

Parties

TE PĀTAKA A NGĀTI KOATA trustees acting in their capacity as trustees of that trust

(Ngāti Koata)

and

TASMAN DISTRICT COUNCIL

(Council)

LAND AND WATER USE PARTNERING DEED

CERTIFIED ORIGINAL SIGHTED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL

Signed
Date 12/12/12

The Property Group Limited
PO Box 49
NAPIER



M.R.J. Schruer
#11177
RICHMOND
Justice of the Peace for New Zealand



the
propertygroup
Corporate Property Advisors ■ Negotiators®

LAND AND WATER USE PARTNERING DEED

Parties

1. TE PĀTAKA A NGĀTI KOATA trustees acting in their capacity as trustees of that trust (Ngāti Koata)
2. TASMAN DISTRICT COUNCIL (Council)

ACKNOWLEDGEMENT

Māori

E tono ana te Kaunihera ki a Ngāti Koata ki te hoko mai i ētahi o ōna whenua, me te manauhea anō i te mea kei roto te whenua nei i te Whakataunga Tiriti ka mutu he whakaritenga te whakataunga mō ngā hara o mua o te Karauna me ngā whakamau i hua ake.

E whakamana ana i te hiranga o te whenua e ai ki tērā e whakapuakina ana i roto i te Whakaaetanga Whakataunga, ā, i roto anō i a Ngāti Koata Whāinga Matua (*Tiaki Tangata, tiaki taiao, tiaki taonga*) me Te Ahunga (*Te tautoko i te oranga Ahurea, ā-Iwi, Wairua, Tōrangapū me te Ōhanga o tō tātau iwi me ngā wāhi*) e hihiri ana mātau ki te whakatakoto i te tono i mea ko te whenua, me ētahi atu whenua me ngā rawa, te huarahi e eke ai ētahi uara whāiti e taea e Ngāti Koata, te Kaunihera me te hapori te tuari. Pēnei i te mauri o te awa me te aka o te Waimea, otirā te mauri o te taiao.

E āhukahuka ana mātau i ngā painga ki te hunga e tūmanako ana i tētahi ratonga wai tōtika ake me te aha kia tika te utu paremata mō taua painga.

English

Council approaches Ngāti Koata about using some of its land with some reluctance knowing that the land is part of a Treaty Settlement and that settlement is for past wrongs by the Crown and the grievances that have resulted.

While recognising the importance of the land including as expressed in the Deed of Settlement and in Ngāti Koata Whāinga Matua (*Tiaki tangata, tiaki taiao, tiaki taonga*) and Te Ahunga (*To support the Cultural, Social, Spiritual, Political and Economic wellbeing of our people and places*) Council is motivated to make the approach because the land, along with other land and resources, can be the means by which certain other values that Ngāti Koata, the Council and the community share can be achieved. This includes the mauri of the river and the Waimea inlet, the quality of the environment generally.

Both Ngāti Koata and Council also recognise the benefits to those who hope to receive a more reliable supply of water and expect that fair compensation should be paid for that benefit.

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STATEMENT OF INTENT

Pursuant to the Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, and the deed of settlement between the Crown and Ngāti Koata dated 21 December 2012, the Crown is to transfer to Ngāti Koata the Commercial Redress Property in the Lee Valley described as Waimea Forest (Waimea Forest Land).

Council wishes to implement a Project in the Lee Valley called the Waimea Water Augmentation Scheme. The Project will include construction of a dam and reservoir required for water augmentation and irrigation purposes. The Project will require storage of water on parts of the Waimea Forest Land as part of the Reservoir.

The Waimea Water Augmentation Scheme will be operated by a Company which will have seven directors and which will be a Council Controlled Organisation meaning that Council will hold at least 51% of the shares and will have the power to appoint 50% or more of the directors of the Company.

Ngāti Koata and Council therefore intend to provide for the advancement of the Waimea Dam project on the basis that:

- a. Ngāti Koata will retain one hundred percent ownership of the Waimea Forest Land.
- b. Ngāti Koata will allow Council to store water on the Water Storage Land which will be part of the Reservoir where it extends onto the Waimea Forest Land at Waterfall Creek and along the Lee River boundary for so long as the dam is required and used for water augmentation and irrigation purposes.
- c. In return Council will compensate Ngāti Koata for the use of the land and the effects of the project on the balance of the Waimea Forest Land.

Ngāti Koata and the Tasman District Council acknowledge that the Waimea Community Dam will augment water to the Waimea River and associated aquifers. Water is a taonga to all New Zealanders. It is an inseparable part of Ngāti Koata's whakapapa and identity, and is a fundamental part of what supports their very existence. As tangata whenua Ngāti Koata have an interest in the water including a kaitiaki responsibility and rights under The Treaty.

The future health and well-being of our waters are a matter of significant importance to Ngāti Koata, as well as all New Zealanders. Its management must be consistent with the concept of Te Mana o te Wai.

The management of freshwater in Tasman will recognise Ngāti Koata's mana whenua and Ngāti Koata's interests in the management of freshwater as recorded in the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014.

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INTERPRETATION

In this Deed terms defined in Schedule 2 have the meaning given to them in that schedule and, unless the context requires otherwise:

Commencement Date	means the date Council confirms to Ngāti Koata that the Project is to proceed.
Council	means the Tasman District Council and includes its employees and the contractors and assignees.
Crown Forestry Licence	means the Crown Forestry Licence over the Waimea Forest Land held in Computer Interest Register NL 9D/54.
The Easement	means the easement to store water granted in accordance with clause 2.0.
The Land Requirement Plan	means the plan attached to this Deed as Schedule 1.
Ngāti Koata	means the trustees from time to time of Te Pātaka a Ngāti Koata, acting in their capacity as trustees of that trust, and includes the trustees from time to time of Ngāti Koata Trust and Koata Limited.
The Project	means the Waimea Water Augmentation Scheme which involves construction of a dam structure called the Waimea Community Dam to impound up to 13 million cubic metres of water which will be released into the Lee River to augment river flows in order to satisfy instream needs and recharge the Waimea Plains groundwater system. The Project will also provide additional water for urban supply and irrigation purposes.
The Reservoir	means the area behind the dam to be constructed as part of the Works for the Project and which shall contain the waters impounded by the Waimea Community Dam which includes the Water Storage Land.
The Resource Consents	means Resource Consent Numbers RM140540, RM140542 – RM140559 (inclusive) and any resource consents obtained (or required, if the context permits) by the Council from time to time in respect of the Project.
Tasman Pine	means Tasman Pine Forests Limited, in its capacity as the licensee under the Crown Forestry Licence over the Waimea Forest Land held in Computer Interest Register NL 9D/54.
The Waimea Forest Land	means an estate in fee simple in all the land containing approximately 366.5800 hectares described as Lots 1 and 2 on DP 14351 subject to Crown Forestry Licence held in Computer Interest Register NL 9D/54.
The Water Storage Land	means that part of the Waimea Forest Land comprising the areas shown on the land requirement plan as: Section 11 on Survey Office Plan 509793- 8.1320 hectares Section 12 on Survey Office Plan 509793- 13.5000 hectares
Total	21.6320 hectares

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The Works

means the construction, operation and maintenance of the Waimea Community Dam including all associated works, earthworks, structures situated both above and below ground level, bridges and all other ancillary activities, required directly or indirectly in connection with the Project.

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AGREEMENT

1.0 Partnering Relationship between Ngāti Koata and Council

1.1 Ngāti Koata and Council will co-operate in the use of both the Water Storage Land and the Waimea Forest Land with the intent of meeting the following objectives:

- 1.1.1** Improving both the immediate and wider environment for future generations.
- 1.1.2** Exploring and enhancing Ngāti Koata's opportunities to develop and use the Waimea Forest Land in accordance with the values and goals of Ngāti Koata.
- 1.1.3** Ensuring that the Water Storage Land is managed in a culturally and environmentally responsible manner for the benefit of the community.
- 1.1.4** Ensuring that the ownership and management entities operating the Works following completion of construction of the Dam and filling of the Reservoir operates the Works in a manner which recognises the values and goals of Ngāti Koata as owner of the Water Storage Land.
- 1.1.5** Operating and using the Water Storage Land in a spirit of partnership to enhance and benefit the Rohe of Ngāti Koata and the wider area serviced by the Council.

