



OIA 19-E-0320 / DOCDM-5947459

4 June 2019

Mr Pat Holland
Federation of Mountain Clubs, Inc.
P O Box 1604
Wellington 6140

EMAIL pat.holland@fmc.org.nz

Dear Pat Holland

Thank you for your Official Information Act request to the Department of Conservation, dated 16 May 2019. You requested a copy of the DOC concession granted to New Zealand Energy Ltd dated May 2011.

The concession was assigned to Pioneer Energy Limited on 1 December 2014 without variations.

Your questions and our responses are listed below:

1. Have there been any variations?
There have been no variations to the concession.

The following documents fall within the scope of your request and are attached:

Item	Date	Document description	Decision
1	29 June 2011	<i>Concession NM-28243-OTH (Easement)</i> Notified Term 35 years commencing 24 June 2011. Granted to New Zealand Energy Limited and later assigned to Pioneer Energy Limited.	Released in full

Please note this letter (with your personal details removed) and enclosed documents will be published on the Department's website.

If you wish to discuss this with the Department, please contact John Wotherspoon, Operations Manager, Nelson Lakes District office on 03 521 1806 or by email jwotherspoon@doc.govt.nz.

Yours sincerely,

Roy Grose
Operations Director
Northern South Island



Concession Document (Easement)

THIS EASEMENT is made this 29 day of June 2011.

PARTIES:

1. Minister of Conservation, (the Grantor)
2. New Zealand Energy Limited (the Concessionaire)

BACKGROUND

- A. The Department of Conservation ("Department") Te Papa Atawhai is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The Department is under the control of the Grantor.
- C. The carrying out of these functions may result in the Grantor granting concessions to carry out activities on public conservation land.
- D. The Grantor administers public conservation lands described in Schedule 1 as the Easement Land.
- E. The Conservation legislation applying to the Easement Land authorises the Grantor to grant a concession over the Easement Land.
- F. The Concessionaire wishes to carry out the Concession Activity on the Easement Land subject to the terms and conditions of this Concession.
- G. The Concessionaire acknowledges that the Easement Land may be the subject of Treaty of Waitangi claims.
- H. The parties wish to record the terms and conditions of this Concession and its Schedules.

OPERATIVE PARTS

- I. In exercise of the Grantor's powers under the Conservation legislation the Grantor GRANTS to the Concessionaire an EASEMENT to carry out the Concession Activity on the Easement Land subject to the terms and conditions contained in this Concession and its Schedules.

SIGNED on behalf of the Minister of Conservation by Neil Marriot CLIFTON, Conservator, acting under delegated authority

in the presence of:

Witness Signature: *Sean Magee*

Witness Name: Sean Magee

Witness Occupation: Community Relations Officer

Witness Address: 186 Bridge Street, Nelson

A copy of the Instrument of Delegation may be inspected at the Department of Conservation at 18-22 Manners Street, Wellington.

SIGNED by New Zealand Energy Limited by:

David Graeme INCH
David Graeme INCH

Director

Nicola Kim INCH
Nicola Kim INCH

Director

SCHEDULE 1

1.	<p>Easement Land (Servient land - the land where the easement activity occurs) (Schedule 4)</p>	<p>As marked on the attached plan or map in Schedule 4 being: Common Name: Lake Matiri Conservation Area Land Status: Held for Conservation Purposes Area: c. 1.3 ha Legal Description: Section 1 SO 15298 And Common Name: Marginal Strip Matiri River Land Status: Marginal Strip Area: c. 0.1 ha Legal Description: Crown Land Block V (under action) Matiri Survey District adjacent to Section 3 Blk V Matiri S.D.</p>
2.	<p>Land (Dominant land - the land that benefits from the easement) (Schedule 4)</p>	<p>Section 3 Blk V Matiri Survey District as marked on the attached plan or map in Schedule 4 being the land in certificate of title: NL9A/1079.</p>
3.	<p>Concession Activity (clause 2)</p>	<p>(a) A right to convey water. (As marked green on the attached plan or map in Schedule 4.) The concession activity includes the construction and operation of: Three weirs at the outlet of Lake Matiri A concrete channel upstream of weir 1 A control hut at the outlet of Lake Matiri A penstock intake at weir 1 1.6m diameter penstock in forest at Lake Matiri Conservation Area Penstock and rock armouring in Matiri River Tailrace on Marginal Strip Matiri River</p> <p>(b) A right of way. (As marked in red on the attached plan or map in schedule 4.) The concession activity includes the construction and operation of: Vehicle turning area at the outlet to Lake Matiri Access track on Marginal Strip Matiri River Access track in Lake Matiri Conservation Area</p>
4.	<p>Term (clause 3)</p>	<p>Thirty five (35) years commencing on 24 June 2011. This concession shall lapse on expiry of five (5) years after the date of execution of this document unless the concession is exercised before the end of that period.</p>

5.	Final Expiry Date (clause 3)	23 June 2046.
6.	Concession Fee (clause 4)	<p><u>Concession Activity Fee</u>: 31.37% of 2% of the Gross Generating Revenue (plus GST) of the power scheme associated with the concession activity.</p> <p><u>Concession Management Fee</u>: \$500 (plus GST) per annum</p> <p><u>Concession Activity Fee (Construction Period)</u>: \$4,000 (plus GST)</p> <p><u>Concession Management Fee (Prior to Commissioning)</u>: Cost recovery of Departmental staff time and mileage to a maximum of \$2,000 (plus GST) per annum.</p>
7.	Concession Fee Payment Dates (clause 4)	<p><u>Concession Activity Fee</u>: Annually in arrears on receipt of invoice issued subsequent to the completed Activity Return Form (Schedule 6). The completed Activity Return Form shall be forwarded to the Grantor no later than 01 July each year.</p> <p><u>Concession Activity Fee (Construction Period)</u>: Within 1 month of commencing construction activity on the Easement Land.</p> <p><u>Concession Management Fee</u>: On receipt of invoice.</p>
8.	Penalty Interest Rate (clause 4)	Double the Grantor's bank's highest 90 day bank bill buy rate.
9.	Concession Fee Review Date(s) (clause 5)	24/06/14; 24/06/17; 24/06/20; 24/06/23; 24/06/26; 24/06/29; 24/06/32; 24/06/35; 24/06/38; 24/06/41; 24/06/44.
10.	Insurance (To be obtained by Concessionaire) (clause 11)	<p><u>Types and amounts:</u></p> <p>(i) Public Liability Insurance for:</p> <p>(a) general indemnity for an amount no less than \$2,000,000; and</p> <p>(b) Forest and Rural Fires Act extension for an amount no less than \$100,000.</p> <p>Insurance amounts subject to review (clause 11)</p>
11.	Addresses for Notices (clause 20)	<p>The Grantor's address is:</p> <p>Department of Conservation Munro State Building 186 Bridge Street Nelson 7010 New Zealand.</p> <p>Phone: 03 546 9335 Fax: 03 548 2805</p> <p>Email: nelson-marlboroughco@doc.govt.nz</p>
		<p>The Concessionaire's address in New Zealand is:</p> <p><u>Registered Address/Address for Service</u> 222 High Street Motueka 7120 New Zealand</p>

