

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAU**

Decision No. [2023] NZEnvC 259

IN THE MATTER OF

appeals under ss 23 and 24 of the Public
Works Act 1981

BETWEEN

S & D DROMGOOL

(ENV-2017-AKL-101)

AD & J POULTON

(ENV-2017-AKL-102)

NEWMAN FARMS LIMITED

(ENV-2017-AKL-103)

Objectors

AND

MINISTER FOR LAND
INFORMATION

Respondent

Court: Judge J A Smith sitting alone under s 279(1) of the Resource
Management Act 1991

Hearing: On the papers
Last case event: 21 November 2023

Counsel: J Prebble and N El Sanjak for the Respondent
D Salmon KC and A McDonald for the Objectors

Date of Decision: 30 November 2023

Date of Issue: 30 November 2023

**DETERMINATION OF THE ENVIRONMENT COURT AND REPORT
TO THE MINISTER ON OBJECTIONS**

Dromgool v Minister for Land Information



- A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the terms of the easements as annexed at Appendix A are endorsed and finalised.
- B: This determination is to be read together with the earlier Environment Court decision (*Dromgool v Minister for Land Information* [2018] NZEnvC 108) and provides the Court's final binding decision under s 24 of the Act for the Minister.
- C: There is no order as to costs.

REASONS

Background

[1] By decision dated 16 August 2016 the Minister for Land Information agreed to an application by Top Energy Limited to acquire easements to enable construction of the Kaikohe to Kaitaia single circuit, up to 110kV transmission line project.

[2] Following the decision by the Minister for Land Information to acquire the land, a Notice of Desire was issued and subsequently a Notice of Intention to Take in respect of each property on or about 8 June 2017.

[3] As no negotiated agreement was completed, the Minister then issued a notice under s 23 of the Public Works Act 1981 (**the Act**), subsequent to complying with s 23(1) of the Act.

[4] Objections were filed by Mr and Mrs Dromgool, Mr and Mrs Poulton, and Newman Farms Limited.

[5] On 11 July 2018, the Environment Court issued a report to the Minister stating:¹

We conclude, under s 24(7), the objectives of the Minister and Top Energy Limited are:

- (a) To construct a single circuit high voltage transmission line with a nominal operating voltage of up to 110kV, and other electrical and communication works together with all associated works from Kaikohe to Kaitaia. An

¹ *Dromgool v Minister for Land Information* [2018] NZEnvC 108, at [173] – [177].

easement is required over each of the Objectors' properties to allow this installation. (The Project).

(b) The Project is designed to:

- (i) improve the capacity, security and reliability of the electricity distribution network in the Far North region to meet growth and increasing demand for electricity in the region; and
- (ii) to remedy underlying network weakness to provide more secure supply for the region.

That adequate consideration has been given to alternative sites, routes and methods to achieve these objectives.

In all of the circumstances of this case, it is fair, sound and reasonably necessary to provide for the easements to achieve the objectives identified, subject to the easement being modified to be more directly applicable to the objectives and the individual properties.

The easements should be reviewed and subject to further negotiation or submission to more exactly reflect the Objectives, following the guidelines in Annexure F. The parties are to consider the resolution of the easement wording ...

The Court will then conclude whether it can proceed with the consideration of the final wording of the easement on the papers, or whether a further hearing is required.

[6] The Objectors appealed against the Environment Court report. In the High Court the appeal was successful in part and the report of the Environment Court was set aside.² However, the Court of Appeal reversed the High Court decision and confirmed the report of the Environment Court.³ Limited leave was granted to appeal to the Supreme Court. The Supreme Court remitted the matter back to the Environment Court to finalise the terms of the easements.⁴

Agreement reached

[7] The parties undertook without prejudice discussions. The parties have now reached agreement on costs, compensation for the easements over the Objectors' land and easement terms and seek the Court's endorsement of the easement terms.

² *Dromgool v Minister for Land Information* [2019] NZHC 1563.

³ *Minister for Land Information v Dromgool* [2021] NZCA 44.

⁴ *Dromgool v Minister for Land Information* [2022] NZSC 157.

[8] The consented amended easement terms now reached between the parties are annexed at **Appendix A**.

[9] The parties jointly seek an order by the Environment Court that endorses the terms of the easements and provides the Environment Court's final binding report under s 24(10) of the Act.

[10] No costs are sought under s 24(13) of the Act.

Consideration

[11] I note that an Environment Court Judge may conduct an inquiry alone by agreement.⁵

[12] The Court has read and considered the joint memorandum of counsel.

[13] The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting orders; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction and conform to the relevant requirements and objectives of the Act.

[14] The Terms of easement was reserved by the court as the focus of the hearing did not address this in detail. It appeared refinements could be made. As the parties have now settled on easement wording by agreement I do not consider it to be necessary to undertake any fulsome review of the terms. They appear to be appropriate generally and have been the subject of attention by all parties.

[15] Given the above, the Court orders, by consent, the terms of the easements at **Appendix A** to be the final easement terms of this project.

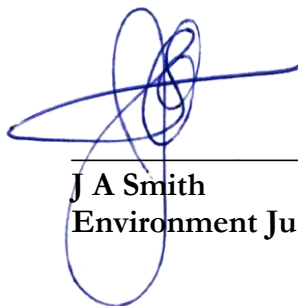
⁵ Public Works Act 1981, s 25.

[16] The Court is satisfied that s 24(7) of the Act is met and the Environment Court report dated 11 July 2018 read together with this determination is final and binding pursuant to s 24(10) of the Act.

Outcome

[17] The court reports accordingly to the Minister:

- (a) Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the terms of the easements as annexed at **Appendix A** are endorsed and finalised.
- (b) This determination is to be read together with the earlier Environment Court decision (*Dromgool v Minister for Land Information* [2018] NZEnvC 108);
- (c) These provide the Court's final binding decision under s 24 of the Act for the Minister; and
- (d) There is no order as to costs.



J A Smith
Environment Judge



Appendix A

Easement instrument to grant easement or *profit à prendre*

Section 109, Land Transfer Act 2017

Grantor

Surname(s) must be underlined.

SHANE RICHARD GEORGE DROMGOOL AND DOROTHY FELICIA DROMGOOL

Grantee

Surname(s) must be underlined.

TOP ENERGY LIMITED

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) ~~or profit(s) à prendre~~ set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule if required.

Purpose of Easement or <i>Profit à prendre</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to convey electricity telecommunications and computer media	"A" on SO 509424	Lot 13 DP 565070 (RT 1008459) Lot 14 DP 565070 (RT 1008460) Lot 15 DP 565070 (RT 1008461)	In gross

Easements or *profits à prendre* rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or **[substituted]** by:

~~[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.]~~

[The provisions set out in the Annexure Schedule B].

