

Ref: 11546-RES

L i c e n c e A g r e e m e n t

relating to

Council land

THE WELLINGTON CITY COUNCIL

And

Wallcork Upland Limited

18 December 2024

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This Agreement is made on the

day of

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Between (1) THE WELLINGTON CITY COUNCIL (the Council)

And (2) Wallcork Upland Limited (the Licensee).

Introduction

- A. The Council occupies and controls road pursuant to sections 316 and 317 of the Local Government Act 1974.
- B. The Licensee owns or occupies the Property, which adjoins/is in the vicinity of the Land.
- C. The Council, in its capacity as land owner, has agreed to licence the Land to the Licensee while the Licensee is the owner or occupier of the Property pursuant to the provisions of the Public Places Bylaw 2022.
- D. This licence acknowledges that the Improvements constructed or placed on the Land by the Licensee are owned by the Licensee. They can accordingly be amended and maintained in accordance with the terms of this licence and sold to another party, provided the Council's approval is obtained. However, the licence establishes situations where the Council can remove or maintain the Improvements.
- E. The parties agree that the licence is granted on the terms and conditions set out in this licence.

It is agreed

1. Interpretation

1.1 Defined terms

In this licence the following definitions shall apply:

Commencement Date means 18 December 2024.

GST means Goods and Services Tax under the Goods and Services Tax Act 1985.

Improvements mean the garage portal, foundations erected or to be erected on the land by the Licensee, and includes any associated structures, fixtures, fittings, improvements, plantings which are now or may during the term of licence be erected on the land.

Land means that part of the land owned by the Council being an area of 2m² more or less at 34 Upland Road, Kelburn highlighted on the attached aerial plan.

Licence Fee means \$90.00 plus GST per annum subject to variation in accordance with clause 2.4.

Permitted Use means for the purposes of earthquake strengthening.

Property means the property at 34 Upland Road, Kelburn legally described as PT LOTS 57 58 DP 2135 that must be owned or occupied by the Licensee during the continuation of this licence in terms of clause 9.1.

1.2 Headings

Headings in this licence are included for ease of reference only and will not affect its construction or interpretation.

2. Licence

2.1 Grant of Licence

The Council grants to the Licensee and the Licensee accepts a licence of the Land, on the terms and conditions set out in this licence.

2.2 Council's Capacity

- (a) The Council enters this licence in its capacity as land owner, and not as regulatory authority. Any consent or approval given by the Council in its capacity as land owner will not be deemed to waive or imply Council's consent or approval in its capacity as a regulatory authority.
- (b) By granting this licence, the Council does not warrant that either the Land, or the Improvements, are suitable for the Permitted Use. The Licensee must satisfy itself that the Land and the Improvements are suitable for the Permitted Use.

2.3 Term

- (a) The term of this licence will commence on the Commencement Date and continue until the date of termination of this licence under clause 7, 8 or 9 (**Term**).
- (b) The Licensee must arrange for this licence and any other related documents to be signed and redelivered to the Council within 30 days of receipt of the licence and any other related documents.

2.4 Payment and variation of Licence Fee

- (a) The Licensee will pay the Licence Fee, without set-off or deduction, to the Council annually in advance by 1 August (**Due Date**) of each year. The Licence Fee covers the period from 1 July to 30 June the following year. On the Commencement Date, the Licensee must pay a pro rata amount of the Licence Fee for the broken period from the Commencement Date until 30 June immediately following the Commencement Date.
- (b) The Council may, from time to time, at the Council's sole discretion, vary the Licence Fee by ordinary resolution of Council. The Council will give the Licensee one month's written notice (in accordance with clause 11) of any change to the Licence Fee. The change to the Licence Fee will take effect from the date specified in that notice (**Effective Date**).
- (c) Where the Effective Date occurs after the Due Date and:
 - (i) the Licence Fee has increased, the Council will invoice the Licensee for the additional amount payable by the Licensee for the period from the Effective Date until the next Due Date, and the Licensee will pay the additional amount on or before the date specified in the invoice.
 - (ii) the Licence Fee has decreased, the Council will credit the amount of the decrease in respect of the period from the Effective Date until the next Due Date against the Licence Fee due on the next Due Date.
- (d) Where the licence is terminated under clause 7, 8 or 9 before the Due Date, no refund of any portion of the Licence Fee will occur.