		<u>Postal Address</u> P.O. Box 113 Motueka 7143 New Zealand Phone: 03 528 1068 Fax: 03 528 1064 Email: david@nzenergy.co.nz
12.	Health and Safety (clause 12)	Is an audited safety plan required? Yes
13.	Registration of Easement (Schedule 5)	Is the easement to be registered with LINZ? Yes If yes, then the following applies: When the Concessionaire wishes the Easement to be registered then the Concessionaire must at its expense prepare an Easement Instrument in the form attached as Schedule 5, arrange for any necessary survey and register the document. The Grantor, if satisfied the Easement Instrument implements this easement must sign any necessary document(s).
14.	Special Conditions (clause 24)	See Schedule 3

Note: The clause references are to the Grantor's Standard Terms and Conditions set out in Schedule 2 of this document.

Note: Please initial each page of Schedule 1

RELEASSED UNDER THE OFFICIAL INFORMATION ACT

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Concessionaires initials <i>[Signature]</i>	Grantors initials <i>[Signature]</i>
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SCHEDULE 2

STANDARD CONDITIONS

1. Interpretation

1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.

1.2 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

2. What is being authorised?

2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.

2.2 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

3. How long is the Concession for - the Term?

3.1 This Concession commences on the date specified in Item 4 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

4. What are the fees and when are they to be paid?

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 6, and 7 of Schedule 1.

4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

5. When can the fee be reviewed?

5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

(a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.

(b) Subject to clause 5.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

(c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 5.2(a) or (b).

- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

5.2 Immediately the Concessionaire gives notice to the Grantor under clause 5.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 19) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y (2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Easement Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d)
 - (i) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
 - (ii) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause

5.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and

(iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1.

6. Are there any other charges?

6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity.

6.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.

6.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

7. When can the Concession be assigned?

7.1 If in Item 2 of Schedule 1 the easement is expressed as being in gross the Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.

7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.

7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.

7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.

7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

7.6 If the Concessionaire is not a publicly listed company any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

8. What are the obligations to protect the environment?

8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.

8.2 The Concessionaire must at its cost keep the easement facility (as defined in the Land Transfer Regulations 2002) now or hereafter upon the Easement Land, in good order,

condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

9. **When can structures be erected?**
- 9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.
10. **What if the Concessionaire wishes to surrender the Concession?**
- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.
11. **What are the liabilities and who insures?**
- 11.1 The Concessionaire agrees to use the Easement Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Land.
- 11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land, the Concession Activity, or to any structures, equipment or facilities on the Easement Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 9 of Schedule 1 with a substantial and reputable insurer.
- 11.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 11.9 On receiving such notice the Concessionaire must within 10 working days take out and keep current

policies for insurance and for the amounts not less than the sums specified in that notice.

- 11.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
 - (b) a copy of the current certificate of such policies.

12. **What about Health and Safety?**

12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 12 of Schedule 1), and with any safety directions of the Grantor.

12.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 12 of Schedule 1;

- (a) Prepare a safety plan;
- (b) have it audited by a suitably qualified person approved by the Grantor and forward to the Grantor a certificate from the auditor certifying that the safety plan is suitable for the Concession Activity; and
- (c) the Concessionaire must obtain from the auditor details as to when the safety plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Grantor within 5 working days of the certificate being issued.

12.3 If clause 12.2 applies then if the Concessionaire amends or replaces the safety plan then before the amendment or replacement plan takes effect the Concessionaire must comply with 12.2(b) and (c).

12.4 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.

12.5 Receipt of the safety plan/audit certificate by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 12 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

12.6 The Concessionaire must:

- (a) notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;
- (b) take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
- (c) take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;
- (d) record and report to the Grantor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
- (e) ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 12;

- (f) be satisfied that facilities or equipment provided by the Grantor to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
- (g) not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

13. What are the compliance obligations of the Concessionaire?

13.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Easement Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Easement Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Easement Land

13.2 The Concessionaire must comply with this Concession.

13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1.(a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14. When can the Concession be terminated?

14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so

remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

- 15. What happens on termination or expiry of the Concession?**
- 15.1 On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.
- 15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.
- 15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.
- 16. When is the Grantor's consent required?**
- 16.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 17. Are there limitations on public access and closure?**
- 17.1 The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.
- 18. What about other concessions?**
- 18.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.
- 19. How will disputes be resolved?**
- 19.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 19.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration

is to be carried out in accordance with the provisions of the Arbitration Act 1996.

- 19.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 19.4 The arbitrator must include in the arbitration award reasons for the determination.
- 19.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.
20. **How are notices sent and when are they received?**
- 20.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of fax, on the date of dispatch;
 - (c) in the case of post, on the 3rd working day after posting;
 - (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 20.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.
21. **What about the payment of costs?**
- 21.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.
- 21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.
22. **What about the powers implied by statute?**
- 22.1 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 **DO NOT APPLY** to this Easement. The rights and powers relating to this Easement are set out in the Special Conditions contained in Schedule 3.
23. **What about Co-Siting?**
- 23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.
- 23.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a

- concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land.
- 23.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
 - (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.
- 23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Land.
- 23.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Land; or
 - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
 - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Land; or
 - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 23.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 23.6.
- 23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.
- 23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
 - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
 - (c) any other matters the Grantor considers relevant.
- 23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.
- 23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.
- 23.11 The Grantor must not authorise the third party to commence work on the Easement Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been

met.