Annexure Schedule B

1. Definitions

1.1 In this Easement unless the context requires otherwise:

- 1.1.1 "Construct" means to build, construct, erect, install or lay the Works, access tracks, gates and/or fences contemplated by this Easement and includes anything that is reasonably necessary to give full effect to this Easement including removing soil and water from the Easement Area;
- 1.1.2 "Easement Area" means that part of the Land shown as Area A on Survey Office Plan 509424;
- 1.1.3 "Emergency Situation" means, a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity;
- 1.1.4 "Entry Notice" means the notice to be given pursuant to clause 6.1 of this Easement;
- 1.1.5 "Equipment" means cables, lines, wires, cranes, drilling rigs, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement;
- 1.1.6 "Grantee" means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with the Grantee's servants, agents, employees, workers, invitees, licensees and contractors with or without vehicles, machinery or equipment.
- 1.1.7 "Grantor" means the registered proprietor(s) for the time being of the Land.
- 1.1.8 "Land" means the Burdened Land, which is the land being Lot 13 Deposited Plan 565070 contained in identifier 1008459, Lot 14 Deposited Plan 565070 contained in identifier 1008460 and Lot 15 Deposited Plan 565070 contained in identifier 1008461 (all North Auckland Registry);
- 1.1.9 "Temporary Period" or "Temporary Periods" means such period or periods of time as are reasonable for the sole purpose or purposes of the Grantee occupying such part or parts of the Land as it requires for the purposes set out in clauses 2.1.1 through 2.1.9 and as detailed in the Entry Notice;
- 1.1.10 "Vehicles" means four-wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, excavation and earthmoving equipment, whether wheeled or tracked;
- 1.1.11 "Working Day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki, and Labour Day; and
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

- (c) A day in the period commencing on the 24th day of December in any year and ending on the 15th day of January in the following year, both days inclusive.

1.1.12 "Works" means electrical and telecommunications works and computer media and includes all or any part of any cables forming dual 110kV and 33kV circuits (including fibre optic cables for operating and maintaining the Grantee's network), wires, earthwires, conductors, poles, including monopoles and double pole "H" structures, insulators, foundations, culvert pipes, ground stays, supports, casings, devices, appliances, structures, fixtures and equipment as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network.

2. Grantee's Rights and Powers

2.1 The Grantee shall have the following rights and powers:

- 2.1.1 to Construct the Works and to remove, inspect, use, operate, repair, maintain, renew, alter, replace, upgrade, add to and modify the Works or any part of the Works on the Easement Area;
- 2.1.2 to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and telecommunications signals and computer media for operating and maintaining the Grantee's network, by means of the Works;
- 2.1.3 to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement and in so doing the Grantee may:
 - (a) drill for core samples and dig test pits;
 - (b) install and maintain testing and monitoring equipment;
 - (c) take away samples from the Easement Area for analysis;
- 2.1.4 to enter and remain on the Easement Area and such other part of the Land as is reasonably necessary in the circumstances with or without Vehicles, machinery and/or Equipment and with such personnel (including its employees, agents, contractors and/or consultants) for the purposes of exercising the Grantee's rights under this Easement;
- 2.1.5 to Construct, inspect, use, repair, maintain, renew, alter, remove and modify any access tracks on the Land, to modify adjacent fences (including boundary fences) on the Land and to remove or trim vegetation on the access tracks at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement with these rights to be exercised on the following terms:
 - (a) where any new access tracks on the Land are to be constructed such will be constructed by the Grantee as far as is practicably possible to enhance the land use operations on the Land by the Grantor;
 - (b) if during the course of the construction of the Works on the Land the Grantee uses any existing access tracks on the Land then these will be repaired and/or maintained as is necessary by the Grantee so that at the conclusion

of the construction of the Works such access tracks are left in as nearly as possible the same condition as they were in at the time of first entry onto the Land by the Grantee;

- (c) if the Grantee in the exercise of access to the Easement Area for the purposes of inspection, use, repair, maintenance, renewal, alteration, replacement, upgrading, addition to or modification of the Works uses access tracks on the Land it shall at the conclusion of such period of access repair and/or maintain those access tracks to ensure that the same are left in as nearly as possible the same condition as they were in at the time of the commencement of the exercise of the Grantee's rights hereunder.

2.1.6 to Construct gates within fences (including boundary fences) located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement;

2.1.7 to clear and keep the Easement Area clear of trees, shrubs, vegetation, structures (including fences), earth, gravel and stone, and to clear and keep such other part of the Land as is reasonably necessary in the circumstances clear of any trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;

2.1.8 to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement; and

2.1.9 to temporarily occupy any part of the Land that is reasonably necessary in the circumstances in order for the Grantee to exercise any of its rights under this Easement including the right to Construct the Works and in doing so the Grantee may fence off such part or parts of the occupied area as is reasonably necessary for a Temporary Period or Temporary Periods for health and safety purposes (subject to clause 3.1 of this Easement).

2.2 In undertaking any one or more of the rights and powers taken the Grantee:

2.2.1 May use its nominated employees, agents, consultants or contractors to perform the Works;

2.2.2 Will meet the full costs of the Works it undertakes;

2.2.3 For the avoidance of doubt the Grantee may enter on to the Land and undertake the Works on any day of the year including days which are not Working Days subject to the provisions of the Entry Notice given by the Grantee under clauses 6.1 and 6.2 of this Easement.

3. Grantee's obligations

3.1 The Grantee will use its best endeavours to cause as little interference as practical to the Grantor, any crops or livestock and any farming activities on the Land. The Grantee shall

at its expense in all things make good and reinstate the Land as and when same shall require reinstatement to ensure that the Land is left in as nearly as possible the same condition as it was at the time of the commencement of the Grantee's rights herein. In particular, but without limitation, when exercising its rights under this Easement, the Grantee shall ensure that:

3.1.1 it leaves all gates as it finds them and reinstates all fences which are taken down so that the Grantee does not negatively affect the stock proofing of the Land; and

3.1.2 all vehicles and equipment are inspected and washed down prior to entry onto the Land, and all vehicles, boots and tools that will come into contact with the Land are treated with any spray then being commonly applied by the Grantor and other users of the Land.

3.2 Where any disturbance, damage or loss is incurred or suffered by:

3.2.1 the Grantor; or

3.2.2 any occupier of the Land undertaking, with the Grantee's knowledge and in compliance with the terms of this Easement, normal farming operations on the Land, in particular sharemilking or forestry,

during any entry onto the Land by the Grantee to construct, repair, maintain, modify, replace, renew or remove the Works or any part of the Works, which is not remedied by the Grantee under clause 3.1, for example but without limitation, a business loss in respect of a business located on the Land, the Grantee shall compensate the Grantor or the occupier, as the case may be, for such disturbance, damage or loss.

3.3 The Grantee will bear the costs of managing vegetation on the Easement Area (excluding pasture land) including removing trees and other vegetation but will not be responsible for the cost of controlling weeds or removing any vegetation which is planted by the Grantor in breach of this Easement.

3.4 The Grantee will bear the whole cost of maintaining the Works apart from any Works which the Grantor and Grantee have agreed are to become the property of the Grantor and any additional costs resulting from the Grantor's breach of this Easement for which the Grantee can recover the costs under this Easement.