1.2 Ngāti Koata and Council will co-operate to further these objectives by:

- 1.2.1** Establishing and maintaining a system of open communication.
- 1.2.2** Providing advance warning of any intended operations and uses of the Reservoir as part of the Project and the Waimea Forest Land or changes in ownership or management structure that could potentially impact on the interaction between the use, management and values of either or both the Waimea Forest Land and the Reservoir as part of the Project.
- 1.2.3** Briefing and requiring all staff, contractors, subcontractors and consultants to act consistently with the partnering concept of this deed.

1.3 Where Ngāti Koata or Council recognise an opportunity to assist the other as responsible custodians of the Reservoir and the Waimea Forest Land, they will discuss and pursue that opportunity jointly.

1.4 Council will ensure that the constitution of the Council Controlled Organisation operating the Project (the CCO) provides for one of the Directors to be appointed by iwi located in the Tasman Region, subject to the approval of the remaining shareholders of the CCO (acting reasonably). This director shall be solely nominated by Ngāti Koata for so long as Ngāti Koata own The Water Storage Land.

1.5 Council has requested Ngāti Koata to propose names for the Reservoir, and other elements of the Project.

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2.0 Use of Water Storage Land

2.1 Ngāti Koata grants Council an easement providing the Council with access to and the right to store water on the Water Storage Land in accordance with the rights and conditions set out in this Deed and in Schedule 2 of this Deed from the Commencement Date, for so long as the Waimea Community Dam continues to be used for the Project.

2.2 The parties acknowledge that the Water Storage Land is subject to a Crown Forestry Licence to Tasman Pine and that before the Council can store water on the Water Storage Land in accordance with this Deed, Council will acquire Tasman Pine's interest with respect to the Water Storage Land or procure Tasman Pine to surrender that part of the Crown Forestry Licence over the Water Storage Land. This Deed is conditional upon the Council entering an agreement with Tasman Pine to effect such acquisition or surrender, on terms satisfactory to the Council at the Council's sole discretion. All costs of securing and performing the agreement with Tasman Pine shall be met by the Council.

2.3 Ngāti Koata agrees to accept and consent to a partial surrender or transfer of the existing Crown Forestry Licence with respect to the Water Storage Land as set out above and will reduce the rental for the balance area remaining subject to the Crown Forestry Licence on a pro rata basis relating to the area surrendered.

2.4 Ngāti Koata covenants with the Council to:

2.4.1 Procure Ngāti Koata's solicitor to certify, sign and register a partial surrender (or transfer) instrument in accordance with clause 2.3 to enable the partial surrender (or transfer) of the existing Crown Forestry Licence with respect to the Water Storage Land.

2.4.2 Obtain the consent of any mortgagee, caveator, or other person having a prior registered interest in respect of the the Waimea Forest Land to the partial surrender or authorise the Council to obtain such consent.

2.4.3 Provide the Council with written evidence of the registration of the partial surrender (or transfer) instrument.

2.5 Before commencing to fill the Reservoir, Council shall at its cost clear the Water Storage Land in accordance with the vegetation removal plan required under the Resource Consents for the Works and will set aside any native timbers removed that are required by Ngāti Koata. Ngāti Koata grants Council all rights that are necessary to clear the Water Storage Land, including access onto the Water Storage Land and access over the Waimea Forest Land for this purpose. Council will also advise Ngāti Koata of any Taonga located during vegetation clearance or otherwise identified and consult as to any proposed recovery or preservation. The obligations on Council to set aside any native timber and advise of any Taonga are personal to Ngāti Koata.

3.0 Compensation

Payment of Annual Fee

3.1 Council shall pay Ngāti Koata an annual easement fee for storing water on the Water Storage Land, as set out in Schedule 2.

Adjustment of Basis of Assessment of Annual Fee

3.2 Notwithstanding the provisions of Schedule 2 (and the Easement once registered), if the Waimea Forest Land is no longer used for forestry, Ngāti Koata may elect to vary the basis on which the



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annual fee is assessed as follows:

3.2.1 The annual fee shall be the current market annual rent for the Water Storage Land, calculated on the basis that:

- a. the Water Storage Land is put to the same use as the adjoining Waimea Forest Land; and
- b. the Water Storage Land could reasonably have been put to such use but for the Project,

and taking into account, as reasonably required, any development costs which would be required to achieve such use.

3.2.2 The revised annual fee shall be agreed by the parties acting reasonably and following generally accepted valuation practice, or as determined pursuant to clause 10 in the absence of agreement. The new fee shall take effect from the next review date following the new fee being agreed and shall then be reviewed at five (5) yearly intervals in accordance with the agreed formulation.

3.2.3 The right in this clause 3.2 to vary the basis on which the annual fee is assessed shall only apply for so long as Ngāti Koata continues as owner of the Waimea Forest Land. In the event that a new basis for determining the fee is agreed pursuant to this clause 3.2 then the parties shall enter into such documents and do all acts matters and things necessary to amend the registered Easement to replace the original fee clause with the new agreed formulation.

3.3 The terms of the right set out in Schedule 2 will be formalised and registered against the title to Waimea Forest Land in the Easement immediately following the creation of a Record of Title for the Waimea Forest Land and transfer by the Crown to Ngāti Koata of the Waimea Forest Land. Ngāti Koata however grants Council (or the Council Controlled Organisation following assignment) access to and rights to use the Water Storage Land on the terms set out in this Deed and in Schedule 2 of this Deed from the Commencement Date hereof notwithstanding the Easement is not formally registered.

3.4 The Council (or the Council Controlled Organisation following assignment) will commence paying the annual easement fee (by installment) on the first payment date specified in the Crown Forestry Licence for the adjoining Waimea Forest Land following the date on which Council first commences clearance of vegetation on the Water Storage Land in accordance with clause 2.5. Council shall on such date also pay a pro rata sum for the period between commencing construction works (the Fee Commencement Date) and the first payment date.

3.5 The continuing obligation to pay the annual easement fee under the Easement shall cease immediately on surrender of the Easement as provided at Schedule 2 clause 2.3.

New Forestry Road Access

3.6 Council will at its cost construct a forestry road across Waterfall Creek generally as shown as 'Ngāti Koata/Tasman Pine Access' on the plan attached as Schedule 1 to replace the physical forestry access across the Lee River that will be flooded on filling of the Reservoir. Construction will be timed to ensure that the replacement access is able to be used before normal forestry operations are disrupted by the removal of the existing Lee River crossing. The Council agrees to indemnify Ngāti Koata against all claims, costs and expenses (including legal costs on a solicitor-client basis) that are made against or incurred by Ngāti Koata as a result of the Council failing to



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meet its obligations under and in accordance with this clause 0. Ngāti Koata grants Council all rights that are necessary to construct the forestry road, including access onto the Waimea Forest Land for this purpose provided that such rights must be exercised in accordance with the reasonable directions of Ngāti Koata and Ngāti Koata's rights in relation to native timbers and Taonga as set out in clause 2.5 will also apply in relation to the construction of the forestry road pursuant to this clause 3.6.

Additional Forestry Access Road

3.7 Council will construct an additional forestry access road for the benefit of Tasman Pine linking the forestry road shown as 'existing M Stuart Access' on the plan attached as Schedule 1 to Tasman Pine's existing road system on its own land spanning the area shown blue and marked 'proposed new road to existing Tasman Pine skid site' on the plan attached as Schedule 1 subject to:

3.7.1 Tasman Pine obtaining consent of the landowner to the construction of that additional Access by Council; and

3.7.2 Tasman Pine entering into an agreement with Ngāti Koata as may be required to revise terms of the forestry rights under the Crown Forestry Licence and any subsequent forestry agreement due to the improved access from a date agreeable to both parties; and

3.7.3 The terms of any agreements reached to satisfy the conditions at 3.7.1 and 3.7.2 being acceptable to Ngāti Koata and Council acting reasonably.

Subject to and following satisfaction of the conditions in this clause 3.7, the Council agrees to indemnify Ngāti Koata against all claims, costs and expenses (including legal costs on a solicitor-client basis) that are made against or incurred by Ngāti Koata as a result of the Council failing to meet its obligations under and in accordance with this clause 3.7.

