

**THE TRUSTEES OF TE KAWERAU IWI SETTLEMENT TRUST**

**and**

**THE CROWN**

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**DEED TO AMEND THE DEED OF SETTLEMENT OF  
HISTORICAL CLAIMS**

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**DEED TO AMEND THE DEED OF SETTLEMENT**

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**DEED TO AMEND THE DEED OF SETTLEMENT**

**THIS DEED** is made on

**BETWEEN**

**THE TRUSTEES OF TE KAWERAU IWI SETTLEMENT TRUST**

**AND**

**THE CROWN** in right of New Zealand acting by the Minister for Treaty of Waitangi  
Negotiations

## DEED TO AMEND THE DEED OF SETTLEMENT

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### BACKGROUND

- A. The trustees of Te Kawerau Iwi Settlement Trust and the Crown are parties to a deed of settlement dated 22 February 2014 (the “**deed of settlement**”).
- B. The trustees and the Crown wish to enter into this deed to record formally, in accordance with paragraph 5.1 of the general matters schedule of the deed of settlement, certain amendments to the deed of settlement.

**IT IS AGREED** as follows:

#### **1. EFFECTIVE DATE OF THIS DEED**

- 1.1 This deed takes effect when it is signed by the parties.

#### **2. TE HENGA**

- 2.1 The Crown has provided disclosure information in relation to Te Henga site A, Te Henga site B and Parihoa site A, by various correspondence sent between 1 June 2014 and 12 June 2014, in addition to the disclosure information referred to in the property redress schedule of the deed of settlement.
- 2.2 For the avoidance of doubt, paragraph 1.2.2 of the property redress schedule of the deed of settlement is to be read to include the disclosure information referred to in clause 2.1.
- 2.3 The parties acknowledge that the vesting of Te Henga site B under the settlement legislation is subject to -
  - 2.3.1 the governance entity granting a registrable easement in gross in relation to that site in the form in part 7.5 of the documents schedule (Te Henga site B Easement A);
  - 2.3.2 the governance entity granting a registrable easement in favour of the registered proprietors of the land contained in computer freehold registers NA651/232, NA885/206, and NA885/207 in relation to that site in the form in Schedule 2 of this deed (Te Henga site B Easement B); and
  - 2.3.3 the interests in relation to that site referred to in schedule 3 of the settlement legislation, including the registered easements for rights to convey water, electricity, telecommunications and computer media and the unregistered licence and concessions.
- 2.4 The parties acknowledge that the vesting of Parihoa site A under the settlement legislation is subject to the interests in relation to that site referred to in schedule 3 of the settlement legislation, including the unregistered concessions.

## DEED TO AMEND THE DEED OF SETTLEMENT

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### 3. AMENDMENTS TO THE DEED OF SETTLEMENT

#### 3.1 The deed of settlement –

3.1.1 is further amended by making the changes set out in schedules 1 and 2 to this deed; and

3.1.2 remains unchanged except to the extent provided by this deed.

### 4. DEFINITIONS AND INTERPRETATION

#### 4.1 Unless the context otherwise requires:

“**deed of settlement**” and “**deed**” have the meaning given to “deed of settlement” by paragraph A of the background; and

“**parties**” means the trustees and the Crown.

#### 4.2 Unless the context requires otherwise:

4.2.1 terms or expressions defined in the deed of settlement have the same meanings in this deed; and

4.2.2 the rules of interpretation in the deed of settlement apply (with all appropriate changes) to this deed.

### 5. COUNTERPARTS

5.1 This deed may be signed in counterparts which together shall constitute one agreement binding on the parties, notwithstanding that both parties are not signatories to the original or same counterpart.

DEED TO AMEND THE DEED OF SETTLEMENT

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Miriama Tamaariki

WITNESS



Name: Rewi Newton

Occupation: 517 Oruarangi Rd  
Executive Officer

Address: 517 Oruarangi Rd  
Mangere

Manukau  
Auckland 2022



Ngarama Walker

WITNESS



Name: Rewi Newton

Occupation: Executive Officer


Address: 517 Oruarangi Rd  
Mangere

Manukau  
Auckland 2022


DEED TO AMEND THE DEED OF SETTLEMENT

SIGNED as a deed on

SIGNED by the trustees of TE KAWERAU IWI SETTLEMENT TRUST as trustees of that trust in the presence of:

  
Te Warena Taua

WITNESS



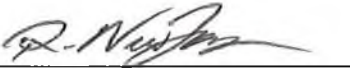
Name: *Rewi Newton*

Occupation: *Executive Officer*

Address: *517 Oruarangi Rd  
Mangere  
Manukau  
Auckland 2022*

  
George Hori Winikerei Taua

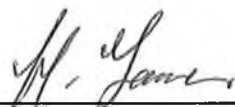
WITNESS




Name: *Rewi Newton*

Occupation: *Executive Officer*

Address: *517 Oruarangi Rd  
Mangere  
Manukau 2022  
Auckland*

  
Hamuera Taua

WITNESS



Name: *Rewi Newton*

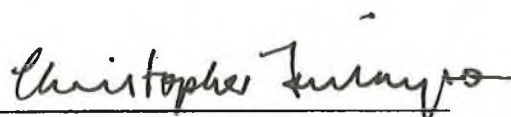
Occupation: *Executive Officer*

Address: *517 Oruarangi Rd  
Mangere  
Manukau  
Auckland 2022*

DEED TO AMEND THE DEED OF SETTLEMENT

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**SIGNED** for and on behalf of **THE CROWN** by  
the Minister for Treaty of Waitangi  
Negotiations in the presence of:

  
Hon Christopher Finlayson

WITNESS

  
\_\_\_\_\_

Name: *PATRICK SOUTHEE*

Occupation: *PRIVATE SECRETARY*

Address: *WELLINGTON*

**DEED TO AMEND THE DEED OF SETTLEMENT**

**SCHEDULE 1**

**AMENDMENTS TO DEED OF SETTLEMENT**

<b>Clause or Schedule or attachments of the deed of settlement</b>	<b>Amendment to the deed of settlement</b>
Clause 5.12.5	<p>This clause is deleted and replaced as follows:</p> <p>“the fee simple estate in Te Henga site B as a historic reserve, with the governance entity as the administering body, subject to the governance entity granting –</p> <p>(a) a registrable easement in relation to that site in the form in part 7.5 of the documents schedule (Te Henga site B Easement A); and</p> <p>(b) a registrable easement in relation to that site in the form in part 7.6 of the documents schedule (Te Henga site B Easement B); and”.</p>
General matters schedule, paragraph 6.1, page 19	The number “40” replaces the number “60” in the definition of <b>settlement date</b> .
Property redress schedule, paragraph 1.2.2	The cross reference in this clause to “paragraph 1” is deleted and replaced with “paragraph 1.1”.
Property redress schedule, part 7, Appendix 1, page 14	<p>The following drafting note is inserted immediately after the heading “Appendix 1”:</p> <p><b><i>[Note: If these instructions apply to a leaseback property that is to be leased back to the Ministry of Education but is not located within the area governed by Auckland Council, the references relating to deeming the most appropriate zoning must be deleted. These instructions may be modified to apply to more than one deferred selection property.]</i></b></p>
Property redress schedule, part 7, Appendix 1, page 15	<p>The heading “MARKET VALUE OF A SCHOOL SITE” and the paragraphs immediately after that header (up to but not including the heading “VALUATION OF PROPERTY”) are deleted and replaced with the following:</p> <p><b>“[MARKET VALUE OF A SCHOOL SITE</b></p> <p>For the purposes of these instructions the intention of the parties in respect of</p>



## DEED TO AMEND THE DEED OF SETTLEMENT

	<p>a school site is to determine a transfer value to reflect the designation and use of the land for education purposes.</p> <p>The market value of a school site is to be calculated as the market value of the property, exclusive of improvements, based on highest and best use calculated on the zoning of the property in force at the valuation date, less 20%.</p> <p>A two step process is required:</p> <ol style="list-style-type: none"><li>1) firstly, the assessment of the unencumbered market value (based on highest and best use) by:<ol style="list-style-type: none"><li>(a) disregarding the designation and the Crown leaseback; and</li><li>(b) considering the zoning in force at the valuation date; and</li><li>(c) excluding any improvements on the land; and</li></ol></li><li>2) secondly, the application of a 20% discount to the unencumbered market value to determine the market value as a school site (transfer value).</li></ol> <p>[If, in the relevant district or unitary plan, the zoning for the school site is Specialised (as defined below), the zoning for the school site for the purposes of step 1(b) of the two-step process above will be deemed to be the Alternative Zoning (as defined below).</p> <p>For the purposes of these instructions:</p> <ul style="list-style-type: none"><li>• "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).</li><li>• "Alternative Zoning" means the most probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order):<ol style="list-style-type: none"><li>(a) the underlying zoning for the school site (if any);</li><li>(b) the zoning for the school site immediately prior to its Specialised zoning;</li><li>(c) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;</li><li>(d) if the school site is within the Auckland Council area, the underlying zoning applied to the school site in the Draft Auckland Unitary Plan publicly notified 15 March 2013, namely [<i>insert the zoning from the Draft Auckland Unitary Plan publicly notified 15 March 2013</i>]; and</li><li>(e) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning</li></ol></li></ul>
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**DEED TO AMEND THE DEED OF SETTLEMENT**