2.5 Interest and costs on overdue Licence Fee

If the Licensee does not pay the Licence Fee on or before the Due Date in any year, then the Licensee will pay:

- (a) default interest to the Council at a rate of 10%, from the Due Date to the date of payment; and
- (b) any costs incurred by the Council through an external collection agency to recover unpaid Licence Fee.

2.6 Permitted use

The Licensee will use the Land only for the Permitted Use.

2.7 Utilities

The Licensee will pay directly to the relevant utility supplier all charges for utilities consumed by the Licensee on the Land, including gas, telecommunications, electricity and water.

2.8 Variation of terms of Licence

The Council may, acting reasonably, revise the terms of this licence or impose special conditions in respect of this licence to reflect any change in the Council's policy. The Council will give written notice to the Licensee of any such revision of terms or special conditions (in accordance with clause 11). The revised terms or special conditions will take effect from the date specified in the notice.

3. Maintenance, Repair, Alterations and Additions

3.1 Licensee to keep the Land and the Improvements in good repair

The Licensee must put and keep the Land and the Improvements in good order, repair and condition to the reasonable satisfaction of the Council.

3.2 The Licensee's further maintenance and repair obligations

The Licensee must at all times, at the Licensee's expense:

- (a) keep the Land and the Improvements clean, tidy, free and clear from all rubbish and noxious weeds, to the Council's reasonable satisfaction; and
- (b) comply with any law, bylaw or other statutory requirement of any competent authority that affects this licence, or is done or to be done under it, or that relates to the Licensee's occupation or use of the Land, and the Licensee must tell the Council immediately if the Licensee becomes aware of any requirement of that type; and
- (c) without limiting the scope of clause 3.2(a), ensure that the Improvements comply with relevant laws, bylaws or other statutory requirements including, without limitation the Building Act 2004. The Council may, from time to time, require the Licensee to obtain, at the Licensee's cost, a written report from a suitably qualified expert, addressed to the Council, confirming that the Improvements comply with the requirements of all relevant laws, bylaws or other statutory requirements; and
- (d) the Licensee is responsible for the cost of:
 - (i) repair of damage caused by land slips; and

- (ii) work needed for retention of roadside batters; and
 - (iii) work required to remedy and prevent land slips,
- caused by the Licensee's use of the Land.

3.3 Council's right of inspection and notice to remedy default

The Council and the Council's employees, contractors and invitees may at all reasonable times enter the Land to view the condition of the Land and the Improvements. If the Council gives the Licensee written notice of any failure on the part of the Licensee to comply with the requirements of clauses 3.1 and 3.2, the Licensee will, with all reasonable speed, remedy those defaults.

4. Indemnity

4.1 The Licensee indemnifies the Council for all liability, loss, damage or expense arising from:

- (a) the Licensee's occupation or use of the Land or the Improvements; and
- (b) something either the Licensee, or someone the Licensee is responsible for, does or fails to do.

4.2 The Council will not be liable to the Licensee for any loss or damage suffered by the Licensee or the Licensee's invitees, employees, agents or contractors or to the Improvements, or to any other property as a result of the Licensee's or any other person's use of the Land or the Improvements. The Licensee acknowledges that it uses the Land and the Improvements entirely at its own risk in all respects.

5. Undertaking Works on the Land

5.1 Definition of Works

In this licence **Works** means:

- (a) any excavation or alteration of all or any part of the Land; and
- (b) any erection of improvements or structures of any nature and any erection of or alteration to the Improvements; and
- (c) any activity that may disrupt, damage or interfere with existing utilities or services (for example water, gas, telecommunications, electricity, waste), to or through the Land.

5.2 Consent required

- (a) The Licensee must obtain the Council's written consent (which the Council may, in its sole discretion, give or withhold) in its capacity as land owner before the Licensee commences any Works on the Land. The Council will be entitled to have due regard to the design of the Licensee's proposed Works and may impose any reasonable conditions on its approval as the Council considers appropriate.

- (b) The Council may, as a condition of approval under clause 5.2(a), require the Licensee to pay a bond of an amount set by the Council. The bond will be refunded on completion of the Works to the Council's satisfaction.