3.5 If by 31 December 2034, the Grantee has not commenced Construction of the Works on the Land, the Grantee will at its own cost prepare, execute and deliver to the Grantor a registrable surrender of this Easement and the Grantor will execute and, at the cost of the Grantee, register the surrender.

4. Grantor's Rights

4.1 Subject to the restrictions set out in this Easement the Grantor may use, occupy and enjoy, for normal farming operations including grazing, cropping and horticulture to a maximum height of 2.5 metres, that part of the surface of the Easement Area which is not occupied by the Works.

5. Grantor's obligations

5.1 The Grantor must not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do, procure, assist or allow the following to be done:

- 5.1.1 alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement);
- 5.1.2 erect any building or other structure (including fences) on the Easement Area;
- 5.1.3 plant any vegetation on the Easement Area (excluding pasture, crops and horticulture to a maximum height of 2.5 metres);
- 5.1.4 operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 4 metres from any electricity transmission line conductor;
- 5.1.5 excavate or deposit material on the Easement Area;
- 5.1.6 impede the Grantee's access over the Easement Area and any access routes over the Land or damage the surface of the access routes;
- 5.1.7 knowingly cause or permit flooding of the Easement Area except where such flooding occurs naturally and is beyond the control of the Grantor;
- 5.1.8 light any fires or burn off vegetation within the Easement Area;
- 5.1.9 do any other thing on the Land which may cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity or otherwise impede, interfere with or prejudice any right of the Grantee set out in clause 2.1.

6. Access

- 6.1 Where the Grantee together with or through its engineers, consultants, employees, contractors, workmen and anyone else authorised by the Grantee intends to enter upon the Land to exercise and give effect to the rights of the Grantee as listed in clauses 2.1.1 through 2.1.9 of this Easement the Grantee must give at least 20 Working Days' notice ("the Entry Notice") to the Grantor except in an Emergency Situation, when prior notice is not required and the provisions of clause 6.6 of this Easement apply.
- 6.2 An Entry Notice is to identify the Works, by way of description and plan(s), the Grantee intends to carry out, with the Entry Notice to specify:
 - 6.2.1 the location of the proposed entry and the proposed access routes over the Land;
 - 6.2.2 any requirements of the Grantee under clauses 2.1.4, 2.1.5 and 2.1.7 in respect of any part of the Land outside of the Easement Area;
 - 6.2.3 the area on which the Works will be undertaken by the Grantee;
 - 6.2.4 the nature of the Works to be undertaken;
 - 6.2.5 the date and time of initial entry;
 - 6.2.6 the length of time that the Grantee expects to be on the Land;
 - 6.2.7 the nature of all other works that are to be undertaken on the Land in accordance with the rights taken pursuant to clause 2.1; and
 - 6.2.8 the steps to be taken to comply with the obligations in clauses 3.1 and 6.5.

- 6.3 Within 5 Working Days of receipt of an Entry Notice from the Grantee of its intention to exercise the right of entry provided for in clause 6.1 the Grantor may:
- 6.3.1 propose reasonable changes to the matters described in clauses 6.2.1 and 6.2.2 which the Grantee shall consider and either implement or advise the Grantor as to why it is impracticable to implement the changes; or
 - 6.3.2 set reasonable conditions relating to the timing of entry, the location of the access route and the nature of any works in respect of any part of the Land outside of the Easement Area,
- but those conditions may not:
- 6.3.3 Delay the exercise of entry by the Grantee by more than 15 Working Days; or
 - 6.3.4 Require monetary or other consideration; or
 - 6.3.5 Otherwise defeat the ability of the Grantee to exercise effectively the rights taken under this Easement.
- 6.4 Any dispute between the Grantor and the Grantee in relation to the terms of the Entry Notice or of the conditions set by the Grantor pursuant to this clause shall constitute a dispute which is to be resolved using the dispute resolution procedure set out in clause 9 of this Easement.
- 6.5 The Grantee, in entering the Land, will use best endeavours to minimise inconvenience to the Grantor, including (but without limitation):
- 6.5.1 The time of entry (unless this is not possible due to an Emergency Situation);
 - 6.5.2 Leaving gates as they are found;
 - 6.5.3 Driving in a safe manner and taking reasonable steps not to disturb stock; and
 - 6.5.4 Avoiding access through any specific areas within the Land which have been identified by the Grantor to the Grantee unless necessary to access the Works,
- but without limiting the rights of the Grantor to claim under clause 3.2 of this Easement.
- 6.6 Where entry is effected by the Grantee due to an Emergency Situation the Grantee shall as soon thereafter as is reasonable give an Entry Notice to the Grantor. Such Entry Notice to be in terms of clause 6.2 of this Easement.

7. Ownership

- 7.1 The Works and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor and will at all times remain the property of the Grantee, except in relation to any Works which the Grantee and the Grantor agree are to become the property of the Grantor.
- 7.2 The Grantee may transfer, assign, sublet, lease or licence all, but not part, of its rights created by this Easement provided that the assignee, sublessee, transferee, lessee or licensee is financially solvent and has the financial resources to meet the Grantee's commitments under this Easement.

8. Health and Safety

- 8.1 The Grantee will comply with all obligations imposed on the Grantee at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Land at the request of the Grantee.
- 8.2 In designing and Constructing any Works, the Grantee will take all practicable steps to mitigate any hazards associated with the Works that may harm persons on the Land.
- 8.3 The Grantor will comply with all obligations imposed on the Grantor at law as owner of the Land relating to the health and safety of persons on the Land.
- 8.4 The Grantee will comply with any reasonable obligations imposed by the Grantor regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

9. No power to terminate

- 9.1 There is no power in this Easement for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement or for any reason.

10. Dispute resolution

- 10.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.
- 10.2 If the dispute is not resolved within 10 Working Days then any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within five Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.
- 10.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent arbitrator.
- 10.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

11. Severability

- 11.1 If any part of this Easement 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 Easement.

12. No Waiver

- 12.1 A waiver of any provision of this Easement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.
- 12.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

13. Implied Rights and Powers

- 13.1 The rights and powers implied in specified classes of easements prescribed in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are negated and the rights and powers contained herein shall apply in substitution.

14. Interpretation

- 14.1 In this Easement, unless inconsistent with the context:
- 14.1.1 singular includes plural and vice versa;
 - 14.1.2 references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;
 - 14.1.3 references to the Grantor and Grantee include their subsidiary or related companies, their permitted assigns and, where appropriate, their employees, contractors, surveyors, invitees and inspectors;
 - 14.1.4 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation or instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those to which reference is made;
 - 14.1.5 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement.

Easement instrument to grant easement or *profit à prendre*

Section 109, Land Transfer Act 2017

Grantor

Surname(s) must be underlined.

ALAN DARVALL POULTON, JENNIFER POULTON AND MARK THOMAS STEWART

Grantee

Surname(s) must be underlined.

