
Licence to Occupy

Mercury NZ Limited (Mercury)

Barry Murphy (Licensee)

Ohakuri Core Site – Pontoon

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Date:

2017

PARTIES

Mercury NZ Limited (*Mercury*)

Barry Murphy (*Licensee*)

BACKGROUND

- A Mercury owns the Land which is more particularly known as the Ohakuri Core Site, as identified in the plan attached as the Third Schedule.
- B The Licensee wishes to construct and use a pontoon on the Licence Area.
- C Mercury has agreed to grant a licence to the Licensee and its invitees to occupy that part of the Land identified as the Licence Area, for the Permitted Use on the terms and conditions set out in this Licence.

GRANT OF LICENCE

Mercury grants to the Licensee, and the Licensee takes and accepts from Mercury, a non-exclusive licence to occupy the Licence Area in common with Mercury, its officers, employees, consultants, workmen, invitees or other licensees for the Permitted Use, and otherwise on the terms and conditions set out in this Licence.

The Licensee's right to use and enjoy the Licence Area will be subject always to Mercury's operations on and adjacent to the Licence Area (including without limitation the operation of the Ohakuri Dam or any other operations relating to the generation of electricity). The Licensee shall not do or permit to be done, any act, matter or thing, where the act, matter or thing is intended to restrict or has the effect of restricting the generation of hydro electricity. This clause shall be paramount to any other clause in this Licence.

Signed for and on behalf of **Mercury NZ Limited**

in the presence of:

Name:

Occupation:

Address:

Signed for and on behalf of **Barry Murphy:**

in the presence of:

Name:

Occupation:

Address:

in the presence of:

Name:

Occupation:

Address:

FIRST SCHEDULE

LAND	The land described as Lot 1 on Deposited Plan South Auckland 89352 comprised in Computer Register 129941 (South Auckland Registry) comprising an area of 43.9000 ha being more particularly identified in the plan attached as the Third Schedule
LICENCE AREA	That part of the Land outlined in green on the plan attached as the Third Schedule.
TERM	Three (3) years.
COMMENCEMENT DATE	[TBC]
EXPIRY DATE	[TBC]
LICENCE FEE	\$1.00 (plus GST) per annum (upon demand)
CONTACT DETAILS FOR MERCURY	Attention: Alan Hurcomb Mercury NZ Limited State Highway 30 Whakamaru Mangakino 3492 Phone: 07 885 2095 / 027 297 5226
CONTACT DETAILS FOR LICENSEE	Barry Murphy [Insert] Phone:
PERMITTED USE	The installation and operation of a pontoon (<i>Pontoon</i>).

SECOND SCHEDULE

1 TERM

- 1.1 This Licence will be for the Term, commencing on the Commencement Date and expiring at midnight on the Expiry Date.
- 1.2 If Mercury permits the Licensee to remain in occupation of the Licence Area after the expiry or earlier determination of this Licence, the Licensee's occupation will be on the same terms as this Licence except that the Licensee's occupation will be terminable by either party giving one month's notice.

2 LICENCE FEE

- 2.1 During the Term of this Licence, the Licensee will pay to Mercury, without deduction or set-off, on demand, the Licence Fee and any other money which the Licensee is required to pay under this Licence.
- 2.2 Mercury will pay all rates and other outgoings levied, charged or assessed on the Land.

3 PERMITTED USE

- 3.1 The Licensee may use the Licence Area for the Permitted Use only.
- 3.2 The Licensee may not erect any additional structure on the Licence Area (other than the Pontoon) without the prior written consent of Mercury (in its sole and absolute discretion).
- 3.3 Following the Commencement Date, the Licensee may construct the Pontoon on the Licence Area and will allow Mercury to inspect the location of the Pontoon and the installation works. As soon as practicable following installation of the Pontoon, the Licensee will provide Mercury with written confirmation from a suitably qualified person that the Pontoon has been built and installed in the Licence Area in accordance with all applicable laws and regulations.
- 3.4 The Licensee may erect a sign on the Licence Area provided the Licensee obtains Mercury's prior written approval of such sign (such approval not to be unreasonably withheld or delayed).

4 MAINTENANCE AND CARE OF THE LICENCE AREA

- 4.1 The Licensee will, at its sole expense and in a proper and workmanlike manner and to Mercury's reasonable requirements, maintain the Pontoon and ensure regular maintenance checks are undertaken in respect of the Pontoon.

