

View Instrument Details



Instrument No 12478118.2
Status Registered
Date & Time Lodged 14 June 2022 11:25
Lodged By Baker, Lisa Anne
Instrument Type Easement Instrument



Affected Records of Title	Land District
859615	North Auckland
976561	North Auckland
976563	North Auckland
976564	North Auckland

Annexure Schedule Contains 7 Pages.

Grantor Certifications

I certify that I have the authority to act for the Grantor and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

I certify that the Mortgagee under Mortgage 10863068.1 has consented to this transaction and I hold that consent ☒

I certify that the Mortgagee under Mortgage 12398010.3 has consented to this transaction and I hold that consent ☒

Signature

Signed by Sarah Elizabeth Kayll as Grantor Representative on 14/06/2022 11:10 AM

Grantee Certifications

I certify that I have the authority to act for the Grantee and that the party has the legal capacity to authorise me to lodge this instrument ☒

I certify that I have taken reasonable steps to confirm the identity of the person who gave me authority to lodge this instrument ☒

I certify that any statutory provisions specified by the Registrar for this class of instrument have been complied with or do not apply ☒

I certify that I hold evidence showing the truth of the certifications I have given and will retain that evidence for the prescribed period ☒

Signature

Signed by Graeme John Mathias as Grantee Representative on 08/06/2022 10:40 AM

*** End of Report ***

Easement instrument to grant easement or *profit à prendre*

(Section 109 Land Transfer Act 2017)

Grantor

TAONGA FARMS LIMITED as to the land in Records of Title 976561 and 859615
JASMINE RAWINIA BAMBER and BRETT SHANE BAMBER as to the land Record of Title 976563
ZOE MARIKA BROWN and STEVEN WAYNE BROWN as to the land in Record of Title 976564

Grantee

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 (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Burdened Land (Computer Register)	Benefited Land (Computer Register) or in gross
Right to convey electricity	Marked "A" on Deposited Plan 574133	Lot 2 Deposited Plan 529826 RT 859615	In gross
	Marked "B" on Deposited Plan 574133	Lot 4 Deposited Plan 557514 RT 976564	In gross
	Marked "C" on Deposited Plan 574133	Lot 3 Deposited Plan 557514 RT 976563	In gross
	Marked "D" on Deposited Plan 574133	Lot 1 Deposited Plan 557514 RT 976561	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 Annexure Schedule B]

Annexure Schedule

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Annexure Schedule B**1. Interpretation**

1.1 In this instrument, unless the context otherwise requires:

- (a) "Burdened Land" means the land owned by the Grantor and contained in Records of Title 859615, 976561, 976563 and 976564;
- (b) "Easement Area" means those parts of the Burdened Land marked on Deposited Plan 574133 with the letters "A", "B", "C" and "D";
- (c) "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 by means of the Transmission Line;
- (d) "Transmission Line" means wires or conductors of any other kind (including fibre optic or coaxial cables) used or intended to be used for the transmission of electricity and/or telecommunication signals, waves or impulses; and includes any insulators, foundations, casings, tubes, tunnels, minor fixtures and other items, equipment or material used or intended to be used for supporting, securing, enclosing, surrounding and protecting a Transmission Line; and also includes any fuses, fuse holders, pillars and transformers, automatic switches, voltage regulators, capacitors or other instruments, apparatus or devices used in association with a Transmission Line; and anything in replacement or substitution of any of the foregoing;
- (e) words importing the singular include the plural and vice versa; and
- (f) references to the Grantor and Grantee include their respective heirs, executors, transferees, administrators, successors and assigns.

2. Grant of electricity and telecommunications easements

2.1 The Grantor grants to the Grantee as an easement in gross forever, the rights to

- 2.1.1 convey, reticulate, convert, transform, transmit, supply and use electrical energy and power by means of the Transmission Line; and
- 2.1.2 convey, send, transmit and transport telecommunications signals, waves or impulses

in each case without interruption or impediment and in any quantity.