TOP ENERGY LIMITED

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) ~~or profit(s) à prendre~~ set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule if required.

Purpose of Easement or <i>Profit à prendre</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to convey electricity telecommunications and computer media	"B" on SO 509803	Lot 1 DP 384466 (RT 337796)	In gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or **[substituted]** by:

~~[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.]~~

[The provisions set out in the Annexure Schedule B].

Annexure Schedule B

1. Definitions

1.1 In this Easement unless the context requires otherwise:

- 1.1.1 "Construct" means to build, construct, erect, install or lay the Works, access tracks, gates and/or fences contemplated by this Easement and includes anything that is reasonably necessary to give full effect to this Easement including removing soil and water from the Easement Area subject always to the provisions of clause 3.6 of this Easement;
- 1.1.2 "Easement Area" means that part of the Land shown as Area B on Survey Office Plan 509803;
- 1.1.3 "Easement Area (Balance)" means that part of the Easement Area which is not within the QEII Covenant Area;
- 1.1.4 "Easement Area (QEII)" means that part of the Easement Area which is within the QEII Covenant Area;
- 1.1.5 "Emergency Situation" means, a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity;
- 1.1.6 "Entry Notice" means the notice to be given pursuant to clause 6.1 of this Easement;
- 1.1.7 "Equipment" means cables, lines, wires, cranes, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement; and in respect of the Easement Area (Balance) only, includes drilling rigs;
- 1.1.8 "Grantee" means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with the Grantee's servants, agents, employees, workers, invitees, licensees and contractors with or without vehicles, machinery or equipment.
- 1.1.9 "Grantor" means the registered proprietor(s) for the time being of the Land.
- 1.1.10 "Land" means the Burdened Land, which is the land being Lot 1 Deposited Plan 384466 contained in identifier 337796 (North Auckland Registry);
- 1.1.11 "QEII Trust" means the Queen Elizabeth the Second National Trust established by the Queen Elizabeth the Second National Trust Act 1977;
- 1.1.12 "QEII Covenant" means Open Space Covenant 6107575.1 registered against the Land;
- 1.1.13 "QEII Covenant Area" means the area of the Land subject to the QEII Covenant; specifically the area marked 'I' on Deposited Plan 384466;
- 1.1.14 "Temporary Period" or "Temporary Periods" means such period or periods of time as are reasonable for the sole purpose or purposes of the Grantee occupying

such part or parts of the Land as it requires for the purposes set out in clauses 2.1.1 through 2.1.10 and as detailed in the Entry Notice;

- 1.1.15 "Vehicles" means four-wheel drives, trucks, tractors, trailers, cranes, helicopters, earthmoving equipment, whether wheeled or tracked; and in respect of the Easement Area (Balance) only, includes motorbikes, cars, graders, pile drivers, drilling rigs, and excavation equipment, whether wheeled or tracked;
- 1.1.16 "Working Day" means any day of the week other than:
- (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki, and Labour Day; and
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
 - (c) A day in the period commencing on the 24th day of December in any year and ending on the 15th day of January in the following year, both days inclusive.
- 1.1.17 "Works" means electrical and telecommunications works and computer media and includes all or any part of any cables forming dual 110kV and 33kV circuits (including fibre optic cables for operating and maintaining the Grantee's network), wires, earthwires, conductors, insulators, devices, appliances and equipment as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network; and in respect of the Easement Area (Balance) only, includes poles, including monopoles and double pole "H" structures, foundations, culvert pipes, ground stays, supports, casings, and other structures and fixtures as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network.

2. Grantee's Rights and Powers

2.1 The Grantee shall have the following rights and powers:

- 2.1.1 to Construct the Works and to remove, inspect, use, operate, repair, maintain, renew, alter, replace, upgrade, add to and modify the Works or any part of the Works on the Easement Area;
- 2.1.2 to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and telecommunications signals and computer media for operating and maintaining the Grantee's network, by means of the Works;
- 2.1.3 to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement and in so doing the Grantee may, in respect of the Easement Area (Balance) only:
- (a) drill for core samples and dig test pits;
 - (b) install and maintain testing and monitoring equipment;
 - (c) take away samples from the Easement Area for analysis;
- 2.1.4 to enter and remain on the Easement Area and such other part of the Land as is reasonably necessary in the circumstances with or without Vehicles, machinery

and/or Equipment and with such personnel (including its employees, agents, contractors and/or consultants) for the purposes of exercising the Grantee's rights under this Easement;

- 2.1.5 to Construct, inspect, use, repair, maintain, renew, alter, remove and modify any access tracks on the Land (provided that no access tracks shall be on the QEII Covenant Area), to modify adjacent fences (including boundary fences) on the Land and, subject to clause 3.1, to remove or trim vegetation on the access tracks at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement with these rights to be exercised on the following terms:
- (a) where any new access tracks on the Land are to be constructed such will be constructed by the Grantee as far as is practicably possible to enhance the land use operations on the Land by the Grantor;
 - (b) if during the course of the construction of the Works on the Land the Grantee uses any existing access tracks on the Land then these will be repaired and/or maintained as is necessary by the Grantee so that at the conclusion of the construction of the Works such access tracks are left in as nearly as possible the same condition as they were in at the time of first entry onto the Land by the Grantee;
 - (c) if the Grantee in the exercise of access to the Easement Area for the purposes of inspection, use, repair, maintenance, renewal, alteration, replacement, upgrading, addition to or modification of the Works uses access tracks on the Land it shall at the conclusion of such period of access repair and/or maintain those access tracks to ensure that the same are left in as nearly as possible the same condition as they were in at the time of the commencement of the exercise of the Grantee's rights hereunder.
- 2.1.6 to Construct gates within fences (including boundary fences) located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement;
- 2.1.7 in respect of the Easement Area (QEII), subject to clause 3.1, to trim or otherwise manage trees, shrubs and vegetation on the Easement Area (QEII) which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;
- 2.1.8 in respect of the Easement Area (Balance), to clear and keep the Easement Area (Balance) clear of trees, shrubs, vegetation, structures (including fences), earth, gravel and stone, and to clear and keep such other part of the Land as is reasonably necessary in the circumstances clear of any trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;
- 2.1.9 in respect of the Easement Area (Balance), to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone

from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement; and

2.1.10 to temporarily occupy any part of the Land that is reasonably necessary in the circumstances in order for the Grantee to exercise any of its rights under this Easement including the right to Construct the Works and in doing so the Grantee may fence off such part or parts of the occupied area as is reasonably necessary for a Temporary Period or Temporary Periods for health and safety purposes (subject to clause 3.1 of this Easement).

2.2 In undertaking any one or more of the rights and powers taken the Grantee:

2.2.1 May use its nominated employees, agents, consultants or contractors to perform the Works;

2.2.2 Will meet the full costs of the Works it undertakes;

2.2.3 For the avoidance of doubt the Grantee may enter on to the Land and undertake the Works on any day of the year including days which are not Working Days subject to the provisions of the Entry Notice given by the Grantee under clauses 6.1 and 6.2 of this Easement.