	<p style="text-align: center;">which provides for the highest and best use of the school site.]</p> <p>The transfer value is used to determine the initial annual rent based on an agreed rental percentage of the agreed transfer value, determined in accordance with the Crown leaseback (plus GST, if any, on the amount so determined).]"</p>
<p>Property redress schedule, part 7, Appendix 1, page 18</p>	<p>At paragraph (d), the following words are inserted immediately after the words "details of your assessment of the highest and best use of the property":</p> <p>"[including, where relevant, details of the deemed most appropriate zoning for the school site]"</p>
<p>Documents schedule, part 7.1, page 61</p>	<p>The addresses for service in Schedule 2 of the Muriwai Conservation Covenant are deleted and replaced as follows:</p> <p>"The address for service for the Owner is:</p> <p>Te Kawerau Iwi Settlement Trust PO Box 59243 Mangere Bridge Auckland</p> <p>The address for service for the Minister is:</p> <p>Conservation Partnerships Manager Department of Conservation Ground Floor - Building 2 Carlaw Park Commercial 12-16 Nicholls Lane Parnell Auckland".</p>
<p>Documents schedule, part 7.2, page 75</p>	<p>The address for service in Schedule 2 of the Oparerira Conservation Covenant is deleted and replaced as follows:</p> <p>"The address for service for the Owner is:</p> <p>Te Kawerau Iwi Settlement Trust PO Box 59243 Mangere Bridge Auckland</p> <p>The address for service for the Minister is:</p> <p>Conservation Partnerships Manager Department of Conservation Ground Floor - Building 2 Carlaw Park Commercial 12-16 Nicholls Lane Parnell Auckland".</p>

**DEED TO AMEND THE DEED OF SETTLEMENT**

<p>Documents schedule, part 7.3, page 88</p>	<p>The addresses for service in Schedule 2 of the Parihoa site A Conservation Covenant are deleted and replaced as follows:</p> <p>"The address for service for the Owner is:</p> <p>Te Kawerau Iwi Settlement Trust PO Box 59243 Mangere Bridge Auckland</p> <p>The address for service for the Minister is:</p> <p>Conservation Partnerships Manager Department of Conservation Ground Floor - Building 2 Carlaw Park Commercial 12-16 Nicholls Lane Parnell Auckland".</p>
<p>Documents schedule, part 7.4, page 94</p>	<p>The description of "The Easement Area" in the second column of Annexure Schedule A of the Parihoa Site A Easement is amended by replacing the description "marked "A" on SO XXXX" with "marked "B" on SO 477158".</p> <p>The description of "The Grantor's Land" in the third column of Annexure Schedule A of the Parihoa Site A Easement is amended by replacing the description "Section 1 SO XXXX" with "Section 1 SO 477158".</p>
<p>Documents schedule, part 7.5, page 99</p>	<p>The heading of this part is deleted and replaced with "Encumbrances – Te Henga Site B Easement A".</p>
<p>Documents schedule, part 7.5, page 102</p>	<p>The description of "The Easement Area" in the second column of Annexure Schedule A of the Te Henga Site B Easement A is amended by replacing the description "marked "A" on SO XXXX" with "marked "A" and "B" on SO 487333".</p> <p>The description of "The Grantor's Land" in the third column of Annexure Schedule A of the Te Henga Site B Easement is amended by replacing the description "Section 1 SO XXXX" with "Section 3 SO 477158".</p>
<p>Documents schedule, part 7.6</p>	<p>New part 7.6 headed "Encumbrances – Te Henga Site B Easement B" is inserted immediately after part 7.5 in the form set out in schedule 2 to this deed.</p>