24. Are there any Special Conditions?

24.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

25. The Law

25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

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SCHEDULE 3

SPECIAL CONDITIONS

A. Construction Erosion and Sediment Management Plan & Final Design Plan

- A.1 The Concessionaire shall provide the Construction, Erosion and Sediment Management Plan required pursuant to condition 46 of resource consents RM060937 and RM060938, issued by Tasman District Council, to the Grantor for the Grantor's written approval. The Grantor will review this plan to ensure that construction works do not differ substantially in location, scale or level of effect to the concession application lodged by the Concessionaire. The Plans will be approved if the Grantor is satisfied that the constructions works are consistent with those described in the concession application and that the Plans will meet the outcomes specified.
- A.2 The Concessionaire shall provide detailed final design plans which shall include accurate structural plans and specifications including elevations of all structures, materials of construction surface finishes and colours. The final design plans shall include concept drawings prepared by a member of the New Zealand Institute of Landscape Architects illustrating the proposed finished appearance of the weirs, armoring of the "sweeping bend" portion of the penstock and rehabilitated area of river bed from where boulders are removed. The final design plan shall also include the fish pass design.
- A.3 The Concessionaire shall ensure that the Construction, Erosion and Sediment Management Plan and the final design plans are prepared by person(s) suitably qualified and experienced in civil and structural engineering and small scale hydro design construction and operation. The person(s) preparing the plans shall be members of an appropriate recognised professional institution (Member of the Institute of Chartered Engineers or similar).
- A.4 The Grantor reserves the right to require that plans provided pursuant to this condition be independently audited by an auditor approved by the Grantor. If this right is exercised, the auditor shall certify that the plans have been prepared in accordance with best practice for the relevant discipline. The costs of any independent audit shall be borne by the Concessionaire.
- A.5 **Status of Plans**
Once approved by the Grantor, the Construction, Erosion and Sediment Management Plan and final design plans shall form part of this Concession, and the Concessionaire shall not deviate from those parts of the plans which affect public conservation land without the prior written approval of the Grantor.
- A.6 No construction work including earthwork, land disturbance, or clearance of vegetation shall commence until the Construction, Erosion and Sediment Management Plan and final design plans have been received and approved in writing by the Grantor. Except that by prior agreement with the Grantor, the Concessionaire may undertake minor work to allow preliminary site investigation such as geotechnical drilling. Depending on the nature of such site investigation, prior approval may be subject to the preparation of the Pest Control and Land Rehabilitation Plan required pursuant to Condition G1.
- A.7 Condition 49.e on resource consents RM060937 and RM060938 requires that a description of the methodology for assessing, salvaging and relocating *Hyridella* freshwater mussels within the drained area behind the cofferdam to elsewhere in the lake be included in the Construction, Erosion and Sediment Management Plan. For the purposes of this concession, the Concessionaire shall also provide a description of the salvaging of freshwater mussels beneath the cofferdam.

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B. Construction Works

- B.1** The construction corridor to form the penstocks through the beech forest shall not exceed 6 metres in width at any point, with the exception of laydown areas which shall be clearly identified in the Construction, Erosion and Sediment Management Plan prepared in accordance with Condition A1.
- B.2** Boundaries of all areas to be disturbed shall be marked out prior to work commencing and approved by the Conservation Supervisor. Disturbance outside these marked areas is not permitted unless the prior written approval from the Grantor has been obtained. The Concessionaire is to pay the Grantor's costs in approving marked areas and considering any requests for deviation from those areas.
- B.3** The felling of any trees is to be done in a manner that minimises damage to surrounding vegetation.
- B.4** No more than 59 mature trees as identified in the application may be removed in the exercise of this Concession.
- B.5** All trees felled pursuant to this concession are to remain the property of the Grantor. The Concessionaire shall comply with all reasonable instructions given by the Grantor to remove large trees to a site approved by the Grantor for disposal in the township of Murchison or immediate environs or any site located between Murchison and the Easement Land.
- B.6** Subject to the provisions of the approved Pest Control and Land Rehabilitation Plan (Condition G1 of this document), the Concessionaire shall dispose of vegetation on site in areas approved by the Grantor and as set out in the Construction, Erosion and Sediment Management Plan. Felled vegetation will not be permitted to be stockpiled in such a way that would cause damage to the surrounding vegetation.
- B.7** All structures and activities associated with the development are to be finished in colours and surface textures and thereafter maintained in a manner that does not detract from the natural character of their surroundings.
- B.8** The Concessionaire must ensure that all refuse and surplus materials are removed from the Conservation Area at the completion of construction works or during the construction works where appropriate.
- B.9** Where river flow is stopped in a channel, monitoring shall be undertaken to determine if there are any fish strandings. Any such stranded fish should be transferred to pools in the river or other suitable habitat to provide for the safety of fish (e.g. the lake or main stem river).
- B.10** Records of any inspections or work undertaken pursuant to condition 56 on resource consents RM060937 and RM060938 (inspection after a major weather event) shall be provided to the Grantor or the Conservation Supervisor upon request.
- B.11** The Grantor may, acting upon the advice of the Conservation Supervisor, order construction activity to cease if that activity presents an immediate and serious risk to conservation values not anticipated or authorised by this Concession.

C. Performance Bond

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- C.2 The surety must execute (in the case of two or more jointly and severally) in favour of, and on terms acceptable to, the Grantor a performance bond initially set at NZ\$ _____ (_____ dollars) for due and faithful performance by the Concessionaire of the obligations under the Concession and/or reinstating any disturbed area of the Land to a standard satisfactory to the Grantor where disturbance has been caused by the Concessionaire or any agent of it and/or otherwise remedying or mitigating any adverse effects of the Concession Activity.
- C.3 If the initial amount of the bond has not been set in condition C.2 then prior to the Concession Activity commencing that amount will be set by the Grantor following an independent risk assessment using a methodology approved by the Grantor.
- C.4 The initial amount set under either clause 2 or 3 may be reviewed at the discretion of the Grantor at any time.
- C.5 The cost of any independent risk assessment or review will be paid by the Concessionaire within 10 working days of being given a notice by the Grantor.
- C.6 Notwithstanding the expiry, surrender or termination of the Concession document, the bond will not expire and is to remain in full force and effect until such time as all obligations of the Concessionaire under the Concession document have been complied with to the satisfaction of the Grantor.
- C.7 If the Concessionaire breaches any condition or fails to carry out any condition of the Concession or in carrying out the Concession Activity there arise adverse effects not authorised or reasonably foreseen in the Concession document the Grantor may call on the bond entered into under this document or any portion of it to ensure compliance with the conditions of the Concession document or to remedy or mitigate those adverse effects referred to above.