3.8 If agreement is reached with Tasman Pine in accordance with clause 3.7 within six months of the date of this Deed, Council will construct the additional access referred to in clause 3.7 before Tasman Pine's existing access easement expires (being 19 March 2031) and Council shall not be required to make any further compensation payment to Ngāti Koata.

3.9 Subject to clause 3.10, if no agreement is reached with Tasman Pine in accordance with clause 3.7 within six months of the date of this Deed, Council shall pay Ngāti Koata an additional payment of \$35,000.00 (plus GST) in lieu of providing the alternative access. Such payment shall be made within one month of the date on which the six-month period expires.

3.10 Should Ngāti Koata fail to reach agreement with Tasman Pine in accordance with clause 3.7, and if requested to do so by Ngāti Koata within 12 months of the date of this Deed, Council shall acquire either;

3.10A the Waimea Forest Land, or

3.10B the Waimea Forest Land excluding the Water Storage Land which will remain held by Ngāti Koata subject to the easement granted at clause 2 and Aerial Cableway Easement granted at clause 7

(called the Sale Land as the case shall require) from Ngāti Koata by declaration pursuant to section 20 Public Works Act 1981, conditional upon:



- 3.10.1 the Council confirming the Project (meeting financial close obligations);
- 3.10.2 the parties agreeing within 12 months of the date of this Deed the price for the Sale Land;
- 3.10.3 Ngāti Koata reaching agreement with Tasman Pine:
 - a. in respect of the rent payable to Ngāti Koata upon subdivision of the Sale Land from the balance of the land currently licensed to Tasman Pine pursuant to the Crown Forestry Licence in NL9D/54; and
 - b. to vary the license to Tasman Pine to reflect the change in area and rent, with effect from the settlement date of the acquisition of the Sale Land by the Council, and further to register a variation following registration of the declaration taking the Sale Land

3.11 Where clause 3.10 applies:

- 3.11.1 the settlement date of the purchase shall be one month after fulfilment of all of the conditions in clause 3.10;
- 3.11.2 the conveyancing terms at Schedule 4 shall apply to the sale and purchase;
- 3.11.3 possession of and risk in the Sale Land shall be given and taken on the settlement date;
- 3.11.4 rates shall be apportioned on the settlement date;
- 3.11.5 the Council shall take the Sale Land by declaration subject to all subsisting registered interests (including the Crown Forestry Licence to Tasman Pine) with all reasonable expediency following the settlement date of the purchase, or the issue of a Record of Title to Ngāti Koata for the Waimea Forest Land in accordance with the Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, whichever is the later.

3.12 Where clause 3.10A applies:

- 3.12.1 unless assigned to, or granted in favour of, the CCO, the Easement shall merge in the estate acquired with effect from the Settlement Date and no longer have any force and effect, and be formally extinguished by the declaration if previously registered;
- 3.12.2 the parties shall be released from their obligations under this Deed with effect from the settlement date except for clauses 1.4 (CCO Directorship), 4 (Participation Rights), 6 (Rights to Land and Water), and 10 (Disputes) and the Council indemnities at clauses 3.6 and 3.7;
- 3.12.3 Council will take the Waimea Forest Land subject to the aerial cable way easement granted pursuant to clause 7.0 and assume the obligations to register the same as successor in title; and
- 3.12.4 any fee paid for the Easement and the payment pursuant to clause 3.9 (if previously made) shall be deducted from the purchase price.



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Date 17/12/10

4.0 Participation Rights Relating to Commercial Operating Model

Electricity Generation

- 4.1** The Parties acknowledge that the Project is designed to provide a sustainable supply of water year-round to the communities within Ngāti Koata's Rohe and Council's statutory boundaries. The Waimea Community Dam to be constructed as part of the Project is designed to allow water flow required for aquifer recharge and environmental flows in the Lee and Waimea Rivers.
- 4.2** Council agrees that if in future any electricity generation is proposed or considered by Council (or the CCO following transfer):
- 4.2.1** any generation will be secondary to the primary purpose of the Dam, which is to provide the environmental flows to meet the Resource Consent conditions for the Dam; and
 - 4.2.2** Irrespective of whether it is to be a Council-owned venture, Council will give Ngāti Koata the first opportunity to invest in the proposal and for the avoidance of doubt acting under a spirit of partnership as required by clause 1.1.5. For the avoidance of doubt the parties acknowledge and agree that spirit of partnership will include matters such as consultation and having regard to comments made by Ngāti Koata as Council develops proposals that may be taken to the market, in advance of such market approach and the thereafter giving a first opportunity to Ngāti Koata. For the avoidance of doubt Ngāti Koata must respond to any opportunity in a reasonable time.

Council Controlled Trading Organisation

- 4.3** The following provisions will apply if and from when the CCO referred to in clause 5.1 amends its constitution to provide the CCO with a for-profit objective and to remove its cost recovery only objective, and to adopt a status of a Council Controlled Trading Organisation (CCTO):
- 4.3.1** If the CCTO makes a distribution to its shareholders on account of the CCTO making a net profit, then the annual fee payable to Ngāti Koata that year for the use of the Water Storage Land will be increased by an amount equivalent to 10% of the amount of such net profit.
 - 4.3.2** The enhanced fee under clause 4.3.1 is only payable if at the time of proposed payment:
 - a. the payment would satisfy the Companies Act requirements for a distribution, as if the payment is a distribution by the CCTO;
 - b. the CCTO is not in breach of any of its payment obligations to its lender(s) and shareholder(s) at the time.

4.4 Clauses 4.2 relating to electricity generation and clause 4.3 relating to a CCTO are personal to Ngāti Koata and shall not run with the ownership of the Waimea Forest Land.

4.5 Council and Ngāti Koata acknowledge the Project seeks to augment water to benefit the downstream environment and provide water security to downstream users who hold water permits. Without limiting Ngāti Koata's rights under clause 4.2, prior to the Council permitting the water stored on the Water Storage Land to be directly used for any other purpose (including electricity generation), the Council shall obtain the agreement of Ngāti Koata (not to be unreasonably withheld or delayed), on such terms and conditions as are agreed, including share of



any financial benefit, whether or not the Waimea Forest Land and/or the Water Storage Land remains in the ownership of Ngāti Koata. For the avoidance of doubt, participation in any financial benefit pursuant to this clause 4.5 shall not necessarily require that any financial investment be made by Ngāti Koata.

5.0 Transfer of Responsibility for Implementation and Operation of the Project

5.1 Council may transfer, lease, assign or sublet any of its estate and interest in the Project including the rights and obligations relating to the Water Storage Land and the Waimea Forest Land under this Deed to the Council Controlled Organisation (CCO) or other entity formed following construction for the purpose of operating the Project subject to that CCO or other entity first entering into a deed of covenant in favour of Ngāti Koata that such CCO or other entity is bound by the requirements of clauses:

5.1.1 4.2 (other than where Council is exercising its rights under the Waimea Dam Hydro Generation Concession agreed between Council, CCO, Waimea Irrigators Limited and Crown Irrigation Investments Limited ("Concession"), which Concession grants the Council exclusive rights for any future hydro generation in connection with the Dam);

5.1.2 4.3;

5.1.3 4.4; and

5.1.4 4.5 (provided however that (i) this clause will not apply in respect of water used solely for the primary purposes of the Project in providing environmental flows to meet the Resource Consent conditions for the Project or any other obligation imposed by law; and (ii) if Council triggers clause 4.5, it will negotiate with Ngāti Koata, while if CCO triggers clause 4.5, CCO will negotiate with Ngāti Koata, and only the negotiating party will be bound),

on the same basis as the Council, provided that if and when that other entity operates on a "for profit" basis then that other entity will be subject to clause 4.3 on the same basis as a CCTO.

5.2 Except where rights:

5.2.1 are expressly limited to Ngāti Koata continuing as owner of the Waimea Forest Land, or

5.2.2 under this Deed arise by virtue of the Council's special relationship with Ngāti Koata as recognized by the Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014 (for example, clauses 1.0 and 6.0),

the rights and obligations of Ngāti Koata run with the Water Storage Land and Ngāti Koata must assign its rights and obligations under this Deed on sale or transfer of the Water Storage Land or the Waimea Forest Land to the transferee (who will become the registered proprietor of the Water Storage Land or the Waimea Forest Land.