3. Grantee's obligations

3.1 The Grantee shall use its best endeavours to avoid any entry on or works to the surface or subsoil of or any vegetation on the Easement Area (QEII) in recognition that the area is also protected by the QEII Covenant. However in an Emergency Situation or where the Grantee otherwise considers that such entry or works are reasonably necessary, the Grantee shall, in addition to its other obligations under this Easement, use best endeavours to adhere to the open space objectives set out in the First Schedule to the QEII Covenant.

3.2 The Grantee will use its best endeavours to cause as little interference as practical to the Grantor, any crops or livestock and any farming activities on the Land, and the QEII Trust, and will notify the QEII Trust of works being undertaken within the QEII Covenant Area. The Grantee shall at its expense in all things make good and reinstate the Land as and when same shall require reinstatement to ensure that the Land is left in as nearly as possible the same condition as it was at the time of the commencement of the Grantee's rights herein. In particular, but without limitation, when exercising its rights under this Easement, the Grantee shall ensure that:

3.2.1 it leaves all gates as it finds them and reinstates all fences which are taken down so that the Grantee does not negatively affect the stock proofing of the Land;

3.2.2 all vehicles and equipment are inspected and washed down at the Grantee's purpose built truck wash bay at its Puketona depot immediately prior to driving to the Land, and all vehicles, equipment and boots that will come into contact with the Land are treated with any disinfectant spray then being commonly applied by the Grantor and other users of the Land immediately prior to entry onto the Land; and

3.2.3 where any Kauri trees are located on the Land, in addition to the obligations in clause 3.2.2, on exit from the land, all vehicles, equipment and boots that have come into contact with the Land will have soil removed on the Land, treated with any spray used on entry, and then travel immediately to the Puketona depot for wash-down.

3.3 Where any disturbance, damage or loss is incurred or suffered by:

3.3.1 the Grantor; or

3.3.2 the QEII Trust; or

3.3.3 any occupier of the Land undertaking, with the Grantee's knowledge and in compliance with the terms of this Easement, normal farming operations on the Land, in particular sharemilking or forestry,

during any entry onto the Land by the Grantee to construct, repair, maintain, modify, replace, renew or remove the Works or any part of the Works, which is not remedied by the Grantee under clause 3.1, for example but without limitation, a business loss in respect of a business located on the Land, the Grantee shall compensate the Grantor or the occupier, as the case may be, for such disturbance, damage or loss.

3.4 The Grantee will bear the costs of managing vegetation on the Easement Area (excluding pasture land) including removing trees and other vegetation but will not be responsible for the cost of controlling weeds or removing any vegetation which is planted by the Grantor in breach of this Easement.

3.5 The Grantee will bear the whole cost of maintaining the Works apart from any Works which the Grantor and Grantee have agreed are to become the property of the Grantor and any additional costs resulting from the Grantor's breach of this Easement for which the Grantee can recover the costs under this Easement.

3.6 The Grantee will replant, with appropriate native species which will not exceed a maximum height of 2.5 metres, at its cost, erosion prone areas in the Easement Area when trees or other vegetation are felled or removed by the Grantee.

3.7 If by 31 December 2034, the Grantee has not commenced Construction of the Works on the Land, the Grantee will at its cost prepare, execute and deliver to the Grantor a registrable surrender of this Easement and the Grantor will execute and, at the cost of the Grantee, register the surrender.

3.8 In the event that the Grantee shall clear the Easement Area (Balance) and/or any other part of the Land or opens up the soil of same as contemplated by clauses 2.1.8 and/or 2.1.9 hereof, the resulting material shall be removed by the Grantee from the Land and deposited off-site at the expense in all things of the Grantee unless the Grantor and the Grantee shall otherwise agree.

4. Grantor's Rights

4.1 Subject to the restrictions set out in this Easement and the QEII Covenant the Grantor may use, occupy and enjoy, for normal farming operations including grazing, cropping and horticulture to a maximum height of 2.5 metres, that part of the surface of the Easement Area which is not occupied by the Works.

4.2 The Grantor may, regardless of any other provision in this easement, at any time prior to the commencement of the construction of the Works, harvest the pine trees in the Easement Area situated to the north and northwest of the QEII Covenant Area.

5. Grantor's obligations

- 5.1 The Grantor must not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do, procure, assist or allow the following to be done:
- 5.1.1 alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement);
 - 5.1.2 erect any building or other structure (including fences) on the Easement Area;
 - 5.1.3 plant any vegetation on the Easement Area (excluding pasture, crops and horticulture to a maximum height of 2.5 metres);
 - 5.1.4 operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 4 metres from any electricity transmission line conductor;
 - 5.1.5 excavate or deposit material on the Easement Area;
 - 5.1.6 impede the Grantee's access over the Easement Area and any access routes over the Land or damage the surface of the access routes;
 - 5.1.7 knowingly cause or permit flooding of the Easement Area except where such flooding occurs naturally and is beyond the control of the Grantor;
 - 5.1.8 light any fires or burn off vegetation within the Easement Area;
 - 5.1.9 do any other thing on the Land which may cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity or otherwise impede, interfere with or prejudice any right of the Grantee set out in clause 2.1.

6. Access

- 6.1 Where the Grantee together with or through its engineers, consultants, employees, contractors, workmen and anyone else authorised by the Grantee intends to enter upon the Land to exercise and give effect to the rights of the Grantee as listed in clauses 2.1.1 through 2.1.10 of this Easement the Grantee must give at least 20 Working Days' notice ("the Entry Notice") to the Grantor and the QEII Trust except in an Emergency Situation, when prior notice is not required and the provisions of clause 6.6 of this Easement apply.
- 6.2 An Entry Notice is to identify, by way of description and plan(s), the Works the Grantee intends to carry out, with the Entry Notice to specify:
- 6.2.1 the location of the proposed entry and the proposed access routes over the Land;
 - 6.2.2 any requirements of the Grantee under clauses 2.1.4, 2.1.5 and 2.1.8 in respect of any part of the Land outside of the Easement Area;
 - 6.2.3 the area on which the Works will be undertaken by the Grantee;
 - 6.2.4 the nature of the Works to be undertaken;
 - 6.2.5 the date and time of initial entry;
 - 6.2.6 the length of time that the Grantee expects to be on the Land;