D. Landscape

- D.1 The Concessionaire shall provide the Landscape Management Plan as required pursuant to conditions 14 and 15 of resource consents RM060937 – RM060942 to the Grantor, for the Grantor's written approval. The plan will be approved if the Grantor is satisfied that it achieves the outcomes specified in resource consent condition 15.
- D.2 The Concessionaire shall ensure that the Plan includes concept drawings illustrating the proposed finished appearance of the weirs, armouring of the 'sweeping bend', control hut and turning area, and access track over the power house tailrace.
- D.3 Once approved by the Grantor, the Landscape Management Plan shall form part of this Concession, and the Concessionaire shall not deviate from those parts of the plan which affect public conservation land without the prior written approval of the Grantor.

E. Conservation Supervisor

- E.1 The Concessionaire shall fund an independent contractor to the position of "Conservation Supervisor" who will act as a liaison contact between the Concessionaire and the Grantor. The exact role, brief of service and level of remuneration of the Conservation Supervisor will be agreed between the Concessionaire and the Grantor, and failing agreement will be determined in accordance with the Grantor's Dispute Resolution clause in the Grantor's Standard Concession conditions.
- E.2 The Concessionaire and the Grantor record that the role of the Conservation Supervisor includes:

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- a. Reviewing work plans and other documentation submitted to the Grantor either under this concession, or in respect of any resource consent requirements, or otherwise associated with the Concessionaire's operations on public conservation land and making appropriate recommendations to the Grantor based on those documents;
 - b. The activities prescribed in Conditions B.2, F.5 and L.1 of this document.
 - c. Monitoring compliance by the Concessionaire with plans required pursuant to this concession, conditions imposed in this concession and any other reasonable requirements of the Grantor.
 - d. Monitoring and liaising with regard to the success or otherwise of ongoing restoration works and making recommendations to the Grantor regarding successful progressive and long-term restoration and rehabilitation of the Site.
- E.3** The appointment of the Conservation Supervisor (or any replacement Conservation Supervisor) will be by the Grantor following consultation with the Concessionaire, and the Conservation Supervisor will report to the Grantor.
- E.4** The Concessionaire and the Grantor agree that the Conservation Supervisor will be a senior position, requiring a range of professional skills necessary for liaising effectively and autonomously with the Concessionaire, the Department, territorial authorities, other external consultants, insurance companies and bondsmen. The Conservation Supervisor must have a strong proven performance in relationship management for developments in environmentally sensitive areas.
- E.5** The Conservation Supervisor must be appointed at least 10 working days prior to the Concessionaire commencing the concession activity. Pending such appointment the Grantor may, if he/she considers it necessary and desirable, appoint, in agreement with the Concessionaire, an interim liaison representative at any time between the date of execution of this Concession and the commencement of this concession; and such interim liaison representative will carry out the role of the Conservation Supervisor as envisaged by condition E2 of the Special Conditions for this concession. The concessionaire shall meet the costs of any interim liaison representative appointed pursuant to this condition.
- E.6** The Conservation Supervisor may, with the prior approval of the Grantor and the Concessionaire, call on additional independent external consultants for specialist advice on matters reasonably raised by the Concessionaire's operations carried out under this concession. The Conservation Supervisor will advise anticipated costs of consultants to both the Concessionaire and Grantor. The Concessionaire shall meet the costs reasonably charged by such consultants.

F. Fires and Contamination

- F.1** No fires are to be lit within the Lake Matiri Conservation Area. Extreme care is to be taken with all equipment likely to start fires and all such equipment and all mechanical equipment used in the Conservation Area shall be provided with suitable fully operational fire extinguishers with operators fully trained in their use.
- F.2** No machinery or vehicle shall be refuelled or serviced within 10 metres of Lake Matiri or any watercourse. Any equipment showing signs of fuel or oil leakage shall be repaired before entering the Conservation Area.

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- F.3 Should any machine develop a leak whilst in the Conservation Area, that machine shall be immediately shut down, the spillage contained, and the Concessionaire shall immediately inform the Conservation Supervisor appointed pursuant to Conditions E1-E6.
- F.4 If notification to Tasman District Council is necessary pursuant to condition 61 of resource consents RM060937 and RM060938 (as the consequence of a spill of hazardous material that is of a volume of 10 litres or more), and if the spill has occurred on, or affected, public conservation land (including marginal strip), then the Concessionaire shall also notify the Grantor as soon as practicable and provide the Grantor with a copy of the written report submitted to Council.
- F.5 All construction debris shall be removed from the site as soon as reasonably practicable after the conclusion of each phase of construction. No excess concrete shall be disposed of in the Conservation Area and concrete wash down water shall be disposed of in positions agreed in advance by the Conservation Supervisor and in no instance where it may reach any water body.
- F.6 The Concessionaire must comply with the Didymo prevention and cleaning protocols as set out in the Biosecurity New Zealand document titled "Cleaning Methods for Freshwater Activities" before and after contact (including people, equipment, clothing and footwear and other items) with any waterway and particularly for any contact with the enclosed waters of Lake Matiri.

G. Vegetation Restoration and Weed Control

- G.1 The Concessionaire shall consult the grantor in the preparation of the Pest Control and Land Rehabilitation Plan required pursuant to condition 99 of resource consents RM060937 and RM060938, issued by Tasman District Council. The completed plan shall be submitted to the Grantor for the Grantor's written approval before any construction activity commences on public conservation land.
- G.2 Once approved by the Grantor the Pest Control and Restoration Plan shall form part of the Concession document and shall not be deviated from without prior written approval of the Grantor.
- G.3 Minor vegetation clearance for the purpose of pre-scheme feasibility investigation may be undertaken with the written approval of the Grantor prior to the submission of the Pest Control and Land Rehabilitation Plan.
- G.4 The purpose of the Land Rehabilitation section of the Plan shall be to ensure that restoration of all disturbed areas and any additional planting or vegetation restoration undertaken by the Concessionaire to mitigate or remedy the effects of their activities is appropriate to the Conservation Area and marginal strip and that restoration is undertaken in accordance with best practice.
- G.5 The Land Rehabilitation section of the Plan which relates to public conservation land shall as a minimum:
- provide details of the location of all proposed vegetation restoration and planting, including species to be planted and/or restored at each location
 - identify sources of all proposed plantings, (Note: All plant material must be sourced from within the Matiri catchment.)
 - methods of site preparation, planting, and methods to be used to ensure successful plant establishment.
 - maintenance schedules including if necessary contingencies for seedling mortality,
 - monitoring and reporting responsibilities.