6.0 Agreement not to restrict Ngāti Koata rights relating to Land and Water

6.1 This Deed does not in any way purport to deal with rights of ownership of water or limit or affect in any way any claims or negotiations that Ngāti Koata and other Iwi are having with the Government as Treaty Partners over water rights and interests.

6.2 This Deed does not limit or restrict Ngāti Koata's rights of ownership and use of the Water Storage Land in conjunction with the balance of the Waimea Forest Land for aquaculture or other uses that can be carried on the land while water is stored on it, subject to and in accordance with the Easement. Any such use will be subject to the parties complying with the partnering relationship set out in this Deed and in particular:

6.2.1 The obligation to operate and use the land in a spirit of partnership set out in clause 1.1.5; and

6.2.2 Any reasonable entry restrictions onto the reservoir arising out of operational and safety requirements relating to the operation of the dam and/or the use of aerial cableways over the Reservoir for logging purposes on any of the adjoining properties including the Waimea Forest Land.

7.0 Operating Easement Over Reservoir for use of Aerial Cableway and Associated Activities

7.1 Ngāti Koata agrees to grant in favour of Tasman Pine as registered proprietor of a Crown Forestry Licence under section 30 Crown Forests Assets Act 1989 as recorded by Computer Interest Register NL 9D/54 an easement for the right to operate an aerial cableway (the Aerial Cableway Easement) over the Water Storage Land with the rights and on the terms and conditions set out in the Easement Instrument attached as Schedule 3.

7.2 The Aerial Cableway Easement shall be granted by easement instrument under the Land Transfer Act 2017.

7.3 Ngāti Koata shall, when called upon to do so to:

7.3.1 Grant and register the Aerial Cableway Easement to be appurtenant to Computer Interest Register NL 9D/54 by way of easement instrument which is to be created in a Landonline workspace;

7.3.2 Procure Ngāti Koata's solicitor to certify and sign the easement instrument in such Landonline workspace to enable the easement instrument to be registered; and

7.3.3 Obtain the consent of any mortgagee, caveator, or other person having a prior registered interest in respect of the the Waimea Forest Land to the Aerial Cableway Easement or authorise the Council to obtain such consent.

7.4 The Council shall meet all costs of creating the Aerial Cableway Easement including without limitation all Ngāti Koata's reasonable legal costs.

7.5 The parties acknowledge that the provisions of this Deed relating to the Aerial Cableway Easement confer a benefit on Tasman Pine for the purposes of the Contracts and Commercial Law Act 2017 and that such rights may be exercised by Tasman Pine.

8.0 Registration of the Easement

8.1 Immediately on the issue of a Computer Interest Register to Ngāti Koata for the Waimea Forest Land in accordance with the Ngāti Koata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, and prior to any other registration that may detract from the rights granted, Ngāti Koata shall register the Easement (granted by Ngāti Koata to the Council pursuant to clause 2.1 of this Deed) by way of easement instrument under the Land Transfer Act 2017 which shall be effected by:

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Signed
Date 12/10/18



- 8.1.1 The Council's solicitor preparing an easement instrument in a Landonline Workspace created for the transaction in the same form as set out in Schedule 2 of this Deed;
- 8.1.2 The Council's solicitor providing to Ngāti Koata's solicitor the dealing number allocated by LINZ;
- 8.1.3 The Council's solicitor certifying, signing, and pre-validating the easement instrument in such Landonline workspace;
- 8.1.4 Ngāti Koata's solicitor certifying and signing and releasing the easement instrument so that Council's solicitor can then submit it thereafter for registration.

8.2 Ngāti Koata covenants with the Council to:

- 8.2.1 Procure Ngāti Koata's solicitor to certify, sign and release the easement instrument in accordance with clause 8.1.4 to enable the Easement to be registered, and procuring the execution by Ngāti Koata's signatories of any documents (including Authority and Instruction forms) required for this purpose;
- 8.2.2 Obtain the consent of any mortgagee, caveator, or other person (including, if necessary, Tasman Pine) having a prior registered interest in respect of the the Waimea Forest Land to the Easement or authorise the Council to obtain such consent; and
- 8.2.3 Provide the Council with written evidence of the registration of the Easement.

9.0 Default

9.1 If either party fails (defaulting party) to perform or join with the other party (other party) in performing any obligation herein, the following provisions will apply:

- 9.1.1 the other party may serve a written notice on the defaulting party (default notice) specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of 20 Working Days from service of the default notice, the other party may perform the obligation;
- 9.1.2 if after the expiry of 20 Working Days from service of the default notice, the defaulting party has not performed or joined in performing the obligation, the other party may:
 - (a) perform the obligation; and
 - (b) for that purpose, enter on to the Water Storage Land;
- 9.1.3 the defaulting party must pay to the other party the actual and reasonable costs of:
 - (a) the default notice; and
 - (b) the other party in performing the defaulting party's obligation; within one month of receiving written notice of the other party's costs; and
- 9.1.4 the other party may recover any money payable under clause 9.1.3 from the defaulting party as a liquidated debt.



10.0 Disputes

10.1 If any dispute arises between Ngāti Koata and the Council concerning the rights created herein, the parties will enter into negotiations in good faith to resolve their dispute.

10.2 If the dispute is not resolved within 20 Working Days from the date on which the parties begin their negotiations, the parties will attend mediation by a mediator jointly appointed by the parties, or if the parties cannot agree on the mediator, then a mediator appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

10.3 If mediation fails to resolve the dispute then the dispute may be resolved by the Courts. The parties must comply with clause 10.1 and 10.2 before they can begin any action at law (other than an application for injunctive relief).

11.0 Costs

11.1 The Council agrees to reimburse the Ngāti Koata's reasonable legal and valuation costs incurred in the negotiation and performance of this Deed.

12.0 Execution

12.1 The parties agree that:

12.1.1 this Deed may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same agreement. A party may enter into this Deed by signing a counterpart copy and sending it to the other party, including by facsimile or email.

12.1.2 the production of a facsimile (or scanned and emailed) copy or copies of the agreement signed by all parties will be deemed to be sufficient to satisfy the requirements of the Property Law Act 2007.

12.1.3 in the case of email, any notice or document is deemed to have been received when acknowledged by the party or by the lawyer orally or by return email or otherwise in writing, except that return emails generated automatically will not constitute an acknowledgement.

12.1.4 in accordance with section 224 of the Contract and Commercial Law Act 2017, the parties agree that any notice or document that must be given in writing by one party to the other may be given in electronic form and by means of electronic communication.

Climate Change

13.1 It is acknowledged by both parties that there is a Notice pursuant to Section 195(2) Climate Change Response Act 2002 (registration 9109917.1) registered against the Computer Interest Register to the Licence.

13.2 The Council shall compensate Ngāti Koata in respect of any liabilities pursuant to the Climate Change Response Act 2002 that Ngāti Koata becomes subject to as a result of the removal of any trees as part of the Works and/or the Project. The amount of compensation payable pursuant to this clause shall be assessed in accordance with the Climate Change Response Act 2002. Payment under this clause will be made within 20 Working Days of the Licensee making demand for payment and providing satisfactory evidence to the Council of the Ngāti Koata's liability under this clause, or at the Council's election may be compensated (in full or part) by the Council using carbon credits held by the Council in lieu of a payment.

CERTIFIED ORIGINAL SIGHTED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL

Signed
Date 17/11/18



Dated this 08 day of DECEMBER 2018

SIGNED by Te Pātaka A Ngāti Koata Trustees:

Name	<u>Frank Hippelito</u>	Signature	<u>[Signature]</u>
Name	<u>Thomas Mark Speers</u>	Signature	<u>[Signature]</u>
Name	<u>Melanie McCreagh</u>	Signature	<u>[Signature]</u>
Name	<u>Nadia Keogh</u>	Signature	<u>[Signature]</u>
Name	<u>Joanie Wilson</u>	Signature	<u>[Signature]</u>
Name	<u>HORI ELLINGTON</u>	Signature	<u>[Signature]</u>

Name of Witness Hem Dion Toia
55 ELMWOOD AVE
Address BLenheim
Signature of Witness [Signature]



CERTIFIED ORIGINAL SIGHTED - AND THAT THIS IS A PHOTOCOPY OF THAT ORIGINAL
Signed [Signature]
Date 12/12/18

THE COMMON SEAL of the abovenamed

TASMAN DISTRICT COUNCIL

was affixed hereto in the presence of:



.....
(Signed) Mayor/~~Deputy Mayor~~

Richard G Kempthorne
.....

