 26 together with other provisions that are by their nature intended to survive, will remain in effect.

## ~~27-28.~~ **FORCE MAJEURE**

- ~~27.1~~28.1 Neither party will be liable to the other party for any delay in performance, of or failure to perform, its obligations (other than a payment of money) under this Licence as a result of any cause beyond its reasonable control.

## ~~28-29.~~ **OWN RISK**

- ~~28.1~~29.1 The Licensee enters into this Licence on the understanding that because of its proximity to Te Waihora (Lake Ellesmere), the Reserve and the Lot may be subject to flooding from time to time.
- ~~28.2~~29.2 The Licensee acknowledges and accepts all risks, and occupies the Lot at their own risk. The Licenser ~~shall not be liable, and~~ expressly excludes to the greatest extent permissible by Law

all liability, for any loss, damage or injury of any kind caused howsoever in relation to the occupation and use of the Reserve or the Lot by the Licensee or their invitees ~~or to any property of the~~ Licensee.

## **~~29-30.~~NOTICES**

~~29.1~~ A notice or other document is given to, or served on, an individual person when it is:

- ~~(a) — delivered by registered post to that person; or~~
- ~~(b) — actually received by that person.~~

~~29.2~~ A notice or other document is deemed to be received by a person when:

- ~~(a) — it is handed to, and accepted by, that person; or~~
- ~~(b) — if that person does not accept it when it is handed to him or her, it is put down in that person's presence and brought to his or her attention; or~~
- ~~(c) — it is otherwise received in writing by that person.~~

30.1 All notices including requests, demands and other communications under this Licence, to be given by a party to any other party must be in writing and:

- (a) signed by the party itself or on its behalf by its solicitor or (in the case of the Licensor) other authorised person; and
- (b) given or served:
  - (i) in the manner provided in the Property Law Act 2007 where that Act applies; or
  - (ii) in all other cases, by personal delivery, receipted courier pack or email to the recipient's address for service or as otherwise directed by the relevant party, or (in the case of a notice from the Licensor to the Licensee) by being prominently affixed to the hut or other structure or vehicle on the Lot.

30.2 Any notices under clause 30.1(b)(ii) will be deemed given, served and received:

- (a) when personally delivered or affixed; or
- (b) in the case of email, when acknowledged by the addressee except that return emails generated automatically shall not constitute an acknowledgement.

30.3 Unless and until changed under this clause, the addresses for service of the parties are as set out in Schedule 1. A party may, by notice to the other, change its address for service.

## **~~30-31.~~COSTS**

~~30.1~~31.1 The Licensee must pay ~~in full immediately~~ on demand all costs and fees (including ~~but not limited to~~ Council staff and contractor's costs, solicitors' costs on a solicitor/client basis and/or the fees of debt collecting agencies engaged by the Licensor) arising out of and associated with steps taken by the Licensor:

- (a) to enforce or attempt to enforce the Licensor's rights and powers under this Licence ~~if the Licensee is in breach or default;~~ and/or

- (b) to recover outstanding money owed to the Licensor [under this Licence](#).

### ~~31.32.~~ **WAIVER**

~~31.4~~~~32.1~~ No failure by a party to exercise, or delay in exercising (in whole or in part) any right, power or remedy under, or in connection with, this Licence shall not operate as a waiver of that right, power or remedy. A waiver of any breach of any provision of this Licence shall not be effective unless that waiver is in writing and signed by the party against whom that waiver is claimed. A waiver of any breach shall not be, or be deemed to be, a waiver of any other or subsequent breach.

### ~~32.33.~~ **SEVERABILITY**

~~32.4~~~~33.1~~ Any illegality, or invalidity or unenforceability of any provision in this Licence is not to affect the legality, validity or enforceability of any other provisions.

### ~~33.34.~~ **ENTIRE UNDERSTANDING**

~~33.4~~~~34.1~~ Except as provided by ~~legislation~~[Law](#), this Licence and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Licence and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Licence.

### ~~34.35.~~ **THE LICENSOR ACTING AS TERRITORIAL AUTHORITY**

~~34.4~~~~35.1~~ The Licensee acknowledges that:

- (a) The Licensor, in its capacity as territorial authority (the "**Council**"), is required to carry out its statutory consent functions under the Reserves Act 1977, Resource Management Act 1991, the Building Act 2004 and the Conservation Act 1987 in accordance with the provisions of those and other ~~Laws~~[statutes](#).
- (b) The granting by the Council of any consent or approval by the Council as territorial authority under those Acts or any other ~~legislation~~[Laws](#), will not of itself be deemed to be a consent or approval by the Licensor under this Licence.
- (c) The Council is bound by statutory obligations to exercise its powers, including discretionary powers and duties under those Acts or any other ~~legislation~~[Laws](#) without regard to any relationship it may have with the Licensee under this Licence.

### ~~35.36.~~ **DISPUTE RESOLUTION**

- (a) If there is a dispute between the parties in relation to this Licence, either party may give the other party notice of the dispute.
- (b) Within 10 Working Days of receipt of the notice of dispute, the parties shall meet to endeavour to resolve the dispute.
- (c) If the dispute is not resolved within 20 Working Days of receipt of the notice of dispute, either party may by notice to the other party refer the dispute to mediation. The mediation will be in Christchurch and conducted under the ~~LEADR~~[Arbitrators' and Mediators' Institute of](#)

New Zealand Incorporated ("~~LEADR~~AMINZ") standard mediation ~~agreement~~protocol. If the parties do not agree on a mediator or the mediator's fees within 5 Working Days of receipt of the notice of mediation, the mediator shall be appointed or the fees set by the ~~chair~~President of ~~LEADR~~AMINZ (or his/her nominee) at the request of either party.

- (d) While any dispute remains unresolved each party shall continue to perform this Licence to the extent practicable, but without prejudice to their respective rights and remedies.
- (e) Nothing in this clause 36 will preclude a party from seeking urgent interlocutory relief before a court, or preclude the Licensor from taking proceedings for the recovery of any Licence Fee or other monies payable under this Licence which remain unpaid or from exercising the rights and remedies under clauses 19 or 22.

**EXECUTION**

THE COMMON SEAL of )  
 SELWYN DISTRICT COUNCIL was )  
 hereto affixed in the presence of: )

\_\_\_\_\_  
 Mayor / Councillor

\_\_\_\_\_  
Councillor / ~~Chief Executive~~ Authorised Officer

SIGNED by )  
~~The~~ the LICENSEE )  
 in the presence of )

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Witness signature

\_\_\_\_\_  
 Print Licensee's Name

\_\_\_\_\_  
 Full Name

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Occupation



**PERMANENT LICENCES  
TERMS AND LIMITATIONS ON USE**

~~The Licensee may permanently occupy the Lot and reside in the hut in accordance with the terms and conditions of the grant of licence provided in this Licence.~~