- 6.2.7 the nature of all other works that are to be undertaken on the Land in accordance with the rights taken pursuant to clause 2.1; and
- 6.2.8 the steps to be taken to comply with the obligations in clauses 3.2 and 6.5.
- 6.3 Within 5 Working Days of receipt of an Entry Notice from the Grantee of its intention to exercise the right of entry provided for in clause 6.1 the Grantor or the QEII Trust may:
- 6.3.1 propose reasonable changes to the matters described in clauses 6.2.1 and 6.2.2 which the Grantee shall consider and either implement or advise the Grantor as to why it is impracticable to implement the changes; or
- 6.3.2 set reasonable conditions relating to the timing of entry, the location of the access route and the nature of any works in respect of any part of the Land outside of the Easement Area,
- but those conditions may not:
- 6.3.3 Delay the exercise of entry by the Grantee by more than 15 Working Days; or
- 6.3.4 Require monetary or other consideration; or
- 6.3.5 Otherwise defeat the ability of the Grantee to exercise effectively the rights taken under this Easement.
- 6.4 Any dispute between the Grantor or the QEII Trust and the Grantee in relation to the terms of the Entry Notice or of the conditions set by the Grantor or the QEII Trust pursuant to this clause shall constitute a dispute which is to be resolved using the dispute resolution procedure set out in clause 10 of this Easement.
- 6.5 The Grantee, in entering the Land, will use best endeavours to minimise inconvenience to the Grantor and QEII Trust, including (but without limitation):
- 6.5.1 The time of entry (unless this is not possible due to an Emergency Situation);
- 6.5.2 Leaving gates as they are found;
- 6.5.3 Driving in a safe manner and taking reasonable steps not to disturb stock; and
- 6.5.4 Avoiding access through any specific areas within the Land which have been identified by the Grantor or the QEII Trust to the Grantee unless necessary to access the Works,
- but without limiting the rights of the Grantor or the QEII Trust to claim under clause 3.3 of this Easement.
- 6.6 Where entry is effected by the Grantee due to an Emergency Situation the Grantee shall as soon thereafter as is reasonable give an Entry Notice to the Grantor and the QEII Trust. Such Entry Notice to be in terms of clause 6.2 of this Easement.

7. Ownership

- 7.1 The Works and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor and will at all times remain the property of the

Grantee, except in relation to any Works which the Grantee and the Grantor agree are to become the property of the Grantor.

- 7.2 The Grantee may transfer, assign, sublet, lease or licence all, but not part, of its rights created by this Easement provided that the assignee, sublessee, transferee, lessee or licensee is financially solvent and has the financial resources to meet the Grantee's commitments under this Easement.

8. Health and Safety

- 8.1 The Grantee will comply with all obligations imposed on the Grantee at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Land at the request of the Grantee.
- 8.2 In designing and Constructing any Works, the Grantee will take all practicable steps to mitigate any hazards associated with the Works that may harm persons on the Land.
- 8.3 The Grantor will comply with all obligations imposed on the Grantor at law as owner of the Land relating to the health and safety of persons on the Land.
- 8.4 The Grantee will comply with any reasonable obligations imposed by the Grantor regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

9. No power to terminate

- 9.1 There is no power in this Easement for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement or for any reason.

10. Dispute resolution

- 10.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.
- 10.2 If the dispute is not resolved within 10 Working Days then any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within five Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.
- 10.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent arbitrator.
- 10.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

11. Severability

- 11.1 If any part of this Easement 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 Easement.

12. No Waiver

- 12.1 A waiver of any provision of this Easement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.
- 12.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

13. Implied Rights and Powers

- 13.1 The rights and powers implied in specified classes of easements prescribed in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are negated and the rights and powers contained herein shall apply in substitution.

14. Relationship with QEII Covenant

- 14.1 In the event of a conflict between the terms of the QEII Covenant and this Easement, the terms of this Easement shall prevail.

15. Interpretation

- 15.1 In this Easement, unless inconsistent with the context:
- 15.1.1 singular includes plural and vice versa;
 - 15.1.2 references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;
 - 15.1.3 references to the Grantor and Grantee include their subsidiary or related companies, their permitted assigns and, where appropriate, their employees, contractors, surveyors, invitees and inspectors;
 - 15.1.4 references to any statute, regulation or other statutory instrument or bylaw shall be deemed to be references to the statute, regulation or instrument or bylaw as from time to time amended and includes substitution provisions that substantially correspond to those to which reference is made;
 - 15.1.5 the headings and subheadings appear as a matter of convenience and shall not affect the interpretation of this Easement.

Easement instrument to grant easement or *profit à prendre*

Section 109, Land Transfer Act 2017

Grantor

Surname(s) must be underlined.

NEWMAN FARMS LIMITED

Grantee

Surname(s) must be underlined.

TOP ENERGY LIMITED

Grant of Easement or *Profit à prendre*

The Grantor being the registered owner of the burdened land set out in Schedule A **grants to the Grantee** (and, if so stated, in gross) the easement(s) ~~or profit(s) à prendre~~ set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A

Continue in additional Annexure Schedule if required.

Purpose of Easement or <i>Profit à prendre</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to convey electricity telecommunications and computer media	"A" on SO 509803	Lot 1 DP 197673 (RT NA125B/373)	In gross

Easements or profits à prendre rights and powers (including terms, covenants, and conditions)

Delete phrases in [] and insert memorandum number as required.

Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers implied in specified classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007

The implied rights and powers are hereby ~~[varied]~~ ~~[negated]~~ ~~[added to]~~ or **[substituted]** by:

~~[Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.]~~

[The provisions set out in the Annexure Schedule B].

Annexure Schedule B

1. Definitions

1.1 In this Easement unless the context requires otherwise:

- 1.1.1 "Construct" means to build, construct, erect, install or lay the Works, access tracks, gates and/or fences contemplated by this Easement and includes anything that is reasonably necessary to give full effect to this Easement including removing soil and water from the Easement Area;
- 1.1.2 "Easement Area" means that part of the Land shown as Area A on Survey Office Plan 509803;
- 1.1.3 "Emergency Situation" means, a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity;
- 1.1.4 "Entry Notice" means the notice to be given pursuant to clause 6.1 of this Easement;
- 1.1.5 "Equipment" means cables, lines, wires, cranes, drilling rigs, Vehicles, plant, tools and machinery and all material and items required for the purpose of exercising any of the rights under this Easement;
- 1.1.6 "Grantee" means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with the Grantee's servants, agents, employees, workers, invitees, licensees and contractors with or without vehicles, machinery or equipment.
- 1.1.7 "Grantor" means the registered proprietor(s) for the time being of the Land.
- 1.1.8 "Land" means the Burdened Land, which is the land being Lot 1 Deposited Plan 197673 contained in identifier NA125B/373 (North Auckland Registry);
- 1.1.9 "Temporary Period" or "Temporary Periods" means such period or periods of time as are reasonable for the sole purpose or purposes of the Grantee occupying such part or parts of the Land as it requires for the purposes set out in clauses 2.1.1 through 2.1.9 and as detailed in the Entry Notice;
- 1.1.10 "Vehicles" means four-wheel drives, motorbikes, cars and trucks, tractors, trailers, graders, pile drivers, drilling rigs, cranes, helicopters, excavation and earthmoving equipment, whether wheeled or tracked;
- 1.1.11 "Working Day" means any day of the week other than:
 - (a) Saturday, Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Matariki, and Labour Day; and
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

- (c) A day in the period commencing on the 24th day of December in any year and ending on the 15th day of January in the following year, both days inclusive.