Name (Print)



.....
(Signed) Councilor

Timothy B. King
.....

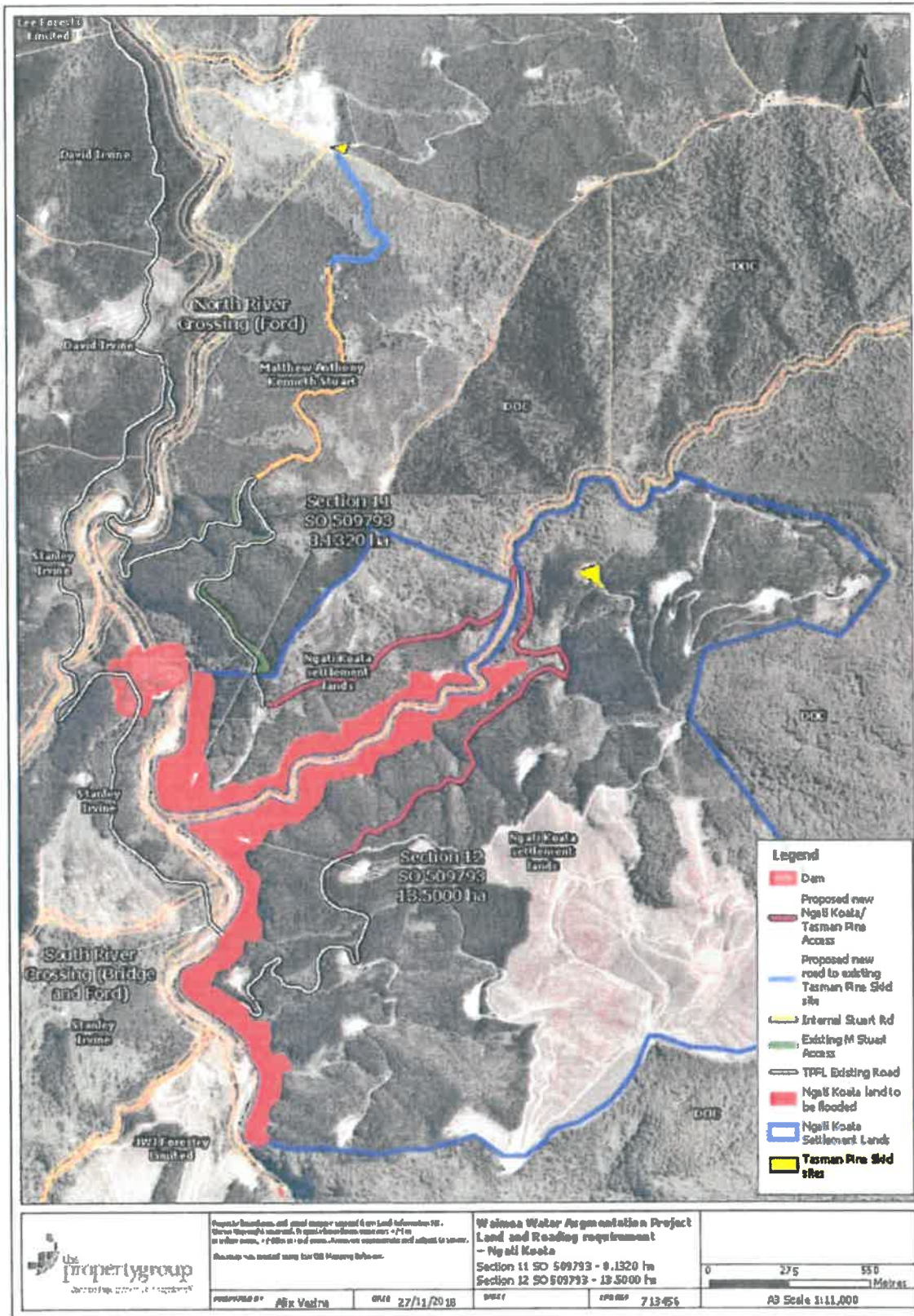
Name (Print)



CERTIFIED ORIGINAL SIGNED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL

Signed *[Signature]*
Date *17/12/12*

Schedule 1 - Land Requirement Plan



<p>the propertygroup Real Estate Services</p>	<p><small>Project boundaries and road mapping subject to any Land Information NZ, Oranga Whero/PA material, or other relevant information. This is a preliminary plan and subject to change. The map was created using the GIS Mapping Software.</small></p>		<p>Waiawa Water Augmentation Project Land and Roading requirement - Ngali Koala Section 11 SO 509793 - 0.1320 ha Section 12 SO 509793 - 13.5000 ha</p>		<p>0 275 550 Meters</p> <p>A3 Scale 1:11,000</p>
	<p>PREPARED BY Alex Vezina</p>	<p>DATE 27/11/2018</p>	<p>SCALE 1:11,000</p>	<p>EPSI REF 713456</p>	

CERTIFIED ORIGINAL SIGHTED - AND THAT THIS IS A PHOTOCOPY OF THAT ORIGINAL

Signed

Date 17/12/18

Schedule 2- Rights and Conditions for Water Storage Easement

1.0 Definitions

1.1 In this Easement Instrument, unless the context otherwise requires:

'the Commencement Date' means the date Council confirms to Ngāti Koata that the Project is to proceed.

'the Dam' means the Waimea Community Dam constructed as part of the Project.

'the Grantee' means Tasman District Council/Council Controlled Organisation and includes its successors and assigns, agents, employees, contractors, tenants, licencees and other invitees of the Grantee.

'the Grantor' means the registered proprietor of the Burdened Land and includes the agents, employees, contractors, tenants, licensees and other invitees of the Grantor.

'the Project' means the Waimea Dam which involves construction of a dam structure to impound approximately 13 million cubic metres of water which will be released into the Lee River to augment river flows in order to satisfy instream needs and recharge the Waimea Plains groundwater system. The Project will also provide additional water for irrigation purposes.

'the Reservoir' means the area behind the Dam to be constructed as part of the Works for the Project and which shall contain the waters impounded by the Dam which includes the Water Storage Land.

'the Resource Consents' means Resource Consent Numbers RM140540, RM140542 – RM140559 (inclusive) and any resource consents obtained (or required, if the context permits) by the Grantee from time to time in respect of the Project.

'the Burdened Land' means the parcel of land over which the easement is registered.

'the Waimea Forest Land' means an estate in fee simple in all the and containing approximately 366.5800 hectares described as Lots 1 and 2 on DP 14351 subject to Crown Forestry Licence held in Computer Interest Register NL 9D/54.

'the Water Storage Land' means Section 11 on Survey Office Plan 509793 and Section 12 on Survey Office Plan 509793.

'the Works' means the construction, operation and maintenance of the Project including all associated works, earthworks, structures situated both above and below ground level (including facilities for the generation of electricity and an associated transformer), bridges, and all other ancillary activities, required directly or indirectly in connection with the Project.

'Working Day' means the hours between 8.30am and 4.00pm on a day of the week other than Saturday or Sunday on which the registered banks are generally open for business in the place where any action or thing is to be done, sent, or delivered.



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

1.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;

- 1.2.2 references to Clauses and the Schedules are to the Clauses and the Schedules of this Easement Instrument;
- 1.2.3 references to any statute, regulation or other statutory instrument or bylaw are deemed to be references to the statute, regulation, instrument or bylaw as from time to time amended and includes substituted provisions that substantially correspond to those referred to ; and
- 1.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

2.0 Right to Store Water

- 2.1 The Grantee shall have the right to store and hold water on, and release water from, the Water Storage Land within the operating levels for the Works and the levels and conditions set out in the Resource Consents and any other statutory or regulatory restrictions relating to the works from time to time on the following conditions.
- 2.2 In the event of unusually heavy inflow of water or rainfall onto the Water Storage Land beyond the reasonable control of the Grantee, the Grantee may retain water on the Water Storage Land up to the designed flood level of the Project and if lawfully directed or requested to do so by any civil defence authority or The Tasman District Council acting in its statutory capacity as a Unitary Authority, or in any other case beyond the reasonable control of the Grantee, beyond that designed flood level.
- 2.3 The easement will remain in force until surrendered by the Grantee. The easement may be surrendered under section 108 of the Land Transfer Act 2017 and must be surrendered within 12 months after the Grantee permanently ceases to store water on the Water Storage Land in accordance with any statutory or regulatory consent.