**DEED TO AMEND THE DEED OF SETTLEMENT**

<p>Documents schedule, part 8, page 112</p>	<p>The following new item 8A is inserted immediately after item 8 in Schedule A of the Ministry of Education Treaty Settlement Lease:</p> <p><b>"ITEM 8A UNDERLYING ZONING</b></p> <p style="text-align: center;"><i>[Insert underlying zoning applied to the Land in the Draft Auckland Unitary Plan publicly notified 15 March 2013]"</i></p>
<p>Documents schedule, part 8, page 116</p>	<p>The following new clauses are inserted immediately after clause 3.3 of the Ministry of Education Treaty Settlement Lease:</p> <p>"3.3A. If, in the relevant district or unitary plan, the zoning for the school site is Specialised (as defined in clause 3.3B), the zoning for the school site for the purposes of clause 3.3 will be deemed to be the Alternative Zoning (as defined in clause 3.3B).</p> <p>3.3B For the purposes of clauses 3.3B and 3.3C:</p> <ul style="list-style-type: none"> <li>(a) "Specialised" means specialised for a school site or otherwise specialised to a public or community use or public work (including education purposes).</li> <li>(b) "Alternative Zoning" means the most probable zoning which provides for the highest and best use of the school site as if the school (or any other public or community use or public work, including education purposes) was hypothetically not present. The Alternative Zoning will be determined with reference to (in no particular order): <ul style="list-style-type: none"> <li>(i) the underlying zoning for the school site (if any);</li> <li>(ii) the zoning for the school site immediately prior to its Specialised Zoning;</li> <li>(iii) the zoning of land adjacent to or in the immediate vicinity of the school site (or both) if there is a uniform neighbouring zone;</li> <li>(iv) if the school site is within the Auckland Council area, the underlying zoning applied to the school site in the Draft Auckland Unitary Plan publicly notified 15 March 2013, as set out in Item 8A of the First Schedule; and</li> <li>(v) any other relevant consideration in the reasonable opinion of a registered valuer that would support the most probable zoning which provides for the highest and best use of the school site.</li> </ul> </li> </ul> <p>3.3C If, during the rent review process, the registered valuers do not agree on the Alternative Zoning, the process set out in clause 3.5 will apply (with necessary modifications) to the determination of the Alternative Zoning, where applicable, at the same time that the Annual Rent is</p>

**DEED TO AMEND THE DEED OF SETTLEMENT**

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	determined under clause 3.5.”
Attachments, part 2	The words "Right of First Refusal Area" are deleted and replaced with the word "land" on the title of Deed Plan OTS-106-22 "Te Onekiritea Point Right of First Refusal Area".
Attachments, part 3A	The word "land" is inserted immediately following the words "Te Onekiritea Point" in the first column under the heading "Property".

SCHEDULE 2

7.6 **Encumbrances – Te Henga Site B Easement B**

**EASEMENT INSTRUMENT  
to grant easement**

**Sections 90A and 90F, Land Transfer Act 1952**

**Land Registration District**

North Auckland

**Grantor**

*Surname must be underlined*

Te Warena Taua, George Hori Winikerei Taua, Ngarama Walker, Hamuera Taua, and Miriama Tamaariki

**Grantee**

*Surname must be underlined*

Anthony Alan Lusk, as to the land in computer freehold register NA651/232, and  
John Knight Harre, Judith Elaine Harre, Smith & Partners Trustee Co. Limited as to the land in  
computer freehold register NA885/206, and  
Malcolm McFarlane Harre, James Douglas Harre and Andrew John Harre, as to the land in computer  
freehold register NA885/207

**Grant of easement**

**The Grantor**, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** the easement set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule

Dated this

day of

2015

**ATTESTATION:** (See insert sheet for continuation of attestations)

Signed by

Signed in my presence by the Grantor:

-----  
Signature of Grantor  
Te Warena Taua

\_\_\_\_\_  
*Signature of Witness*

**Witness Name:**

**Occupation:**

**Address:**

MC5147279.2

All signing parties and either their witnesses or solicitors must sign or initial in this box.













## ANNEXURE SCHEDULE

Easement Instrument	Dated:	Page of pages
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### BACKGROUND

- A The Grantor is the administering body established under section 64 of the Te Kawerau ā Maki Claims Settlement Act 2015 of the land described as Section 3 SO 477158 (**Land**).
- B The Land is known as Te Henga Historic Reserve under the Te Kawerau ā Maki Claims Settlement Act 2015, and is subject to the Reserves Act 1977.

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 In this Easement:

**Access Fee** means during any Renewal Term, the fee payable by each Grantee to the Grantor during that particular Renewal Term for the grant of the Easement for which they have the benefit as provided for in this Easement Instrument, calculated or determined in accordance with the provisions of clause 5.2;

**Accessway** means that part of the Easement Land that is the formed track as at the date of this Easement;

**Default Interest Rate** means that rate which is 5% above the then wholesale 90 day bank bill rate as published by the Reserve Bank of New Zealand;

**Easement** means this Easement Instrument;

**Easement Area C** means that part marked C on SO 487333 set out in Schedule A;

**Easement Area D** means that part marked D on SO 487333 set out in Schedule A;

**Easement Area E** means that part marked E on SO 487333 set out in Schedule A;

**Easement Land** means:

- (a) Easement Area C and Easement Area D, in respect of the Grantee's Land held in computer freehold register NA651/232; and
- (b) Easement Area C and Easement Area E, in respect of the Grantee's Land held in computer freehold registers NA885/206 and NA885/207;

**Grantee** in respect of each part of the Grantee's Land, is the registered proprietor of each computer freehold register specified as the Grantee's Land in Schedule A, and includes any successors or assigns of the Grantee and, where the context permits, the Grantee's employees, contractors, lessees, licensees, agents and invitees;