1.1.12 "Works" means electrical and telecommunications works and computer media and includes all or any part of any cables forming dual 110kV and 33kV circuits (including fibre optic cables for operating and maintaining the Grantee's network), wires, earthwires, conductors, poles, including monopoles and double pole "H" structures, insulators, foundations, culvert pipes, ground stays, supports, casings, devices, appliances, structures, fixtures and equipment as are reasonably necessary to give effect to the Grantee's rights under this Easement to install and operate an electricity transmission network.

2. Grantee's Rights and Powers

2.1 The Grantee shall have the following rights and powers:

- 2.1.1 to Construct the Works and to remove, inspect, use, operate, repair, maintain, renew, alter, replace, upgrade, add to and modify the Works or any part of the Works on the Easement Area;
- 2.1.2 to convey, conduct, send, distribute, pass, convert, transport, transmit and receive electricity and telecommunications signals and computer media for operating and maintaining the Grantee's network, by means of the Works;
- 2.1.3 to undertake all tests, inspections, investigations and surveys that are reasonably necessary for the Grantee to exercise its rights under this Easement and in so doing the Grantee may:
 - (a) drill for core samples and dig test pits;
 - (b) install and maintain testing and monitoring equipment;
 - (c) take away samples from the Easement Area for analysis;
- 2.1.4 to enter and remain on the Easement Area and such other part of the Land as is reasonably necessary in the circumstances with or without Vehicles, machinery and/or Equipment and with such personnel (including its employees, agents, contractors and/or consultants) for the purposes of exercising the Grantee's rights under this Easement;
- 2.1.5 to Construct, inspect, use, repair, maintain, renew, alter, remove and modify any access tracks on the Land, to modify adjacent fences (including boundary fences) on the Land and to remove or trim vegetation on the access tracks at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement with these rights to be exercised on the following terms:
 - (a) where any new access tracks on the Land are to be constructed such will be constructed by the Grantee as far as is practicably possible to enhance the land use operations on the Land by the Grantor;
 - (b) if during the course of the construction of the Works on the Land the Grantee uses any existing access tracks on the Land then these will be repaired and/or maintained as is necessary by the Grantee so that at the conclusion of the construction of the Works such access tracks are left in as nearly as

possible the same condition as they were in at the time of first entry onto the Land by the Grantee;

- (c) if the Grantee in the exercise of access to the Easement Area for the purposes of inspection, use, repair, maintenance, renewal, alteration, replacement, upgrading, addition to or modification of the Works uses access tracks on the Land it shall at the conclusion of such period of access repair and/or maintain those access tracks to ensure that the same are left in as nearly as possible the same condition as they were in at the time of the commencement of the exercise of the Grantee's rights hereunder.

2.1.6 to Construct gates within fences (including boundary fences) located on the Land and to inspect, use, repair, maintain, renew, alter, remove and modify those gates at the cost of the Grantee to the extent that is reasonably necessary for the Grantee to exercise its rights under this Easement;

2.1.7 to clear and keep the Easement Area clear of trees, shrubs, vegetation, structures (including fences), earth, gravel and stone, and to clear and keep such other part of the Land as is reasonably necessary in the circumstances clear of any trees, shrubs, vegetation, structures (including fences), soil, earth, gravel and stone which is or is likely to be or become, in the reasonable opinion of the Grantee, a danger or hazard to the safety or operation of the Works, will impede the Grantee's access to the Works or will otherwise interfere with the Grantee's rights under this Easement;

2.1.8 to open up the soil of the Easement Area and excavate or remove timber, vegetation, soil, earth, gravel and stone from the Easement Area to the extent necessary for the Grantee to exercise its rights under this Easement; and

2.1.9 to temporarily occupy any part of the Land that is reasonably necessary in the circumstances in order for the Grantee to exercise any of its rights under this Easement including the right to Construct the Works and in doing so the Grantee may fence off such part or parts of the occupied area as is reasonably necessary for a Temporary Period or Temporary Periods for health and safety purposes (subject to clause 3.1 of this Easement).

2.2 In undertaking any one or more of the rights and powers taken the Grantee:

2.2.1 May use its nominated employees, agents, consultants or contractors to perform the Works;

2.2.2 Will meet the full costs of the Works it undertakes;

2.2.3 For the avoidance of doubt the Grantee may enter on to the Land and undertake the Works on any day of the year including days which are not Working Days subject to the provisions of the Entry Notice given by the Grantee under clauses 6.1 and 6.2 of this Easement.

3. Grantee's obligations

3.1 The Grantee will use its best endeavours to cause as little interference as practical to the Grantor, any crops or livestock and any farming activities on the Land. The Grantee shall at its expense in all things make good and reinstate the Land as and when same shall require reinstatement to ensure that the Land is left in as nearly as possible the same condition as it was at the time of the commencement of the Grantee's rights herein. In

particular, but without limitation, when exercising its rights under this Easement, the Grantee shall ensure that:

3.1.1 it leaves all gates as it finds them and reinstates all fences which are taken down so that the Grantee does not negatively affect the stock proofing of the Land; and

3.1.2 all vehicles and equipment are inspected and washed down prior to entry onto the Land, and all vehicles, boots and tools that will come into contact with the Land are treated with any spray then being commonly applied by the Grantor and other users of the Land.

3.2 Where any disturbance, damage or loss is incurred or suffered by:

3.2.1 the Grantor; or

3.2.2 any occupier of the Land undertaking, with the Grantee's knowledge and in compliance with the terms of this Easement, normal farming operations on the Land, in particular sharemilking or forestry,

during any entry onto the Land by the Grantee to construct, repair, maintain, modify, replace, renew or remove the Works or any part of the Works, which is not remedied by the Grantee under clause 3.1, for example but without limitation, a business loss in respect of a business located on the Land, the Grantee shall compensate the Grantor or the occupier, as the case may be, for such disturbance, damage or loss.

3.3 The Grantee will bear the costs of managing vegetation on the Easement Area (excluding pasture land) including removing trees and other vegetation but will not be responsible for the cost of controlling weeds or removing any vegetation which is planted by the Grantor in breach of this Easement.

3.4 The Grantee will bear the whole cost of maintaining the Works apart from any Works which the Grantor and Grantee have agreed are to become the property of the Grantor and any additional costs resulting from the Grantor's breach of this Easement for which the Grantee can recover the costs under this Easement.

3.5 If by 31 December 2034, the Grantee has not commenced Construction of the Works on the Land, the Grantee will at its own cost prepare, execute and deliver to the Grantor a registrable surrender of this Easement and the Grantor will execute and, at the cost of the Grantee, register the surrender.

4. Grantor's Rights

4.1 Subject to the restrictions set out in this Easement the Grantor may use, occupy and enjoy, for normal farming operations including grazing, cropping and horticulture to a maximum height of 2.5 metres, that part of the surface of the Easement Area which is not occupied by the Works.