3.0 Installation of equipment

- 3.1 The Grantee may install booms and other floating equipment and monitoring and measuring equipment and safety devices on the Reservoir on the Water Storage Land and anchor such equipment on the Water Storage Land. The Grantee will take all reasonable endeavours to minimise the impact of such equipment on other activities (such as aquaculture) carried on or over the Water Storage Land from time to time in accordance with this Easement.
- 3.2 Such equipment shall be installed in compliance with all statutory, regulatory or resource consent requirements and, except in an emergency, shall not be installed without the consent of the Grantor (not to be unreasonably withheld or delayed).

4.0 Land Maintenance and Vegetation Works

- 4.1 Prior to filling the Reservoir, the Grantee will at its cost clear the Water Storage Land in accordance with the vegetation removal plan required under the Resource Consents for the Works, and the Grantor grants to the Grantee all rights of access over the Water Storage Land and the Waitaha Forest Land necessary to enable it to perform this obligation.
- 4.2 The Grantee shall at its cost use all reasonable endeavours to minimise erosion, land slippage and landslides on the Water Storage Land by such means as are reasonably available, practical and economic. In determining such mitigation measures and prior to carrying out any planting for such purpose the Grantee will further consult with the Grantor over any proposed revegetation or



planting above the maximum design operating level for the Reservoir with a view both to making the area visually attractive and also minimising runoff and erosion.

- 4.3 The Grantee may remove from any water on or about the Water Storage Land or remove from any part of the Water Storage Land, any sediment or other material or any vegetation which in the opinion of the Grantee is impeding or likely to impede the efficient operation of the Project or to cause danger, injury or damage to persons or property. Before carrying out such work, the Grantee shall (except in the case of an emergency or due compliance with statutory, regulatory or resource consent requirements) first obtain the consent of the Grantor.
- 4.4 Except in the case of emergency, the Grantee shall obtain the consent of the Grantor before undertaking works in accordance with 4.2 or 4.3, which consent shall not be unreasonably withheld or delayed.

5.0 Operational

- 5.1 The Grantee shall have the right to enter onto the Water Storage Land to operate vessels and to install, operate, and maintain the equipment installed pursuant to clause 3.1 and any other plant and equipment on the Reservoir (including the Water Storage Land) for the purposes of operating the Works and to authorise other owners of land adjoining the Reservoir to operate vessels on the Reservoir for purposes relating to forestry management on their land (but not for other purposes). The Grantee will take reasonable steps to mitigate the impact of such operations on any other activities (such as aquaculture) carried out on or over the Water Storage Land from time to time. The Grantee shall be responsible for retrieval of any logs or other material entering the reservoir from the adjoining land unless such work is the obligation of a third party.
- 5.2 The Grantee shall have the right to enter onto the Water Storage Land to plant and maintain water margin buffer plantings, monitor and maintain water levels and carry out maintenance and inspection functions with relation to the operation of the Reservoir as part of the Project. The Grantee agrees to indemnify the Grantor against all claims, costs and expenses (including legal costs on a solicitor-client basis) that are made against or incurred by the Grantor as a result of the Grantee's actions or omission under this clause 5.2.
- 5.3 The Grantor shall not carry out or permit to be carried out any activity on the Water Storage Land
- 5.3.1 in the vicinity of any infrastructure or equipment of the Grantee that may prejudice the operation of or cause damage to such equipment;
- 5.3.2 that may conflict with conditions of any resource consents held by the Grantee for the Project or the use or operation of the Reservoir or the Dam;
- 5.3.3 that may conflict with any health and safety or operational requirements of the Grantee as notified to the Grantor from time to time

without obtaining the written consent of the Grantee, such consent not to be unreasonably withheld or delayed, and may be given on reasonable conditions.



6.0 Grantee authorities, consents and approvals

- 6.1 Subject to clause 6.2 the Grantor shall support, cooperate with and provide assistance to the Grantee and promptly upon request provide the Grantee with any authorities, consents, or approvals (including under section 95E of the Resource Management Act 1991) as owner and occupant of the Burdened Land to any applications to obtain, renew or vary any designation, plan

change, rule, approval, consent (including Resource Consent), licence, permit or other authorisation and the activities described in those applications, in such form as is required by the Grantee, in relation to the Project. The Grantor shall not oppose, or procure or fund or encourage any opposition to, any such applications or activities or withdraw any such authority, consent or approval once provided.

6.2 The Grantor's support may be restricted or withheld where inconsistent with the Grantor's rights and obligations under this easement, any other agreement between the parties, or materially adverse to the Grantor's interests. The Grantee must reimburse any costs reasonably incurred by the Grantor in providing support as requested under clause 6.1.

7.0 Emergency and Public Safety

7.1 If at any time there is an emergency, or operations on the Reservoir authorised under this easement require access to be restricted for public safety and operational purposes, the Grantee may temporarily exclude entry by anybody, including the Grantor on the Water Storage Land and other parts of the Reservoir.

7.2 The Grantee may take such measures as are reasonably necessary for the safety of persons or property on or around the Reservoir and the Dam including erecting notices on the Water Storage Land warning of any danger and may otherwise require the Grantor and any of its grantees, assignees or invitees to adhere to any reasonably necessary safety measures when on the Water Storage Land.

8.0 Statutory Compliance

8.1 The Grantee will obtain and comply with all statutory and regulatory consents required with relation to all actions and uses on the Water Storage Land authorised under this easement.

9.0 Health and Safety

9.1 The Grantee and the Grantor acknowledge that both the Water Storage Land and the Waimea Forest Land adjoining the Water Storage Land comprise working environments and that different hazards may exist there from time to time. The parties will work together to identify, familiarize themselves and manage all such hazards.

9.2 The parties to this easement must give prompt notice to each other of any:

9.2.1 Accident to or defect in the Waimea Forest Land or the Water Storage Land of which either party may be aware which have the potential to effect the other party's working environment and activities.

9.2.2 Any circumstances occurring on the Waimea Forest Land or Water Storage Land likely to cause damage or injury.

9.3 The Grantee will comply with the requirements and obligations imposed by the Health and Safety at Work Act 2015 and will take all necessary steps to ensure that the obligations imposed upon the owner under the Health and Safety at Work Act 2015 will at all times be complied with. Each party will also actively participate in the other party's health and safety compliance processes. The Grantor will observe and comply with all of the Grantee's health and safety requirements notified to it in relation to the Water Storage Land.

10.0 Annual Fee



10.1 The Grantee shall pay the Grantor an annual fee calculated at the greater of:

10.1.1 \$5,000.00 plus GST per annum; or

10.1.2 the annual hectare rate (plus GST) from time to time under the forest licence for the adjoining Waimea Forest Land applied with respect to the area of the Water Storage Land.

10.2 The annual fee shall be paid in instalments on the same dates and in the same proportions as the annual licence fees paid for the forest licence for the adjoining Waimea Forest Land (or any subsequent licence or forestry agreement), as notified by the Grantor to the Grantee from time to time. Should the adjoining Waimea Forest Land cease to be subject to a forest licence or forestry agreement, the payments shall be made periodically on an ongoing basis at the times and in the proportions as were required in the calendar year immediately prior to the expiry or earlier termination of the last licence or agreement in place on the adjoining Waimea Forest Land.

10.3 Where clause 10.1.1 or 10.1.2 applies:

10.3.1 such payment shall be increased on any review date for the forest licence for the Waimea Forest Land (or any subsequent licence or forestry agreement) by the percentage increase of the reviewed rent under the forest licence (or any subsequent licence or forestry agreement).