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## ANNEXURE SCHEDULE

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

**Grantor** is the registered proprietor of the Grantor's Land in Schedule A and includes any successors in title of the Grantor and, where the context permits the Grantor's employees, contractors, lessees, licensees and agents;

**GST** means the Good and Services Tax arising pursuant to the Goods and Services Tax Act 1985;

**Heavy Motor Vehicle** has the meaning given to it in the Land Transport Act 1998;

**Initial Term** means the term of 60 years from the settlement date under the Te Kawerau ā Maki Claims Settlement Act 2015;

**maintain** includes maintain, repair, renew and inspect and **maintenance** has a similar meaning;

**Renewal Dates** means the 60<sup>th</sup> anniversary of the commencement of the Initial Term and the date every 30 years thereafter and **Renewal Date** means any one of these dates;

**Renewal Term** means a renewal term of 30 years of the Easement commencing from the relevant Renewal Date as granted pursuant to clause 5; and

**Working Day** means any day of the week excluding Saturday, Sunday, national statutory holidays (or the Monday on which they are observed), and the anniversary days commonly observed in Wellington and Auckland.

1.2 In the interpretation of this Easement, unless the context otherwise requires:

1.2.1 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement;

1.2.2 references to any statute, regulation or other statutory instrument or bylaw shall be deemed reference to the statute, regulation, instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those referred to; and

1.2.3 the singular includes the plural and vice versa and words incorporating any gender shall include every gender.

## 2 RIGHT OF WAY

2.1 The right of way comprises the right for the Grantee in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the Easement Land for the purpose of ongoing access to and from the Grantee's Land. Unless otherwise permitted by the Grantor, the ongoing right to access to and from the Grantee's Land will be limited to the purpose of accessing a single dwelling (including ancillary improvements) situated on the whole of the land area comprised in each of the three properties held in the three separate computer freehold registers set out in Schedule A (together described as the Grantee's Land) as at the date of this Easement and any

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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

subsequent subdivision of those properties (to adjust the existing boundaries and/or create more allotments) will not affect this limitation.

2.2 The right of way includes the right to go over and along the Easement Land with or without any kind of:

2.2.1 domestic animal; or

2.2.2 motor vehicle, machinery or implement, but not any Heavy Motor Vehicle unless the Heavy Motor Vehicle is reasonably necessary for the purpose of carrying out maintenance to the Easement Land and/or the Grantee's Land (including any improvements on the Grantee's Land).

2.3 The right of way includes:

2.3.1 the right to maintain the existing Accessway over the Easement Land; and

2.3.2 the right to have the Easement Land kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the Accessway but subject to clause 3.2.

**3 GENERAL RIGHTS**

3.1 The right of way comprises the right to use the Easement Land for the purposes set out in clause 2.

3.2 The Grantor must not do and must not allow to be done on the Grantor's Land anything that may interfere with or restrict the rights under this Easement or of any other party or interfere with the efficient operation of the Easement. Notwithstanding the foregoing, the Grantee acknowledges that the Grantor has no obligation to:

3.2.1 clear any obstruction on the Easement Land; or

3.2.2 replace or provide support to the Easement Land due to any falling away or erosion of the Easement Land,

other than any obstruction which the Grantor has deliberately or recklessly created, or any falling away or erosion of the Easement Land due to any deliberate or reckless act of the Grantor.

3.3 Except as provided in this Easement the Grantee must not do and must not allow to be done on the Grantor's Land or the Grantee's Land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the Easement.

3.4 The Grantee will promptly notify the Grantor of any accident or damage (which is more than of a minor nature) which the Grantee becomes aware of which occurred on or in relation to the Easement Land.

<b>All signing parties and either their witnesses or solicitors must sign or initial in this box.</b>
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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

**4 TERM**

- 4.1 The Easement is granted for the Initial Term, but subject to the perpetual right to renew the Easement as set out in clause 5.1 and the right to surrender the Easement in clause 4.2.
  
- 4.2 The Grantee may surrender the Easement at any time during the Initial Term or a Renewal Term upon the giving of 3 months written notice to the Grantor that it wishes to surrender this Easement in whole or in part subject to the following provisions:
  - 4.2.1 The Grantee having the benefit of the right to use Easement Areas C and D for the benefit of the Grantee's Land contained in computer freehold register NA651/232 may only surrender this Easement in part insofar as it relates to these Easement Areas (and in respect of Easement Area C, only insofar as this Easement benefits the Grantee's Land held in computer freehold register NA651/232).
  
  - 4.2.2 The Grantee having the benefit of the right to use Easement Areas C and E for the benefit of the Grantee's Land contained in computer freehold register NA885/206 may only surrender this Easement in part insofar as it relates to these Easement Areas and only insofar as this Easement benefits the Grantee's Land held in computer freehold register NA885/206.
  