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- G.6 The Concessionaire shall be responsible for the maintenance, including if necessary by plant replacement, of all vegetation restoration areas for a minimum of 5 years from the time of initial planting or vegetation restoration.
- G.7 The Concessionaire shall agree the location of storage areas for forest duff and top soil with the Conservation Supervisor prior to the excavation of this material.
- G.8 The Concessionaire shall rehabilitate all areas (including all laydown areas) not required for the ongoing construction or operation of the hydro scheme within 6 months of initial disturbance.
- G.9 The Concessionaire shall provide a report on rehabilitation progress to the Grantor on an annual basis until the rehabilitation goals set out in the Pest Control and Land Rehabilitation Plan have been met and in any case for no less than 5 years after initial planting or restoration.
- G.10 The Concessionaire shall consult the Grantor prior to giving effect to the measure imposed by condition 40.a of resource consent RM060942 (payment of \$20,000 for riparian planting) in order to establish the most appropriate time to implement the condition.
- Weed Control**
- G.11 The purpose of the Pest Control section of the Plan shall be to ensure that no pest plant organism (including aquatic species such as didymo) not already present in the Lake Matiri Conservation Area is introduced and that exotic species already present in the Conservation Area are not further distributed.
- G.12 Any machine that is used in any part of the Lake Matiri Conservation Area already infested with exotic weeds shall be thoroughly cleaned by water blasting or other method approved by the Conservation Supervisor, before leaving that part of the Conservation Area to prevent the spread of weeds to other parts of the Conservation Area. Alternatively the Concessionaire shall thoroughly remove and destroy all weeds prior to undertaking construction activity in areas already infested with weeds.
- G.13 The Concessionaire must comply with the Didymo prevention and cleaning protocols as set out in the Biosecurity New Zealand document titled "Cleaning Methods for freshwater Activities" before and after contact (including people, equipment, clothing and footwear and other items) with any waterway and particularly for any contact with the enclosed waters of Lake Matiri.
- G.14 The Pest Control section of the Plan shall:
- identify the locations and types of all weed species already present in the construction area and in any areas identified for compensatory restoration planting,
 - provide details of species at risk from being introduced,
 - describe methods for avoiding the introduction and further spread of weeds,
 - set out methods for eradicating any weed(s) which are inadvertently introduced or spread as a result of construction activity, including frequency of weed control operations and number of years such operations need to be repeated.
 - monitoring and reporting responsibilities.
- G.15 The Concessionaire shall be responsible for ongoing implementation of the Pest Control measures for the periods specified for each weed in the Pest Control section of the Plan and in no case for less than 5 years after the cessation of construction activities on sites disturbed by construction activities.

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H. Lake Levels and Residual Flow

- H.1 For the purposes of this concession, the Concessionaire shall comply with all measures in respect of Lake Matiri and the Matiri River (where it flows within public conservation land) imposed by conditions 155-166 of resource consents RM060969, RM090023, RM060940 and RM060941.
- H.2 Operation of the scheme shall not cause the level of Lake Matiri to fall below 340.10 metres above sea level (masl) except that for emergency repairs, required as a result of a serious threat to the structural integrity of one or more weirs, the lake level may be drawn down to no lower than 339.58 masl. If emergency lowering of the lake is to occur, the Concessionaire shall inform the Grantor at the earliest possible opportunity. The lake shall only be drawn down below the minimum lake level for a maximum of 24 hours at any time.
- H.3 Operation of the scheme may increase the 100 year flood level of Lake Matiri by up to 0.4m.
- H.4 The Concessionaire shall retain a permanent record of the amount of water diverted to the penstock. This record shall be available for inspection by the Grantor upon request.
- H.5 The Concessionaire shall retain a permanent record of lake level that shall be available for inspection by the Grantor upon request.
- H.6 The Concessionaire shall prepare a summary of the hydrological data from the preceding calendar year, which shall be submitted to the Grantor during the first week of July each year and which shall include, as a minimum, the following information:
- Minimum, median, mean and maximum lake levels.
 - Minimum, median, mean and maximum flows in the Matiri River, as recorded pursuant to condition 162.b of resource consents RM060969, RM090023, RM060940 and RM060941.
 - The number of occasions that lake levels were at (or below) the naturally occurring minimum level of 340.08 metres above sea level.
 - The number of occasions that flow in the Matiri River was at (or below) the flow specified in condition 155 of resource consents RM060969, RM090023, RM060940 and RM060941.
 - Flow rates from the compensation valve referred to at condition 155 of resource consents RM060969, RM090023, RM060940 and RM060941 recorded at flow recorder site 4 as required by resource consent condition 162.d.