- 4.2 The Licensee shall keep the Licence Area clean and tidy and regularly remove all rubbish from the Licence Area.
- 4.3 The Licensee will immediately (or as soon as reasonably practicable taking into account the nature of the damage) make good any damage caused directly or indirectly by the Licensee or those for whom the Licensee is responsible to Mercury's reasonable requirements.
- 4.4 If the Licensee defaults in any of its obligations to maintain or repair under this Licence, Mercury may arrange for such repair or maintenance to be completed at the cost of the Licensee and the Licensee shall immediately reimburse Mercury for such expense, but without prejudice to Mercury's other rights and remedies under this Licence.

5 EXCLUSION OF LIABILITY

To the extent permitted by law, under no circumstances will Mercury, its employees, agents or sub-contractors be liable in contract, tort or otherwise for any loss or damage suffered by the Licensee arising out of the Permitted Use, this Licence or the use by the Licensee of the Licence Area.

6 INDEMNITY

The Licensee will indemnify Mercury against all loss, damage, liability, cost, expense, fines, penalties, liability or proceeding suffered or incurred at any time by Mercury as a direct or indirect result of any breach of any of the Licensee's obligations, undertakings or warranties contained or implied in this Licence or as a direct or indirect result of the Licensee's activities on the Licence Area.

7 PUBLIC LIABILITY INSURANCE

The Licensee shall keep current a policy of public liability insurance for \$1,000,000.00.

8 RELEASE

- 8.1 The Licensee acknowledges that:
- (a) the Permitted Use may be affected by fluctuating lake and river levels and flows associated with the operation of the Hydro System, including possible flooding. The Licensee acknowledges and agree that it uses the Licence Area completely at its own risk (in all respects); and
 - (b) Mercury will have no obligation or liability to the Licensee in respect of any loss, damage, cost, or expense incurred by or to the Licensee and/or its

invitees arising out of the Permitted Use or the Licensee's use of the Licence Area.

9 NO WARRANTY

9.1 The Licensee acknowledges that:

- (a) Mercury has made no warranty, representation or claim in respect of the Licence Area or its characteristics (including whether the Permitted Use is a permitted activity under the relevant Regional or District Plans), which has induced the Licensee to enter this Licence; and
- (b) the Licensee has entered this Licence completely in reliance on the Licensee's own skill and knowledge.

10 ASSIGNMENT

This Licence is personal to the Licensee and may not be assigned or otherwise disposed of and its benefits shall not be shared with or in any way made available to any other person.

11 EARLY TERMINATION

- 11.1 This Licence shall be terminable by either party at any time by giving one months' notice in writing to the other (*Cancellation Notice*).
- 11.2 The Licensee shall not be entitled to any form of compensation, damages or claim of whatsoever kind for any early termination on account of any inconvenience or loss or for any other reason as a consequence of such termination.

12 TERMINATION

- 12.1 The Licensee will, 10 Business Days before the Expiry Date or if terminated earlier, within 10 Business Days after the date of termination of this Licence:
 - (a) remove the Pontoon and any other structures on the Licence Area, making good any damage caused to Mercury's reasonable satisfaction. Any structures remaining on the Licence Area after the applicable 10 Business Day period will, at Mercury's election (in its sole and absolute discretion), become the property of Mercury without any compensation, payment or any claim against Mercury by the Licensee or otherwise be removed by Mercury at the cost of the Licensee in all respects; and

- (b) make good the Licence Area in accordance with the Licensee's obligations in this Licence, including but not limited to, the obligations set out in clause 4 (Maintenance).

12.2 Termination of this Licence shall be without prejudice to the rights and remedies of either party against the other in respect of any antecedent claim or breach.

13 DEFAULT

13.1 If the Licensee fails to comply with any term contained or implied in this Licence, including payment of the Licence Fee, then Mercury may serve notice of the breach in accordance with the requirements of the Property Law Act 2007 (*Default Notice*). The Licensee must make good the breach within 10 Business Days of the date of the Default Notice. If the Licensee fails to do so, this Licence may be immediately terminated by Mercury by notice in writing served upon the Licensee (*Termination Notice*).

13.2 The Licensee will have 10 Business Days from the date of receipt of the Termination Notice to remove the Pontoon and any structures, improvements, chattels, stock or machinery and make good any damage caused by such removal and will comply with clause 11 of this Licence.

13.3 The Licensee will not be entitled after expiry of the 10 Business Days to enter onto the Licence for any purpose and the Licensee will have no claim against Mercury in respect of the Licence Area or any structures, improvements, chattels, stock or machinery of the Licensee remaining on the Licence Area.