10.3.2 If the Waimea Forest Land ceases to be subject to a forest licence or forestry agreement, the annual payments shall be increased at five (5) yearly intervals by the percentage increase in the average per ha rate for forestry licences for comparable land in the Tasman Region as advised by the forestry advisors to each of the Grantor and Grantee. Should the adjoining Waimea Forest Land cease to be used for commercial forestry, or should the Grantor and Grantee's advisors advise that there is no comparable land in the Tasman District subject to forestry licences, the annual payment shall be adjusted from the next review date and thereafter at five year intervals in accordance with the following calculation:

$$\frac{A}{B} \times C$$

Where:

A = the Consumer Price Index (All Groups) last published by the Department of Statistics or other governmental agency calculated as at the relevant review date.

B = the Consumer Price Index (All Groups) last published by the Department of Statistics or other governmental agency as at the Commencement Date or the last review date (whichever is the later).

C = the annual fee payable by the Grantee during the 12-month period immediately prior to the review date.

PROVIDED THAT in no circumstances will the new annual payment calculated in accordance with this formula be less than the annual payment payable by the Grantee for the 12 months immediately preceding the review date



11. No power to terminate

CERTIFIED ORIGINAL SIGNED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL
Signed _____
Date 12/12/11

11.1 There is no implied power herein for the Grantor to terminate the easement rights due to the breach of any term herein or for any other reason, it being the intention of the parties that the easement rights will continue until surrendered.

12. Default

12.1 If either party fails (defaulting party) to perform or join with the other party (other party) in performing any obligation herein, the following provisions will apply:

12.1.1 The other party may serve a written notice on the defaulting party (default notice) specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of 20 Working Days from service of the default notice, the other party may perform the obligation;

12.1.2 If after the expiry of 20 Working Days from service of the default notice, the defaulting party has not performed or joined in performing the obligation, the other party may:

- (a) perform the obligation; and
- (b) for that purpose enter on to the Burdened Land;

12.1.3 The defaulting party must pay to the other party the actual and reasonable costs costs of:

- (a) the default notice; and
- (b) the other party in performing the defaulting party's obligation;

within one month of receiving written notice of the other party's costs; and

12.1.4 The other party may recover any money payable under clause 12.1.3 from the defaulting party as a liquidated debt.

13. Disputes

13.1 If any dispute arises between the Grantor and the Grantee concerning the rights created herein, the parties will enter into negotiations in good faith to resolve their dispute.

13.2 If the dispute is not resolved within 20 Working days from the date on which the Parties begin their negotiations, the parties will attend mediation by a mediator jointly appointed by the Parties, or if the Parties cannot agree on the mediator, then a mediator appointed by the President for the time being of the New Zealand Law Society or his or her nominee.

13.3 If mediation fails to resolve the dispute then the dispute may be resolved by the Courts parties must comply with clause 13.1 and 13.2 before they can begin any action at law than an application for injunctive relief).



14. Transferability of Easement rights

14.1 The Grantee shall be entitled to transfer or assign its rights and obligations under this Easement Instrument in whole or part.

14.2 Upon the transferee or assignee (as the case may be) becoming liable under this Easement Instrument or notifying the Grantor that it has assumed the relevant obligations of the Grantee

under this Easement Instrument, the provisions of this Easement Instrument shall cease to be binding upon the transferor or assignor (as the case may be) in respect of the relevant parts (or if applicable, in whole) but without prejudice to the transferor's or assignor's liability for any antecedent breach of covenant under this Easement Instrument.

- 14.3 The Grantee can only transfer any easement in compliance with the requirements of clause 5.1 of the Deed.



CERTIFIED ORIGINAL SIGHTED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL
Signed.....
Date..... 17/12/18

Schedule 3 Aerial Cableway Easement terms and Conditions

1.0 Prescribed rights and powers

The rights and powers prescribed by Schedule 5 of the Land Transfer Regulations 2018 (the Regulations) are implied into this Easement Instrument, except as may be negated, amended, or added to as set out in this Easement Instrument.

2.0 Definitions and interpretation

2.1 In addition to the definitions contained in clause 1 of the Regulations, in this Easement Instrument, unless the context otherwise requires:

'Aerial Cableway' means all cables pulleys and equipment, excluding anchors, towers or other support structures required to transport or extract logs aerially from logging sites on the benefitted land.

'The Project' means the Waimea Dam project which involves construction of a dam structure to impound approximately 13 million cubic metres of water which will be released into the Lee River to augment river flows in order to satisfy instream needs and recharge the Waimea Plains groundwater system. The Project will also provide additional water for irrigation purposes.

'The Waimea Dam' means the dam structure

'Water Storage Easement' means the easement granted by the Grantor to [] for, among other things, the storage of water on the Water Storage Land.

'Water Storage Grantee' means the grantee under the Water Storage Easement.

'Water Storage Land' means Section 11 on Survey Office Plan 509793 and Section 12 on Survey Office Plan 509793.

'Working Day' means the hours between 8.30am and 4.00pm on a day of the week other than a Saturday or Sunday on which the registered banks are generally open for business in the place where any action or thing is to be done, sent, or delivered.

'the Works' means the construction, operation and maintenance of the Project including all associated works, earthworks, structures situated both above and below ground level (including facilities for the generation of electricity and an associated transformer), bridges, and all other ancillary activities, required directly or indirectly in connection with the Project.

2.2 In the construction of this Easement Instrument, unless the context otherwise requires:

- 2.2.1 the headings and sub-headings appear as a matter of convenience and shall not affect the construction of this Easement Instrument;
- 2.2.2 references to Clauses and the Schedules are to the Clauses and the Schedules of this Easement Instrument;
- 2.2.3 references to any statute, regulation or other statutory instrument or bylaw are deemed to be references to the statute, regulation, instrument or bylaw as from time to time



amended and includes substituted provisions that substantially correspond to those referred to; and

2.2.4 the singular includes the plural and vice versa, and words importing any gender include the other genders.

3.0 Right to operate aerial cableway

3.1 Subject to the terms of this easement, including, without limitation, clause 7, the Grantee, its contractors and employees, shall have the right:

3.1.1 to enter into the airspace above the surface of the maximum operating level of the Water Storage Land and string and operate, maintain and remove aerial cableways for the aerial transportation and extraction of logs from the Benefitted Land.

3.1.2 to enter onto the surface of the Water Storage Land with any vessel plant or equipment for the purposes of operating and monitoring, supervising and controlling use of aerial cableways.

3.1.3 to submerge cables below the surface of water on the Water Storage Land by fully detensioning the cableway when haulers and aerial cableways are not being used.

4.0 Operational Precautions

4.1 In exercising its rights under this easement the Grantee shall at its own cost take all reasonable full and proper precautions for guarding against any danger (including, but without limitation, fire, physical damage or water pollution on the Burdened Land, or to any person on the Burdened Land or to the Water Storage Grantee), and in particular shall (but without limiting the general obligation to take reasonable full and proper precautions pursuant to this clause 4.1):

4.1.1 give to the Grantor and the Water Storage Grantee no less than one month's notice prior to erecting any aerial cableway, stipulating location within the Water Storage Land, method of installation, intended times and duration of use;

4.1.2 give the Grantor and the Water Storage Grantee at least 24 hours' notice before commencing any logging operations using the cableway;

4.1.3 comply strictly with all reasonable conditions including warning sign requirements and any health and safety induction and compliance or operational requirements that may be imposed from time to time by the Grantor or the Water Storage Grantee or any other lawful authority;

4.1.4 remove all aerial cableways at the end of the log harvesting cycle or event for which they are erected.

The Grantee shall have no obligation to retrieve logs or other material entering the Reservoir outside of aerial cableway operations unless arising from a negligent act or omission of the Grantee or as provided in clause 3.1.



5.0 Removal of Logs

CERTIFIED ORIGINAL SIGHTED - AND THAT THIS IS A PHOTOCOPY OF THAT ORIGINAL

Signed

Date 17/12/18

5.1 The Grantee shall promptly remove from the Water Storage Land any logs or other material lost from the aerial cableway during operations. This obligation shall not in any way diminish the Grantee's obligation to operate the aerial cableway safely and take all practical steps to prevent the loss of logs or any other material from the aerial cableway.

5.2 The Grantee shall promptly repair any damage to the Water Storage Land which (in the reasonable opinion of the Grantee, the Grantor and the Water Storage Grantee) has the potential to cause erosion or discharge of soil and debris into the Water Storage Land as agreed by the parties acting reasonably, and which (in the reasonable opinion of the Grantee, the Grantor and the Water Storage Grantee) is caused by the loss of logs, recovery of logs or otherwise resulting from the installation, operation or removal of the Aerial Cableway.