I. Aquatic Ecology

Aquatic Ecology Monitoring Plan

- I.1 The Concessionaire shall provide the Aquatic Ecology Monitoring Plan required pursuant to condition 168 of resource consents RM060939, RM090023, RM060940 and RM060941 issued by Tasman District Council, to the Grantor for the Grantor's written approval prior to construction work commencing on public conservation land. The Plan shall be prepared by a suitably qualified and experienced person(s) approved by the Grantor following consultation and agreement with the Concessionaire. If agreement can not be reached, this clause shall be subject to the disputes resolution process specified in the Grantor's standard terms and conditions.
- I.2 The Plan shall specify those measures required by condition 168 of resource consents RM060939, RM090023, RM060940 and RM060941 and also specify the type, method, frequency, purpose and location of monitoring in respect of:
- native fish in Lake Matiri;

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- b) periphyton in the Matiri River between the lake outlets and the boundary of Lake Matiri Conservation Area;
- c) the effectiveness of eel passage at Weirs 2 and 3 fish passes;
- d) the effectiveness of the intake screening at weir 1; and
- e) the degree of entrainment of native fish in the tailrace channel on marginal strip adjacent to the power house.
- I.3 The purpose of the Aquatic Ecology Monitoring Plan shall be to determine the effects specified in condition 169 of resource consents RM060939, RM090023, RM060940 and RM060941 and also to determine
- a) the effects of scheme operation on native fish in Lake Matiri;
- b) any significant effects on periphyton growths in the river;
- c) the effectiveness of native fish passage over weirs 2 and 3;
- d) the effectiveness of penstock intake screening and
- e) the degree of entrainment of native fish at the power house tailrace.
- I.4 The Plan shall specify the targets and/or thresholds for interpretation of what effects constitute 'significant effects'.
- I.5 Monitoring shall be conducted at the frequencies specified in condition 170 of resource consents RM060939, RM090023, RM060940 and RM060941. If weir 1 is designed without an eel trap the words 'through the trap' (at condition 170.b) shall be disregarded for the purposes of this concession. Monitoring frequencies imposed by condition 170.e shall also include periphyton between the lake outlets and the boundary of Lake Matiri Conservation Area. Also, monitoring frequencies imposed by condition 170.f shall include native fish at Lake Matiri for the purposes of this concession.
- I.6 Condition 170.d of resource consents RM060939, RM090023, RM060940 and RM060941 requires that the age and size structure of the eels shall be determined by a one off sample of at least 50 eels from Lake Matiri 10 years after the commissioning of the scheme. The Aquatic Ecology Monitoring Plan shall specify how a baseline study of the current age and size structure of the eel population at Lake Matiri shall be established.
- I.7 Condition 170.f of resource consents RM060939, RM090023, RM060940 and RM060941 imposes monitoring requirements in respect of macroinvertebrates (including mussels) and aquatic plants in Lake Matiri. This condition is augmented by Special Concession Condition I.5 above. The Aquatic Ecology Monitoring Plan shall specify how a baseline of lake biota will be established.
- I.8 If an expert panel is convened pursuant to condition 170.c of resource consents RM060939, RM090023, RM060940 and RM060941 the Concessionaire shall ensure that a representative of the Department of Conservation, nominated by the Grantor, and agreed to by the Concessionaire, is a member of that panel and that written approval of the Grantor is obtained prior to the implementation of any revised monitoring programme. If agreement can not be reached in respect of the Department's representative, this clause shall be subject to the disputes resolution process specified in the Grantor's standard terms and conditions.
- I.9 If an expert panel is convened pursuant to condition 172.d of resource consents RM060939, RM090023, RM060940 and RM060941 in relation to significant adverse effects on public conservation land the Concessionaire shall ensure that a representative of the Department of Conservation, nominated by the Grantor, and agreed to by the Concessionaire, is a member of the panel. If agreement can not be reached in respect of the Department's representative, this clause shall be subject to the disputes resolution process specified in the Grantor's standard terms and conditions.
- I.10 In addition to the outcomes of the monitoring programme specified in condition 172.a of resource consents RM060939, RM090023, RM060940 and RM060941, it shall be a

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condition of this concession that there shall be no significant adverse effect on native fish populations on public conservation land due to the operation of the power scheme.

- I.11 Once approved by the Grantor the Aquatic Ecology Management Plan shall form part of the Concession and shall not be deviated from without prior written approval of the Grantor.
- I.12 The Concessionaire shall include an analysis of information relating to the monitoring requirements specified in this concession document in the Annual Report referred to at condition 24 of resource consents RM060937 - RM060942. A copy of the report shall be provided to the Grantor by the first week of July each year.

- Aquatic Habitat Compensation Payment**
- I.13 The Concessionaire shall make a compensation payment of \$30,000 (including GST) to the Grantor, upon request, in 2 or 3 lumps sums following the commissioning of the power scheme associated with the infrastructure authorised by this concession. The Grantor shall use the payments to enhance freshwater aquatic habitat in the catchment of the Buller River or its tributaries. The Grantor shall provide to the Concessionaire, upon request, a report detailing how the compensation payments have been used.

J. Fish Passage

- J.1 The Concessionaire shall provide connectivity flow for the purpose of providing fish passage from Weir 1 as specified in conditions 149 and 150 of resource consents RM060939, RM090023, RM060940 and RM060941 issued by Tasman District Council.
- J.2 The Concessionaire shall provide the Grantor with a record of the surveys conducted (pursuant to condition 150) to determine the volume of water to be released in order to achieve a wetted fish passage in accordance with condition 149. A report shall be submitted to the Grantor within 1 month of each survey conducted.
- J.3 The Concessionaire shall keep a record of all occasions necessary to pump water to maintain a wetted surface for eel passage over weir 1 pursuant to condition 154 of resource consents RM060939, RM090023, RM060940 and RM060941. This record shall be made available to the Grantor upon request and included in the Annual Report referred to at condition 24 of resource consents RM060937 - RM060942.
- J.4 All weirs shall be designed and built to incorporate climbing passes and holding pools in order to facilitate the safe passage of eels and koaro to and from Lake Matiri.
- J.5 The weirs (including fish pass features) shall be designed and built in accordance with conditions 137-140 of resource consents RM060939, RM090023, RM060940 and RM060941. A copy of the final design shall be submitted to the Grantor as per Special Concession Condition A2.
- J.6 If the Concessionaire engages an aquatic scientist to provide advice pursuant to condition 153 of resource consents RM060939, RM090023, RM060940 and RM060941, the Concessionaire shall, within 48 hours, inform the Grantor. Any report produced pursuant to condition 153 of resource consents RM060939, RM090023, RM060940 and RM060941 shall be provided by the Concessionaire to the Grantor, and the Concessionaire will obtain the written approval of the Grantor prior to the implementation of any recommendations made in that report.
- J.7 Condition 172.b of resource consents RM060939, RM090023, RM060940 and RM060941 requires that trap and transfer from the power station tailrace shall be carried out if monitoring shows that eel passage is not being provided by the combination of the minimum passage flow and flow over the weir/fish pass. Condition 153 of resource

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consents RM060939, RM090023, RM060940 and RM060941 (referred to above at Special Concession Condition J.6) provides, however, that an aquatic scientist shall investigate the flow regime and prepare a report if suitable eel passage is not achieved between the Matiri River and the weir at outlet 1. It is a condition of this concession that the Concessionaire will, in the first instance, seek advice (pursuant to resource consent condition 153) from an appropriately qualified and experienced aquatic scientist if criteria specified to achieve wetted fish passage are inadequate.