5.3 **Regulatory consent**

The Licensee must also apply for the consent of the Council in its capacity as a regulatory authority, and obtain all necessary consents to permit the use of the Land and completion of Works in accordance with the requirements of the Resource Management Act 1991, the Building Act 2004 and all Wellington City Council bylaws.

5.4 **Health and safety**

The Licensee must advise the Council how it will comply with the Health and Safety at Work Act 2015 when it asks the Council for consent under clause 5.2.

5.5 **Completion certificates**

When the Works are complete, the Licensee must give the Council, at the Licensee's cost, a copy of all code compliance (if any) and building certificates (if any) for the completed Works under the Building Act 2004.

5.6 **Council may require removal of Works and the Improvements**

The Council may, at any time, at the Council's sole discretion require by notice in writing that any Works and/or the Improvements are removed from the Land. The Licensee will make good any damage caused to the Land by the Works and/or Improvements to the satisfaction of the Council at the Licensee's cost. If the Licensee does not comply with its obligations under this clause by the date specified in the Council's notice, the Council may undertake the removal and make good any damage caused to the Land by the Works and/or Improvements. The Council may recover the actual and reasonable cost of doing so from the Licensee. The Licensee will pay such costs to the Council immediately on demand in writing by the Council.

6. **No Assignment**

6.1 **Licensee not to assign**

This licence is personal to the Licensee, and the Licensee will not:

- (a) transfer, assign, charge or otherwise deal with this licence; or
- (b) sublicense the Land or the Improvements or otherwise part with possession of the Land or the Improvements.

7. **Termination by the Council**

7.1 **Termination on one month's notice**

The Council may, at any time, terminate this licence by giving the Licensee at least one month's written notice (in accordance with clause 11).

7.2 Termination for breach

The Council may terminate this licence if:

- (a) the Licence Fee or utility charges are in arrears and unpaid for 28 days whether demanded or not; or
- (b) the Licensee breaches any of the Licensee's obligations under this licence; or
- (c) the Licensee abandons the Land; or
- (d) the Licensee disposes of its interest in the Property or the Improvements.

7.3 Notice of grounds of termination for breach

- (a) The Council will give the Licensee notice (in accordance with clause 11) stating the grounds of termination (**Notice**) before it exercises its right to terminate this licence under clause 7.2.

7.4 Terms of notice

- (a) If the breach is capable of being remedied, the Notice given under clause 7.3 will also state:
 - (i) that the Licensee is required to remedy the breach, and
 - (ii) that the Council intends to terminate this licence if the breach is not remedied within 28 days (or such longer period as the Council may choose, in its sole discretion) from the date of the Notice.

Other notices

The Council will give any other notice required by law at the same time as the Notice.

7.5 Time of termination

This licence will, unless the Licensee has remedied the breach identified, terminate on the expiry of the Notice and clause 10 will apply.

8. Licensee's right to terminate

The Licensee may terminate this licence by giving the Council one month's written notice and the termination provisions in clause 10 will apply but will not release the Licensee from any of its outstanding obligations under this licence up to the time of termination.

9. Termination on sale of Property

9.1 Termination

- (a) This licence will end on the settlement date of the sale of the Property by the Licensee to a purchaser (**Purchaser**). The termination provisions in clause 10 will apply, but the Council may, on written application by the Licensee and the Purchaser, elect to permit the Licensee to sell the Improvements to the Purchaser and to grant a new licence to the Purchaser.

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9.2 Sale of the Improvements

- (a) The Licensee will provide the Purchaser with a copy of this licence and advise the Purchaser that the Purchaser will need to apply to the Council for a new licence of the Land. If the Council elects to permit the Licensee to sell the Improvements to the Purchaser of the Property, any sale of the Improvements to the Purchaser must be conditional on the Purchaser obtaining approval from Council to enter into a new licence of the Land with the Council.
- (b) The written application for the Council's consent to sell the Improvements and to grant a new licence to the Purchaser will include, without limitation, the following details:
 - (i) the name and contact details of the Licensee;
 - (ii) the name and contact details of the Purchaser;
 - (iii) a description of the Land to which this Licence relates;
 - (iv) the address of the Property being sold by the Licensee to the Purchaser;
 - (v) the date of settlement of the sale of the Property;
 - (vi) the signatures of the Licensee and the Purchaser.
 - (vii) The Council will determine, at all times acting reasonably, whether or not a new licence will be granted to the Purchaser, and the terms of that licence.