14 COMPLIANCE WITH STATUTES

14.1 The Licensee will comply with:

- (a) the provisions of all Regional and District Plans, and any Conservation Management Strategy, or Conservation Management Plan, pursuant to Part IIIA of the Conservation Act 1987;
- (b) the Conservation Act 1987;
- (c) the Biosecurity Act 1993;
- (d) the Building Act 2004;
- (e) the Resource Management Act 1991;
- (f) the Health and Safety at Work Act 2015;

- (g) the provisions of any other relevant statute or regulation affecting the Licence Area and Mercury's use of it and relating to the Licensee's use of the Licence Area;
- (h) the provisions of all licences, requisitions and notices issued by any competent authority in respect of the Licence Area and Mercury's use of it and its use by the Licensee; and
- (i) Mercury's security, and health and safety requirements.

15 LICENCE NOT A LEASE

- 15.1 This Licence is intended as a personal privilege and is not to take effect as a lease, right of first refusal or option to purchase the Licence Area nor does it create any legal estate in the Licence Area.
- 15.2 The Licensee accepts and acknowledges that it has no right to lodge a caveat against the Licence Area to protect its rights and interests pursuant to this Licence.
- 15.3 The Licence is non-exclusive and does not restrict access to the Licence Area by Mercury (its officers, employees, consultants, workmen, invitees or other licensees). For the avoidance of doubt, this Licence is non-exclusive licence and Mercury shall have the right to enter the Licence Area, with or without invitees, employees, agents, and advisors for any reason. Mercury shall take reasonable measures to ensure that disturbance to the Licensee from such access is kept to a minimum.

16 COSTS

The parties will meet their own costs relating to the negotiation, preparation and completion of this Licence.

17 DISPUTE RESOLUTION

- 17.1 The parties acknowledge that they wish to avoid or minimise any differences or disputes arising out of and from the terms of this Licence. The parties therefore agree that if any difference or dispute arises between them they will actively, openly and in good faith negotiate that difference or dispute with a view to achieving a quick resolution.
- 17.2 If the parties cannot resolve a dispute or difference within 10 Business Days of any dispute or difference arising then, unless otherwise expressly provided in this Licence, they will without prejudice to any other right, explore whether such dispute or difference can be resolved by agreement between them using informal

dispute resolution techniques such as mediation. The rules governing any such technique if adopted will be agreed between the parties or as selected by the organisation known as "LEADR" (Lawyers Engaged in Alternative Dispute Resolution).

- 17.3 If the parties cannot agree on any dispute resolution technique within a further 15 Business Days of any dispute or difference being referred by both parties to any informal dispute resolution technique under clause 22.2 then the difference or dispute will be determined by arbitration by a sole arbitrator in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

18 NOTICES

- 18.1 All notices under this Licence must be in writing and sent by personal delivery, post, facsimile or email, to the address, number or email address as set out in the First Schedule.

- 18.2 A notice will only be effective:

- (a) in the case of personal delivery, when delivered;
- (b) if posted, when it would have been delivered in the ordinary course of the post and in any event at the end of the fifth Business Day after the day of the posting;
- (c) if made by facsimile, upon production of a transmission report by the machine from which the facsimile was sent which indicates complete transmission to the facsimile number of the recipient designated for the purposes of this Licence;
- (d) if emailed, when the receiving party acknowledges receipt orally or by return email or otherwise in writing (except that an automatically generated return email is not sufficient), and in any event at the end of the first Business Day after the day the email was sent,

provided that a notice received or deemed to be received after 5pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent shall be deemed not to have been received until the next Business Day in that place.

19 WAIVER

No waiver or failure to act by Mercury in respect of any breach by the Licensee shall operate as a waiver of another breach.

20 IMPLIED RELATIONSHIPS

Nothing contained in this Licence shall be deemed or construed or constitute any party or parties' agent or representative or be deemed to create any trust, commercial partnership or joint venture.

21 SEVERABILITY

If any part of this Licence is held by any court or administrative body of competent jurisdiction to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining parts of this Licence.

22 NON-MERGER

The parties acknowledge and agree that certain covenants set out in this Licence shall continue beyond the expiry or sooner determination of this Licence for the benefit of the parties notwithstanding expiry or sooner determination of the Licence.

23 GOVERNING LAW

This Licence shall be construed and take effect in accordance with the laws of New Zealand.

24 INTERPRETATION

In this Licence:

- (a) references to *Mercury* include the successors of Mercury;
- (b) references to the Licensee are a reference to [Insert] and include its invitees (including the general public);
- (c) words or phrases which appear in this Licence mean and include those details supplied after those words or phrases in the First Schedule;
- (d) *Business Days* means any weekdays on which registered banks are open for normal banking business in Hamilton; and
- (e) a reference in this Licence to any laws, legislation or legislative provision includes any statutory modification, amendment, or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision.

LICENCE TO OCCUPY - OHAKURI

THIRD SCHEDULE

PLAN OF THE LAND AND LICENCE AREA