- J.8** The Concessionaire shall maintain a minimum of 10 stoat traps and one rat poison-bait feeding station adjacent to the fish pass at Outlet 1 from the 1st of December to the 28th of February inclusive each year. The Concessionaire shall also maintain a rat poison-bait feeding station adjacent to weir 2 and another adjacent to weir 3 during the same period. The bait stations shall be restocked and the traps cleared and reset at least fortnightly.

Intake Screening

- J.9** The penstock intake shall be screened so as to avoid the entrainment of native fish. The screen shall have a mesh size of no greater than 25 millimetre bar spacing and shall be constructed such that the intake velocity at the outermost surface of the outermost screen is less than 0.5 metres per second.
- J.10** The final design of the intake structure shall be prepared by person(s) suitably qualified and experienced in structural engineering and small scale hydro design construction and operation in whose professional opinion the intake structure design avoids the creation of a surface vortex at the intake and who shall provide to the Grantor an assessment of the degree of screen clogging anticipated by the chosen screen design.
- J.11** The Concessionaire is required to maintain the intake screen and all associated structures in a good state of repair so as to avoid the entrainment of native fish.
- J.12** The compensation flow pipe outlet at weir 1 shall be screened so as to avoid the entrainment of fish. The screen shall have a mesh size of no greater than 25 millimetre bar spacing and shall be constructed such that the intake velocity at the outermost screen surface of the outermost screen is less than 0.5metres per second.

Tailrace

- J.13** The tailrace shall incorporate a device suitable to prevent the entrainment of fish.

K. Recreation and Access

- K.1** The Concessionaire shall maintain safe access to and through the construction area for the walking public during the full construction period aside from temporary obstructions for reasons of safety.
- K.2** The Concessionaire having established that it is not practical to provide safe access may temporarily obstruct public access for periods of up to two hours.
- K.3** The Concessionaire shall allow sufficient time for walkers to traverse the area to be obstructed between obstruction periods and will establish a means to ensure that the parties have traversed the area safely. This time period shall be a minimum of half an hour for an obstruction of part of the route or four hours for obstruction of the full route.
- K.4** The Concessionaire shall provide a formed walking access track for the public of a standard the equivalent or higher than that specified for Tramping Tracks in 'The New Zealand Handbook – Tracks and Outdoor Structures' (SNZ HB 8630:2004) for the full length of the track from the Matiri West Branch River through to Lake Matiri Conservation Area. The Concessionaire shall first agree the final line of the track with the Grantor and supply full technical specifications for the construction to the Grantor

Concessionaires initials

Grantors initials

for approval prior to construction commencing. The Concessionaire shall comply with this condition prior to the commissioning of the power scheme.

K.5 The cost of maintaining the access track on public conservation land to the standard required for the concession activity shall be the sole responsibility of the Concessionaire.

K.6 The Concessionaire shall comply with conditions 38-41 of resource consent RM060942, imposed by Tasman District Council (land use). If the easement referred to in condition 38 of resource consent RM060942 has not been granted at the time the power scheme is operational, the Concession Fee at item 6 of Schedule 1 shall be 31.37% of 3% of the Gross Generating Revenue (GST) of the power scheme associated with the concession activity until such time as the easement is granted.

K.7 The Concessionaire shall pay the survey and registration costs associated with the implementation of condition 38 of resource consent RM060942 in regard to the easements in gross in favour of the Crown over the existing formed walking track and access maintenance track on Sec 3 Blk V Matiri SD (NL9A/1079).

K.8 The Concessionaire shall consult the Grantor prior to giving effect to the measure imposed by condition 39 of resource consent RM060942 in regard to the installation of a fence to exclude livestock from the visitor access track. The purpose of the consultation will be to agree the location of the fence line.

K.9 The Concessionaire shall consult the Grantor prior to giving effect to the measure imposed by condition 40.d of resource consent RM060942 (in regard to the supply and transportation of prepared aggregate) in order to establish the most appropriate time and process to implement the condition.

K.10 The Concessionaire shall contribute to the Department of Conservation the sum of \$30,000 (including GST). The contribution shall be towards the development of a footbridge across the West Branch Matiri River or any other programme or project which supports, promotes or maintains recreational opportunities within Lake Matiri Conservation Area or adjoining conservation land. The amount subject to this condition shall be adjusted annually to the Construction Cost Index (CCI); adjustment to the CCI shall be backdated to the date of resource consent, 7 October 2009. The Department may request the contribution subject to this condition to be paid in instalments. Any request for an amount in excess of \$5,000 shall be made not less than six (6) months prior to the date that payment is expected. Any request for an amount less than \$5,000 shall be made not less than three (3) months prior to the date that payment is expected.

Note: As a result of Condition K10 above, Condition 40b of resource consent RM060942 is no longer required and the Grantor will not oppose an application by the Concessionaire to Tasman District Council to have the consent condition cancelled.

K.11 The Concessionaire shall ensure that the audited safety plan prepared pursuant to item 12 of schedule 1 and clause 12 of schedule 2 of the concession document addresses potential risks to visitors at each of weirs authorised by this concession. The purpose of this aspect of the safety plan shall be to ensure that reasonable care is taken by the concessionaire to minimise risks to recreational users of Lake Matiri Conservation Area, including visitors who may use boats or kayaks on Lake Matiri.

L. Protection of Fauna

L.1 Headworks construction for any of the 3 weirs shall cease when paradise shelduck moulting commences on Lake Matiri and shall not recommence until no moulting shelduck are present within 200 metres of the outlets. The decision to commence

Concessionaires initials	<i>[Signature]</i>	Grantors initials	<i>[Signature]</i>
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headworks construction shall be made by the Concessionaire in consultation with a nominated representative of Fish and Game New Zealand and the approval of the Conservation Supervisor.