9.3 Consequences of breach

The Council will not permit the Licensee to sell the Improvements to a Purchaser of the Property if the Licensee is in breach of this licence.

10. Consequences of termination

10.1 Removal of improvements by Licensee

The Licensee will, prior to the termination of the licence, remove the Improvements from the Land and make good any damage to the Land caused by the Improvements to the satisfaction of the Council, at the Licensee's cost. Removal of the Improvements is not required if the Council has approved the Sale of the Improvements under clause 9.

10.2 Removal of the Improvements by the Council

If the Licensee does not remove the Improvements in accordance with clause 10.1 or the Licensee is in breach of this licence, the Council may, within 28 days after the date of termination of this licence, remove the Improvements from the Land and make good any damage to the Land caused by the Improvements, at the Licensee's cost. The Licensee will pay actual and reasonable costs to the Council immediately on demand in writing by the Council.

10.3 No claim by Licensee

The Licensee will have no right to claim compensation from the Council in respect of the Improvements removed by the Licensee or the Council under clauses 10.1 and 10.2.

10.4 **No prejudice to prior obligation**

Termination of this licence will be without prejudice to any liability of the Licensee incurred prior to the termination of this licence.

11. **Notices**

11.1 The Council may give the Licensee notice under this licence by posting it by ordinary post or delivering it to the last address given by the Licensee to the Council or to the Licensee's last known residential address (or to the Licensee's registered office if the Licensee is a company), or by personal service on the Licensee, or by posting it by ordinary post to the address of the ratepayer in respect of the Property for the time being in the Council's rating records.

11.2 Notices given:

- (a) personally are served when they are delivered;
- (b) by post are served the following day after posting;
- (c) on a Saturday, Sunday or Public Holiday are served on the first business day after such day.

12. **Dispute Resolution**

12.1 **Arbitration**

If a dispute or difference regarding the interpretation of this licence is not able to be resolved through negotiation then the dispute or difference may be settled by reference to arbitration. The reference will be to a single arbitrator appointed by the parties, but if the parties cannot agree, the arbitrator will be appointed by the President of the New Zealand Law Society (or any successor), such arbitration to be carried out in accordance with the Arbitration Act 1996 and the substantive laws of New Zealand.

12.2 **Moneys due**

The procedures in clause 12.1 shall not prevent the Council from taking proceedings for the recovery of the Licence Fee or other money payable under this licence which remain unpaid.

12.3 **Dispute costs**

The Licensee and the Council will share equally all costs of resolving disputes under clause 12.

13. **Costs**

The costs of the preparation of this licence will be partially met by the Licensee through the payment of the fee provided in the Council's current encroachment policy. The Council's legal costs related to the enforcement or attempted enforcement of the Council's rights and powers under this licence will be payable by the Licensee.

14. **No set off or deduction**

The Licensee will not set off or deduct anything from any amount due to the Council under this licence.

15. **No caveat or registration**

The Licensee is not entitled to register this licence or lodge a caveat in respect of the Land.

16. **Survival of Clauses**

Clauses 10.2, 10.3 and 12 will survive termination of this of licence in respect of any liability arising during the period that the Licensee occupies the property.

17. **Counterpart Clause**

This agreement may be executed in any number of counterparts, all of which together constitutes one and the same instrument, and either of the parties to this agreement may execute this agreement by signing any such counterpart. The parties acknowledge that this agreement may be executed on the basis of exchange of electronic scanned copies and confirm that their respective execution of this agreement by such means is a valid and sufficient execution.

18. **Additional Clauses**

- (a) If there is any conflict between these additional clauses and the other terms of this licence, the additional terms will prevail.