  - 4.2.3 The Grantee having the benefit of the right to use Easement Areas C and E for the benefit of the Grantee's Land contained in computer freehold register NA885/207 may only surrender this Easement in part insofar as it relates to these Easement Areas and only insofar as this Easement benefits the Grantee's Land held in computer freehold register NA885/207.
  
  - 4.2.4 If the surrender of the Easement in whole or in part is due to the reason that the Easement Land or any of the Easement Areas C, D and/or E are no longer suitable to be used for the purposes set out in clause 2, the parties will discuss in good faith as to whether alternative accessway route(s) on the Grantor's Land may be granted in substitution, such grant to be on the such terms as the parties agree at that time. To avoid doubt, the Grantor is not obliged by this clause to necessarily grant any easement in substitution.
  
  - 4.2.5 The Grantee requiring the partial surrender of this Easement will be responsible for all costs, including those reasonable costs incurred by the Grantor, in connection with the preparation and registration of any surrender instrument to give effect to the partial surrender (and where agreed, the granting of any replacement easement including associated survey costs). Where more than one Grantee is seeking to surrender this Easement (and where agreed, the granting of any replacement easement) at the same time, then those Grantees will be liable for those costs in equal shares.
  
  - 4.2.6 The Grantor will do all things (including signing any documents) necessary to give effect to the surrender (and where agreed, the granting of any replacement easement including the associated survey required to show the new easement areas) provided that at the time of the request, the Grantee is not in breach of any of its obligations under this Easement.

<b>All signing parties and either their witnesses or solicitors must sign or initial in this box.</b>
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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

4.2.7 Where the surrender is to take effect during a Renewed Term and an Access Fee has been paid in advance, the Grantee will be entitled to be refunded a prorated share of the Access Fee paid in advance as one lump sum for the unexpired period of the Renewal Term. Notwithstanding the foregoing, the Grantor shall be entitled to set off against any such refund payment, the cost of remedying any breach by the surrendering Grantee which has not been remedied as at the surrender date of this Easement by that Grantee or any Access Fee payable for the granting of any replacement easement (if applicable).

**5 RENEWAL TERMS**

5.1 The Grantee is entitled to a perpetual right to renew the Easement for a Renewal Term from each Renewal Date, subject to the following provisions:

5.1.1 the Grantee will be deemed to have exercised its right to renew the Easement for the Renewal Term on each Renewal Date provided that:

- (a) the Grantee has not given written notice to the Grantor that it does not wish to renew this Easement prior to the relevant Renewal Date; and
- (b) the Grantee has consistently complied with all of its material obligations under this Easement to the reasonable satisfaction of the Grantor during the Initial Term, or the then current Renewal Term, as the case may be; and
- (c) the Grantee is not in breach of any of its material obligations under the Easement as at the relevant Renewal Date; and

5.1.2 the Grantee will pay an Access Fee for each Renewal Term in accordance with clause 5.2; and

5.1.3 with the exception of clause 4.1, the terms of this Easement will apply to each Renewal Term; and

5.1.4 the Grantor and the Grantee will not be released from any liability for any breach of this Easement by the renewal of the Easement.

5.2 For each Renewal Term, each Grantee will pay an Access Fee (plus GST, if any) for the right of way granted in this Easement for that Grantee's benefit in accordance with the following provisions:

5.2.1 The amount of the Access Fee for the relevant Renewal Term will be determined as follows:

- (a) The Grantees and the Grantor acknowledge and agree that the Access Fee payable by each Grantee for each Renewal Term is to be consistent with the fee or fees that would be payable for the right of way granted by this Easement as if that right were granted by the Department of Conservation, or the relevant entity in the future assuming the relevant roles and responsibilities

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## ANNEXURE SCHEDULE

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

of the Department of Conservation for assessing and calculating concession activity and similar fees for grants of a similar nature (**Relevant Entity**). In determining the Access Fee for each Renewal Term:

- (i) the parties (or the independent expert, if applicable) will have regard to all relevant information that may be publicly available and/or through the Official Information Act 1982 (or any successor legislation) at that time on the methodology (including all applicable legislation and regulations) being used by the Relevant Entity for determining the fees payable for similar grants; and
  - (ii) if there is an applicable fee or fee range set by the Relevant Entity for comparable grants at or about the time of the relevant Renewal Date, then unless there is a good reason not to do so (having regard to the matters the Relevant Entity might take into account in determining such fees), the amount of the Access Fee payable under this Easement for each Renewal Term will be that applicable fee or set within the applicable fee range (as appropriate).
- (b) The Grantees and the Grantor will meet and in good faith endeavour to agree the Access Fee payable by each Grantee within the 12 month period prior to the relevant Renewal Date in accordance with clause 5.2.1(a). If the parties are unable to agree the Access Fee payable for a Renewal Period within 30 Working Days of the parties first meeting (or such longer period agreed by the parties), then:
- (i) the Grantees and the Grantor will endeavour to agree and jointly appoint a single independent expert who has the relevant experience and qualifications to determine the Access Fee in accordance with clause 5.2.1(a);
  - (ii) if the Grantees and the Grantor are unable to agree on the appointment of a single independent expert, then any of the parties can request the then president of the New Zealand Institute of Valuers (or its successor entity) to make such an appointment;
  - (iii) the expert must adopt a procedure which, in the expert's opinion, is the most simple and expeditious procedure practicable in the circumstances;
  - (iv) the parties must provide the expert with all relevant information that the expert reasonably requires (including any relevant information which it may have obtained from the Relevant Entity through publicly available information and/or Official Information Act requests (if necessary));
  - (v) the expert will assess and determine the Access Fee payable by each Grantee in accordance with clause 5.2.1(a) and in doing so, must act as an independent expert and not as an arbitrator;

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## ANNEXURE SCHEDULE

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- (vi) the expert must provide his or her written determination (including reasons) within 20 Working Days of the matter being referred to him or her;
- (vii) the determination of the expert will be final and binding on the parties;
- (viii) the cost of the expert and the Grantor's reasonable costs in relation to the expert determination (including those costs incurred in obtaining the information pursuant to clause 5.2.1(b)(iv)) will be borne by the Grantees equally; and
- (ix) each of the Grantees will bear its own costs in relation to the expert determination.

5.2.2 The Access Fee shall be capitalised and paid by the Grantee to the Grantor in one lump sum by the applicable date specified in clause 5.2.4 (but subject to clause 5.3).

5.2.3 All costs, including those reasonable costs incurred by the Grantor, in connection with any Renewal Term including but not limited to those incurred in connection with the calculation of the Access Fee payable by each Grantee, and the preparation and registration of any new Easement Instrument (if necessary) to give effect to the Renewal Term will be met by the Grantees in equal shares.

5.2.4 Each Grantee must pay the relevant Access Fee (plus GST, if any) associated with its right of way to the Grantor by the later of:

- (a) the relevant Renewal Date;
- (a) 30 Working Days following the date of delivery of the Grantor's notice specifying the Access Fee payable for the relevant Renewal Term; or
- (b) if the Access Fee is disputed, then 30 Working Days following the date the Access Fee is resolved in accordance with clause 5.2.1(b).

Where GST is payable in addition to the Access Fee, the Grantor must issue a valid tax invoice to the Grantee for the correct amount to be paid.

5.2.5 If a Grantee defaults in payment of the Access Fee for which it is liable under clause 5.2.4, then that Grantee will pay on demand interest at the default interest rate on the unpaid amount from the relevant due date for payment to the date of payment.

5.3 If during a Renewal Term, there is a change in the nature of the activity conducted on the Grantees' Land which affects the use and impact on the Easement Land, then either the Grantees or the Grantor can require the Access Fee to be reviewed in accordance with the provisions of clause 5.2 for the balance of the then current Renewal Term.

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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

5.4 The Grantor and each of the Grantees will do all things (including signing any documents) necessary to register any new Easement Instrument (as necessary) to give effect to a Renewal Term.

**6 MAINTENANCE AND COSTS**

6.1 The following provisions shall apply to the Grantee's maintenance obligations:

6.1.1 the Grantees are each equally responsible for the maintenance of Easement Area C and the associated costs;

6.1.2 the Grantee having the benefit of the right to use Easement Area D under this Easement is solely responsible for the maintenance of Easement Area D and the associated costs; and

6.1.3 the Grantees having the benefit of the right to use Easement Area E under this Easement are each equally responsible for the maintenance of Easement Area E and the associated costs,

and such maintenance obligations in each case includes repairing any damage caused by the general public or acts outside the Grantee's control and so as to keep the Easement Land in a safe and suitable condition for its intended use under this Easement (except for damage caused by the Grantor which the Grantor will be responsible for under clause 6.4).

6.2 Any earthworks or structures required for the purposes of complying with clause 6.1 (of more than a minor nature, having regard to previous earthworks or structures undertaken to maintain the accessway) will require the prior written consent of the Grantor (which must not be unreasonably withheld, but in considering whether or not to grant consent and/or impose any reasonable conditions which may be attached to the giving of such consent, the Grantor may have regard to the natural and historic values of the Easement Land).