2.2 The Grantee together with the Grantee's agents, contractors and employees, and with any vehicles, equipment, tools and materials has the right to enter by a reasonable route and remain on the Easement Area and any other parts of the Burdened Land as are reasonably necessary to do the following work:

- (a) to survey, investigate, lay, install and construct the Transmission Line both over and under the Easement Area, and if under at a depth and along such line as shall be determined by the Grantee and if over at a height and along such line as similarly shall be determined by the Grantee;

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- (b) to install such infrastructure both on or under the surface of the Burdened Land as is necessary for the effective transmission of electricity by means of the Transmission Line;
 - (c) to inspect, operate, use, maintain, repair, renew, upgrade, replace, change the size of and remove the Transmission Line;
 - (d) with the Grantee's agents, contractors and employees, and with any vehicles, equipment, tools and materials, to enter and remain for a reasonable time on the Burdened Land for any purposes necessary or convenient for the Grantee to exercise its rights under this instrument (including the right to extinguish fires);
 - (e) to construct on the Burdened Land whatever roads, tracks, access ways, fences, gates and other works are deemed necessary by the Grantee for it to exercise its rights under this instrument and which are approved by the Grantor (that approval not to be unreasonably withheld);
 - (f) to keep the Easement Area cleared of all buildings and structures by any means the Grantee considers necessary;
 - (g) to keep the Easement Area cleared of all fences, trees and vegetation by any means the Grantee considers necessary where such:
 - (i) breach any statutory or regulatory requirements or standards or codes of practice or otherwise breach generally accepted engineering standards as to the minimum clearance of the Transmission Line;
 - (ii) impede the exercise by the Grantee of its rights under this instrument or the Grantee's access over the Burdened Land or the Easement Area or to the Transmission Line; or
 - (iii) inhibit the safe and efficient operation of the Transmission Line;
 - (h) to remove at the Grantor's expense trees and/or vegetation on the Burdened Land where the Grantee, acting reasonably considers such trees and/or vegetation pose a risk to the safe and efficient operation of the Transmission Line and the Grantor having been given notice of the requirement for the removal of such trees and/or vegetation pursuant to clause 5(b) of this instrument has failed to act.
- 2.3 The Grantee has no obligation to construct the Transmission Line or convey electricity through it or them continuously or at all.
- 3. Access**
- 3.1 The Grantee must, before exercising the right of entry in clause 2.2:
- (a) make reasonable efforts to identify the Grantor or the occupier of the Burdened Land;
 - (b) give reasonable notice, and in any event not less than three (3) days notice, to the Grantor or the occupier of the Burdened Land of the Grantee's intention to enter the Burdened Land, except in an Emergency Situation when prior notice is not required;

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- (c) identify the work it intends to carry out.
- 3.2 The Grantee is not required by reason of the obligations in this clause to delay entry onto the Burdened Land from the date notified.
- 3.3 The Grantee, in entering the Land, will take reasonable steps to minimize inconvenience to the Grantor or the occupier of the Burdened Land, including;
- (a) liaising with the Grantor to arrange a suitable time of entry to the Easement Area (unless this is not possible due to an Emergency Situation);
 - (b) leaving gates as they are found (if applicable);
 - (c) driving in a safe manner and taking reasonable steps not to disturb stock (if applicable); and
 - (d) Avoiding access through specific areas identified by the Grantor unless necessary to access the Transmission Line.
- 3.4 The Grantee is not required to delay entry onto the Burdened Land or to pay any money or other consideration to the Grantor or any occupier of the Burdened Land by reason of the obligations in this clause.
- 3.5 When accessing the Easement Area, the Grantee will:
- (a) complete work on the Transmission Line as soon as possible with as little damage as possible to the Burdened Land and any vegetation, fences or improvements on it; and
 - (b) use all reasonable endeavours to repair and make good all damage caused to the Burdened Land by the Grantee or the Grantee's agents, contractors or employees as a result of carrying out work on the Transmission Line.
- 4. Ownership of the Transmission Line and Electrical Works**
- The Transmission Line will at all times remain the property of the Grantee.
- 5. Grantor's Continued Use of Burdened Land**
- Subject to clause 6, the Grantor:
- (a) may use the Burdened Land as long as that use does not unreasonably interfere with the enjoyment of the Grantee's rights and interests granted under this instrument;
 - (b) shall remove trees and vegetation on the Burdened Land where the Grantee, acting reasonably gives notice to the Grantor that it considers it necessary that such trees and/or vegetation be removed to ensure that such trees and vegetation do not pose a risk to the safe and efficient operation of the Transmission Line.
- 6. Restrictions on Grantor's use**
- 6.1 The Grantor must not do or allow any act which may interfere with or affect the rights of the Grantee or the operation of the Transmission Line and, in particular, the Grantor must not, without the consent in writing of the Grantee:

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- (a) On the Easement Area, or within the minimum distance from the Transmission Line as advised by the Grantee (having regard to relevant statutory or regulatory requirements, codes of practice and engineering standards applicable from time to time), erect or permit the erection of any buildings or structures, or alter or allow to be altered the overall dimensions of existing buildings or structures, or carry out any earthworks or stockpiling, or construct or permit the construction of any roads, dams, walls or driveways, or allow any vegetation to become established, or remove or permit the removal of any soil, sand, gravel or other substance;
 - (b) disturb the soil of the easement area below the depth of 0.3 metres;
 - (c) cause or knowingly permit flooding of the Easement Area;
 - (d) burn off crops, trees or undergrowth on the Burdened Land;
 - (e) operate or permit to be operated any machinery or equipment (including any cranes, drilling-rigs, pile-drivers and excavators) in close proximity to any part of the Transmission Line;
 - (f) disturb any survey pegs or markers placed on the Easement Area by the Grantee;
 - (g) impede the Grantee's access over the Burdened Land or the Easement Area or to the Transmission Line; or
 - (h) do anything on or in the Burdened Land which would or could damage or endanger the Transmission Line.
- 6.2 The consent of the Grantee required under clause 6.1 will not be unreasonably withheld, but may be given subject to conditions.
- 6.3 The Grantee may consent in writing to certain existing buildings, structures, fences or vegetation on the Easement Area at the date of this instrument remaining there, but such consent may be given subject to conditions.
- 6.4 If any act or item consented to under clause 6.2 or 6.3 subsequently results in a situation described in clause 2.2 (g)(i) – (iii), then such consent may be revoked by the Grantee without compensation.
- 6.5 Before exercising any right under this instrument to remove a fence, the Grantee must consult with the Grantor so the Grantor is given a reasonable opportunity to co-ordinate the erection of any necessary replacement fence. The cost of any replacement fence will be borne by the Grantor and the Grantor must comply with any reasonable directions of the Grantee as to the height, materials used and location of such replacement fence.
- 6.6 If the Grantor does not meet its obligations under this instrument within such reasonable timeframe as is specified in a notice from the Grantee requiring it to do so then the Grantee may meet those obligations (and enter the Burdened Land for that purpose) and the Grantor is liable to pay to the Grantee the costs incurred in doing so.
- 7. Indemnity against third party claims**
- Each party ("Indemnifying Party") must indemnify the other ("Indemnified Party") against all claims or demands from third parties for any loss, damage or liability in respect of, or arising out of, the use of the land by the Indemnifying Party (or any person authorised, whether expressly or impliedly by it) **EXCEPT**

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Continue in additional Annexure Schedule, if required

THAT it will not be liable to indemnify where such loss, damage or liability was caused by the Indemnified Party. Where the actions of the Indemnified Party contribute to that loss, damage or liability, the indemnity given by the Indemnifying Party will be reduced in proportion to that contribution.
8. Licence and assignment The Grantee may assign, licence or otherwise grant any right of all or any part of any estate or interest conferred by this instrument.
9. Perpetual easement There is no power implied in this instrument for the Grantor to terminate the easement for any breach of this instrument or for any other reason. It is the intention of the parties that the easement created by this instrument will continue forever unless surrendered.
10. Arbitration If any dispute arises between the parties in relation to this instrument or any matter arising under it and that dispute cannot be resolved by negotiation, then the parties must submit the dispute to arbitration in accordance with the Arbitration Act 1996 (and its amendments or any statute which replaces it). The arbitration will be commenced by either party giving written notice to the other of the details of the dispute and that party's desire to have the matter referred to arbitration. The arbitration will be by one arbitrator, if the parties can agree upon one, and, if not, then by two arbitrators, one to be appointed by each party, and their umpire to be appointed by the arbitrators before they begin to consider the dispute. The award in the arbitration will be final and binding on the parties.