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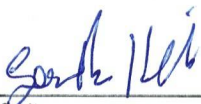
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SIGNED by Wallcork Upland Limited:


(Director)

Licensee Signature

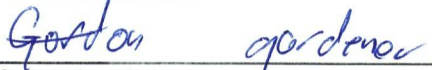
Witness:



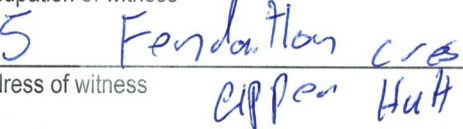
Signature of witness



Full name of witness



Occupation of witness



Address of witness

Signed for and on behalf of
WELLINGTON CITY COUNCIL:

Signature

Witness:

Signature of witness

Full name of witness

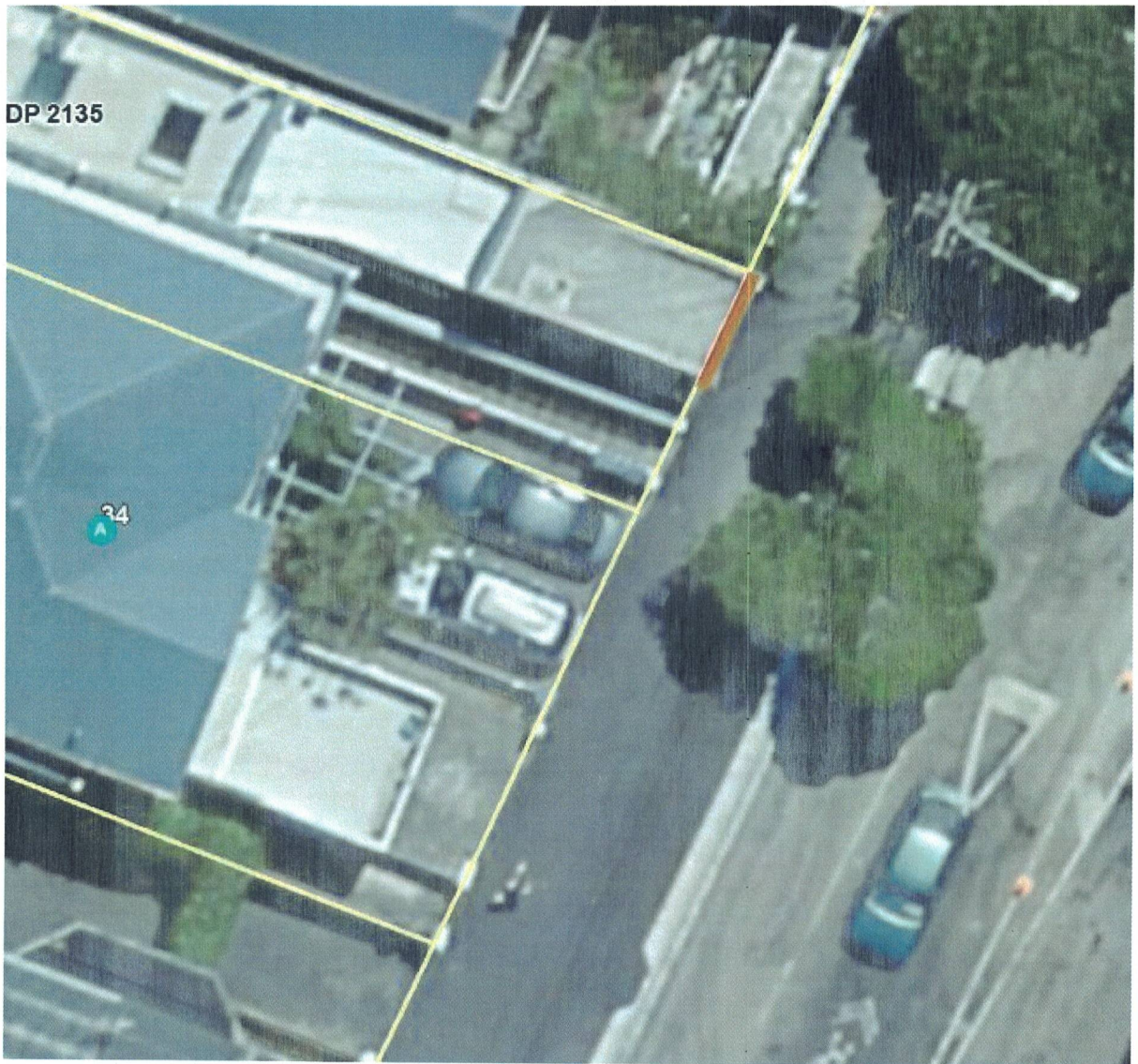
Encroachment Advisor

Occupation of witness

113 The Terrace, Wellington

Address of Wellington City Council

Aerial Plan



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