6.3 In exercising any of the Grantee's rights in this Easement and complying with clause 6.1 the Grantee (or Grantees, if more than one) must:

6.3.1 obtain and comply with all necessary regulatory consents; and

6.3.2 avoid damaging or interfering with any historic, cultural or archaeological sites of which the Grantor has advised the Grantee (or Grantees, if more than one) are located on the Grantor's Land; and

6.3.3 avoid more than minor damage to trees and bush on the Grantor's Land provided that the Grantee will be entitled to trim back, fell and/or remove such trees and bush where these are situated on or encroach into the Easement Land as may be reasonably necessary for the purpose of clause 2.3.2 and/or to eliminate any hazard on the Easement Land; and

6.3.4 ensure that any felled trees and bush removed from the Grantor's Land are made available to the Grantor for its exclusive use.

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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

6.4 The Grantor or Grantee (or Grantees, if more than one) must promptly carry out at that party's sole cost any maintenance of the Easement Land that is attributable solely to an act or omission by that party.

6.5 The party or parties responsible for the maintenance in this clause 6 must meet any associated requirements of the relevant local authority including obtaining and complying with any necessary regulatory consents.

**7 RIGHTS OF ENTRY**

7.1 For the purpose of performing any duty or in the exercise of any rights conferred or implied in the Easement, the Grantee may, with the consent of the Grantor, which must not be unreasonably withheld:

7.1.1 enter upon the Grantor's Land by a reasonable route and with all necessary tools, vehicles permitted under clause 2.1, and equipment; and

7.1.2 remain on the Grantor's Land for a reasonable time for the sole purpose of completing the necessary work; and

7.1.3 leave any vehicles, machinery or equipment on the Grantor's Land for a reasonable time if work is proceeding.

7.2 The Grantee must ensure that as little damage or disturbance as possible is caused to the Grantor's Land or to the Grantor.

7.3 The Grantee must ensure that all work is performed in a proper, safe and workmanlike manner.

7.4 The Grantee must ensure that all work is completed promptly and in accordance with all applicable laws, regulations and other legal requirements.

7.5 The Grantee must immediately make good any damage done to the Grantor's Land by restoring the surface of the land as nearly as possible to its former condition.

7.6 The Grantee must compensate the Grantor for all damage to any buildings, erections, or fences on the Grantor's Land caused by the Grantee (including any damage arising in connection with any work carried out by the Grantee).

**8 ACKNOWLEDGEMENT AND INDEMNITY**

8.1 The Grantee acknowledges and accepts that it enters and uses the Easement Land strictly at its own risk (including but not limited to health and safety risk) and the Grantee shall only permit employees, contractors, lessees, licensees and agents and other invitees to enter upon the Easement Land on the same basis.

8.2 To the extent permitted by law, the Grantee indemnifies the Grantor against any loss, claim (including but not limited to any claim in respect of health and safety risk and/or non-

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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

compliance with any related environmental legislation or consents), damage, costs, expense, liability or proceeding suffered or incurred at any time by the Grantor in connection with the exercise by the Grantee of its rights under this Easement, or any breach by the Grantee of its obligations, undertakings or warranties contained or implied in this Easement, provided that this indemnity will not apply to any loss or claims to the extent that they arise from any breach by the Grantor of its obligations under this Easement.

**9 LIABILITY EXCLUDED**

Under no circumstances will the Grantor be liable in contract, tort, or otherwise to the Grantee for any expense, costs, loss, injury, or damage, arising as a result of the general public using the Easement Land or other matters which are outside of the control of the Grantor.

**10 DEFAULT**

If the Grantor or any Grantee does not meet the obligations implied or specified in this Easement:

10.1 any party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 15 Working Days from service of the notice of default (or such longer period as determined by the non-defaulting party (acting reasonably) having regard to the nature of the default and the remedial action required), the other party may meet the obligation; and

10.2 if, at the expiry of the period specified in the default notice:

10.2.1 the party in default has not met the obligation, the other party may:

- (a) meet the obligation; and
- (b) for that purpose, enter the Grantor's Land; and

10.2.2 if the party in default is the Grantee, and the Grantee has not met the obligation, the Grantee may not exercise the rights provided in this Easement until such time as the Grantee has remedied the default to the satisfaction of the Grantor; and

10.3 the party in default is liable to pay the other party the cost of preparing and serving the default notice and the reasonable costs incurred in meeting the obligation; and

10.4 the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

**11 DISPUTES**

If a dispute in relation to this Easement arises between the Grantor and any Grantee:

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**ANNEXURE SCHEDULE**

Easement Instrument	Dated:	Page of pages
---------------------	--------	---------------

- 11.1 the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- 11.2 the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- 11.3 if the dispute is not resolved within 30 Working Days of the written particulars being given (or any longer period agreed by the parties):
  - 11.3.1 then any party may refer the dispute to arbitration in accordance with the Arbitration Act 1996; and
  - 11.3.2 the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

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