6.0 Emergency and Personal Safety

6.1 The Grantee may take such measures as the Grantee reasonably thinks necessary for the safety of persons or property on or about the reservoir including the right to erect signs and notices warning of any danger.

6.2 The Grantee may exclude entry by any persons onto the parts of the Water Storage Land immediately adjacent to the Aerial Cableway during operation of the Aerial Cableway.

7.0 Priority

7.1 The rights of the Grantee pursuant to this Easement Instrument are second in priority to the rights of the Water Storage Grantee under the Water Storage Easement and the Grantee acknowledges that the rights of the Water Storage Grantee shall prevail in the event of any conflict or inconsistency and this clause 7.1 will prevail over the other provisions of this easement.

7.2 In the event of any emergency relating to the Works the Grantee will immediately cease operation of all aerial cableways until the emergency is addressed.

7.3 The Grantee (and its contractors and employees) shall not exercise any of the rights under clause 3 of this easement or otherwise carry out or permit to be carried out any activity on the Water Storage Land;

7.3.1 in a way that is reasonably foreseeably likely to damage the Waimea Dam or the boom associated with the Waimea Dam, and in any event not on or over the area being 50m upstream of the boom and not in or over the area between the boom and the Waimea Dam;

7.3.2 that may conflict with conditions of any resource consents held in respect of the Project or the use or operation of the Water Storage Land or the Waimea Dam;

7.3.3 that may conflict with any reasonable health and safety or operational requirements of the Water Storage Grantee as notified to the Grantee from time to time;

without obtaining the written consent of the Water Storage Grantee, provided such consent is not unreasonably withheld or delayed.



7.4 The Grantee agrees that the provisions of this Easement Instrument confer a benefit on the Water Storage Grantee for the purposes of the Contract and Commercial Law Act 2017 and that such rights may be exercised by the Water Storage Grantee.

8.0 Grantor's Consent

CERTIFIED ORIGINAL SIGHTED - AND THAT THIS IS A PHOTOCOPY OF THAT ORIGINAL
Signed
Date 17/12/18

8.1 In all cases where the consent of the Grantor is required, such consent or approval shall not be unreasonably delayed or withheld or granted upon unreasonable conditions, or granted subject to the payment of money or any other consideration.

9.0 Statutory Compliance

9.1 The Grantee shall obtain and comply with all statutory and regulatory consents required from time to time to exercise its rights under this easement instrument.

9.2 The Grantee shall be entitled to apply for any resource consents and any other statutory or regulatory consents required for the purpose of the exercise of any of the Grantee's rights under this easement instrument in the same manner as if the Grantee was the owner of the Water Storage Land. The Grantee shall before making the relevant application forward a copy to the Grantor and the Water Storage Grantee and, if reasonably requested, will consult with the Water Storage Grantee in relation to such consents to ensure compliance with this easement.

9.3 The Grantor shall at the reasonable cost of the Grantee, provide a reasonable degree of support in respect of such application and shall not support, fund or encourage any other party to oppose such application.

10.0 Parties to co-operate to avoid disruption to each other's operations

10.1 The Grantee shall use all reasonable endeavours to minimize any disturbance and disruption caused by the Grantee to the Works or the operation of the Project when exercising the Grantee's rights under this easement instrument.

10.2 The Grantor and the Water Storage Grantee shall use all reasonable endeavours to cause as little disturbance and disruption to the Grantee's forestry operations as possible.

10.3 The parties shall appoint designated contact persons and keep each other advised of contact details for these persons and any change in designated contact persons. Such persons shall on a routine basis:

10.3.1 Advise the other of scheduled works that may affect each other's operations;

10.3.2 Liaise to avoid as much as practicable conflict between forest harvesting and scheduled maintenance or other activities relating to the works; and

10.3.3 Keep each other informed of safety issues, updated health and safety protocols and any other matters likely to affect the other party's operations.

11.0 Severability

11.1 In addition to the Regulations, if any part of this Easement Instrument 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 Instrument which shall remain in full force.



12.0 Registration

12.1 In addition to the Regulations, the Parties shall do all acts and things necessary and execute all documents to ensure that this Easement Instrument is registered.

13.0 Disputes

13.1 The provisions of clause 14 of the Regulations are modified by deleting paragraphs 14 (a) to (c) and inserting the following:

If any dispute difference arises in any way out of or in connection with the easements the parties agree to discuss the matter fully in the spirit of goodwill and co-operation with a view to reaching a resolution for the purposes of which either party may require the other to enter into mediation in the manner adopted by LEADR or an equivalent facility for alternative dispute resolution available in New Zealand. If the parties cannot resolve any such dispute or difference and such dispute cannot be resolved through mediation, either party may require the matter to be referred to arbitration on the following terms:

- a. The arbitrator is to be jointly agreed upon by the parties;
- b. If the parties fail to agree on an arbitrator within seven (7) days of the issue of being submitted to them any party may require the President of the Nelson District Law Society to nominate an arbitrator and that nomination will bind the parties;
- c. The reference is to arbitration under the Arbitration Act 1996;
- d. The arbitration decision is final and binding on and may include:
 - i. An order for costs
 - ii. An order for enforcement
 - iii. Interest on monies payable.



CERTIFIED ORIGINAL SIGHTED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL
Signed
Date 17/12/18

Schedule 4- Conveyancing Terms

1. Ngāti Koata will advise whether the Sale Land will be at the Settlement Date subject to any registered or unregistered mortgage, lien, or charge. If so Ngāti Koata will forward to the Council statements signed by each mortgagee and holder of the lien or charge setting out the amount required to be paid to it in discharge of reduction of the mortgage debt or for the release of the lien or charge. Ngāti Koata acknowledges Council may retain and pay (if demanded) to the persons entitled the whole or a sufficient portion of the purchase price to release the Sale Land from all mortgages or rent charges affecting the same.

Settlement

2. The Council shall pay the purchase price (less any deduction in accordance with clause 3.12.4) for the Sale Land to Ngāti Koata on the Settlement Date, provided that GST will only be payable on production of a valid tax invoice prepared in accordance with section 24 of the Goods and Services Tax Act 1985 ("the GST Act"). For this purpose, Ngāti Koata shall provide the Council with a valid tax invoice for the Sale Land prepared in accordance with Section 24 of the GST Act a reasonable time before the Settlement Date.
3. Ngāti Koata acknowledges that the Council will tender settlement by way of a cheque drawn on the account of Tasman District Council or alternatively by way of an electronic transfer of funds drawn on the account of Tasman District Council that has been made pursuant to a protocol agreed to by the parties.

Additional Compensation

4. The parties acknowledge and agree that:
 - (i) In addition to the purchase price, the Council agrees to pay the amount of \$25,000.00 by way of additional compensation being the amount payable under section 72C(1) of the Public Works Act 1981.
 - (ii) The Council shall pay the additional compensation for acquisition of notified land to Ngāti Koata on the Settlement Date.
 - (iii) The additional compensation for acquisition of notified land shall not attract GST.

GST

5. The parties acknowledge and agree that the supply of the Sale Land shall be subject to the provisions of the GST Act and zero-rated pursuant to section 11(1)(mb) of the GST Act.
6. Ngāti Koata warrants that at the date of this Deed Ngāti Koata is a registered person as required by the GST Act, and will still be a registered person at the Settlement Date.
7. The Council warrants that:
 - (i) it is a registered person as required by the GST Act;
 - (ii) it is acquiring the Sale Land for the purpose of making taxable supplies; and
 - (iii) the Sale Land will not be used as a principal place of residence

and that will also be its intention at the Settlement Date



CERTIFIED ORIGINAL SIGHTED - AND THAT
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Signed
Date 12/12/18

8. Each party reserves its rights to seek compensation from the other party and reserves all its remedies at common law and equity if the other party breaches any warranty granted in clause 6 or 7 of this Schedule 4.

Declaration

9. If clause 3.10A applies, the Council will take the Water Storage Land for the purposes of Water Augmentation and Irrigation Purposes and the balance of the Waimea Forest Land as severance.



**CERTIFIED ORIGINAL SIGHTED - AND THAT
THIS IS A PHOTOCOPY OF THAT ORIGINAL**

Signed

Date