5. Grantor's obligations

5.1 The Grantor must not, without the prior written consent of the Grantee (which will not be unreasonably withheld or delayed), do, procure, assist or allow the following to be done:

5.1.1 alter or disturb the present grades and contours of the surface of the Easement Area except in the course of normal farming and grazing operations (but subject to the restrictions set out in this Easement);

- 5.1.2 erect any building or other structure (including fences) on the Easement Area;
- 5.1.3 plant any vegetation on the Easement Area (excluding pasture, crops and horticulture to a maximum height of 2.5 metres);
- 5.1.4 operate any Equipment or Vehicles on the Easement Area within a minimum clearance distance of 4 metres from any electricity transmission line conductor;
- 5.1.5 excavate or deposit material on the Easement Area;
- 5.1.6 impede the Grantee's access over the Easement Area and any access routes over the Land or damage the surface of the access routes;
- 5.1.7 knowingly cause or permit flooding of the Easement Area except where such flooding occurs naturally and is beyond the control of the Grantor;
- 5.1.8 light any fires or burn off vegetation within the Easement Area;
- 5.1.9 do any other thing on the Land which may cause damage to the Works or endanger the continuity or safety of the supply and distribution of electricity or otherwise impede, interfere with or prejudice any right of the Grantee set out in clause 2.1.

6. Access

- 6.1 Where the Grantee together with or through its engineers, consultants, employees, contractors, workmen and anyone else authorised by the Grantee intends to enter upon the Land to exercise and give effect to the rights of the Grantee as listed in clauses 2.1.1 through 2.1.9 of this Easement the Grantee must give at least 20 Working Days' notice ("the Entry Notice") to the Grantor except in an Emergency Situation, when prior notice is not required and the provisions of clause 6.6 of this Easement apply.
- 6.2 An Entry Notice is to identify the Works, by way of description and plan(s), the Grantee intends to carry out, with the Entry Notice to specify:
 - 6.2.1 the location of the proposed entry and the proposed access routes over the Land;
 - 6.2.2 any requirements of the Grantee under clauses 2.1.4, 2.1.5 and 2.1.7 in respect of any part of the Land outside of the Easement Area;
 - 6.2.3 the area on which the Works will be undertaken by the Grantee;
 - 6.2.4 the nature of the Works to be undertaken;
 - 6.2.5 the date and time of initial entry;
 - 6.2.6 the length of time that the Grantee expects to be on the Land;
 - 6.2.7 the nature of all other works that are to be undertaken on the Land in accordance with the rights taken pursuant to clause 2.1; and
 - 6.2.8 the steps to be taken to comply with the obligations in clauses 3.1 and 6.5.
- 6.3 Within 5 Working Days of receipt of an Entry Notice from the Grantee of its intention to exercise the right of entry provided for in clause 6.1 the Grantor may:

6.3.1 propose reasonable changes to the matters described in clauses 6.2.1 and 6.2.2 which the Grantee shall consider and either implement or advise the Grantor as to why it is impracticable to implement the changes; or

6.3.2 set reasonable conditions relating to the timing of entry, the location of the access route and the nature of any works in respect of any part of the Land outside of the Easement Area,

but those conditions may not:

6.3.3 Delay the exercise of entry by the Grantee by more than 15 Working Days; or

6.3.4 Require monetary or other consideration; or

6.3.5 Otherwise defeat the ability of the Grantee to exercise effectively the rights taken under this Easement.

6.4 Any dispute between the Grantor and the Grantee in relation to the terms of the Entry Notice or of the conditions set by the Grantor pursuant to this clause shall constitute a dispute which is to be resolved using the dispute resolution procedure set out in clause 9 of this Easement.

6.5 The Grantee, in entering the Land, will use best endeavours to minimise inconvenience to the Grantor, including (but without limitation):

6.5.1 The time of entry (unless this is not possible due to an Emergency Situation);

6.5.2 Leaving gates as they are found;

6.5.3 Driving in a safe manner and taking reasonable steps not to disturb stock; and

6.5.4 Avoiding access through any specific areas within the Land which have been identified by the Grantor to the Grantee unless necessary to access the Works,

but without limiting the rights of the Grantor to claim under clause 3.2 of this Easement.

6.6 Where entry is effected by the Grantee due to an Emergency Situation the Grantee shall as soon thereafter as is reasonable give an Entry Notice to the Grantor. Such Entry Notice to be in terms of clause 6.2 of this Easement.

7. Ownership

7.1 The Works and Vehicles or any other property of the Grantee will not, for any reason, become the property of the Grantor and will at all times remain the property of the Grantee, except in relation to any Works which the Grantee and the Grantor agree are to become the property of the Grantor.

7.2 The Grantee may transfer, assign, sublet, lease or licence all, but not part, of its rights created by this Easement provided that the assignee, sublessee, transferee, lessee or licensee is financially solvent and has the financial resources to meet the Grantee's commitments under this Easement.

8. Health and Safety

- 8.1 The Grantee will comply with all obligations imposed on the Grantee at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters on the Land at the request of the Grantee.
- 8.2 In designing and Constructing any Works, the Grantee will take all practicable steps to mitigate any hazards associated with the Works that may harm persons on the Land.
- 8.3 The Grantor will comply with all obligations imposed on the Grantor at law as owner of the Land relating to the health and safety of persons on the Land.
- 8.4 The Grantee will comply with any reasonable obligations imposed by the Grantor regarding the identification and mitigation of hazards and the health and safety of persons on the Land.

9. No power to terminate

- 9.1 There is no power in this Easement for the Grantor to terminate any of the Grantee's rights due to the Grantee breaching any term of this Easement or for any reason.

10. Dispute resolution

- 10.1 If any dispute arises between the Grantor and the Grantee concerning the rights and obligations contained within this Easement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.
- 10.2 If the dispute is not resolved within 10 Working Days then any party may at any time serve a mediation notice on the other party requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within five Working Days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.
- 10.3 If the dispute is not resolved within 20 Working Days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 10 Working Days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee, will appoint an independent arbitrator.
- 10.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

11. Severability

- 11.1 If any part of this Easement 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 Easement.

12. No Waiver

- 12.1 A waiver of any provision of this Easement shall not be effective unless given in writing and then it shall be effective only to the extent that it is expressly stated to be given.

- 12.2 A failure, delay or indulgence by any party in exercising any power or right shall not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right shall not preclude further exercises of that power or right or the exercise of any other power or right.

13. Implied Rights and Powers

- 13.1 The rights and powers implied in specified classes of easements prescribed in the Fourth Schedule to the Land Transfer Regulations 2002 and the Fifth Schedule of the Property Law Act 2007 are negated and the rights and powers contained herein shall apply in substitution.

14. Interpretation

- 14.1 In this Easement, unless inconsistent with the context:

14.1.1 singular includes plural and vice versa;

14.1.2 references to "persons" includes references to companies, corporations, partnerships, joint ventures, associations, trusts, government departments or agencies and territorial local authorities;

14.1.3 references to the Grantor and Grantee include their subsidiary or related companies, their permitted assigns and, where appropriate, their employees, contractors, surveyors, invitees and inspectors;

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

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