- L.2 The Concessionaire shall ensure that their agents, servants, contractors, employees or invitees do not take dogs onto the Land.
- L.3 The Concessionaire shall, upon request, contribute to the Department of Conservation a terrestrial habitat compensation payment of \$20,000 (plus GST) to enhance terrestrial habitat in the Matiri River catchment. All dollar values subject to this condition shall be CPI adjusted annually. At the Grantor's discretion, drawdown of this compensation payment may be requested in more than one instalment.
- L.4 The Concessionaire shall, prior to felling, monitor with an automatic bat detector for 24 hours any tree likely to be occupied by bats. This includes the trees identified as 7, 15, 49, 61 and 62 in the document entitled 'Matiri Tree and Shrub Identification Checksheet' dated 4/28/2004 and any red beech tree with a diameter at breast height of greater than 50cm. The purpose of the monitoring shall be to ensure that no bat is roosting at the tree when it is felled. No tree shall be felled at which a roosting bat has been detected during the preceding 24 hours. The Concessionaire shall consult the Conservation Supervisor regarding the implementation of any aspect of this condition.

M. Helicopter Access

- M.1 Helicopter access to the construction area at Lake Matiri Conservation Area is permitted with authorised helicopter Concessionaires only.

N. Other matters

- N.1 The Concessionaire is responsible for the structural integrity and maintenance of all structures or development activities associated with the scheme.

- N.2 The Concessionaire submitted the resource consent decision in its entirety as part of its concession application. The Grantor reserves the right to treat any breach of the conditions of resource consents RM060937, RM060938, RM060939, RM060940, RM060941, RM060942, RM090023 issued by Tasman District Council as a breach of this concession where such breach relates to public conservation land. Where an alleged breach is disputed, the breach shall be determined by the dispute process set out in Schedule 2.

- N.3 The Concessionaire shall appoint a representative prior to the exercise of this concession who shall be the Grantor's principal contact person(s) in regard to matters relating to the concession. The Concessionaire shall inform the Grantor of the representative's name and how they can be contacted. Should that person(s) change during the term of the concession, the Concessionaire shall immediately inform the Grantor in writing of the name(s) of the new representative(s) and how they may be contacted. The Grantor shall also nominate a representative prior to the exercise of this concession who shall be the Concessionaire's principal contact person in regard to matters relating to this concession.

Variations

- N.4 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.
- N.5 The Grantor may, on request or on his or her own motion, vary any conditions of this Document if the variation is necessary:

Concessionaires initials		Grantors initials	
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- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this concession was granted; or
- (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the concession and the effects of the Activity permitted by this Document require more appropriate conditions.

The Concessionaire is to be bound by every such variation.

O. Rights and Powers

General rights

- O.1** All the easements referred to in this concession include
 - a) the right to use any easement facility already situated on the stipulated area or course for the purpose of the easement granted; and;
 - b) if no suitable easement facility exists, the right to lay, install, and construct an easement facility reasonably required by the Concessionaire (including the right to excavate land for the purpose of that construction).

O.2 The Grantor must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

O.3 The Concessionaire must not do and must not allow to be done on the dominant land or the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

O.4 The definition of easement facility in clause 8.2 of Schedule 2 is replaced by the definition in clause O.5 of Schedule 3.

O.5 'Easement facility' in relation to the right to convey water, means weirs, pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution.



O.6 'Easement facility' in relation to the right of way means that part of the surface of the land described as the stipulated area.

O.7 'Stipulated area' or 'stipulated course' in relation to any of easements referred to in this concession means the course that is shown on a plan prepared for the purpose of specifying the easement(s).

Rights of Entry

O.8 For the purpose of performing any duty or in the exercise of any rights conferred under this concession, the Concessionaire may:

- a) enter upon the servient land by a reasonable route and with all necessary tools, vehicles, and equipment; and
- b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work; and
- c) leave any vehicles or equipment on the servient land for a reasonable time if work is proceeding.

Concessionaires initials		Grantors initials	
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- O.9** If the Concessionaire enters the servient land to conduct work, the Concessionaire must;
- a) ensure that as little damage or disturbance as possible is caused to the servient land or to the Grantor.; and
 - b) ensure that all work is performed in a proper and workmanlike manner; and
 - c) ensure that all work is completed promptly; and
 - d) immediately make good any damage done to the servient land by restoring the surface of the land as nearly as possible to its former condition.

Right to convey water

- O.10** A right to convey water includes the right for the Concessionaire in common with the Grantor and other persons to whom the Grantor may grant similar rights to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the servient land to the dominant land.
- O.11** The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- O.12** The easement facility referred to in condition O.9 is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the Grantor at the time of installation of the facility.

Rights of Way

- O.13** A right of way includes the right for the Concessionaire in common with the Grantor and other persons to whom the Grantor may grant similar rights, at all times, to go over and along the easement facility.
- O.14** The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of vehicle, machinery, or implement.
- O.15** A right of way includes
- a) the right to establish a driveway, to repair and maintain an existing driveway, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
 - b) the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the driveway.

Concessionaires initials  Grantors initials 

SCHEDULE 4

**DOC Nelson/Marlborough
Concession**

Concession no. NM 28243-OTH

Type: Easement

Name: New Zealand Energy Limited

Term: 35 Years

Expires: 30 June 2046

Area: c1.4ha

Legal Description: Section 1 SO 15298 and Crown Land Blk V (under action) Matiri Survey District

Conservation unit name: Lake Matiri

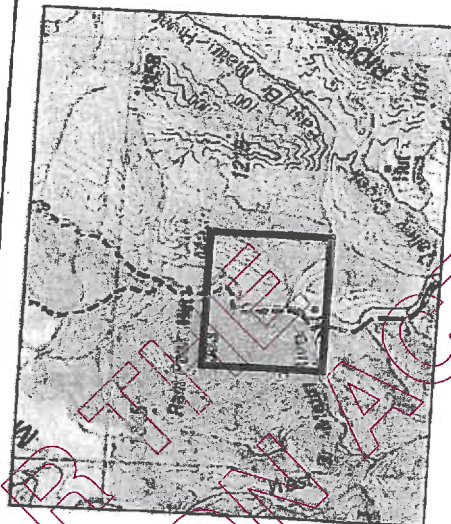
Conservation Area / Marginal Strip - Matiri River

Conservation unit no: 00175 & 05049

Local Authority: Tasman District Council

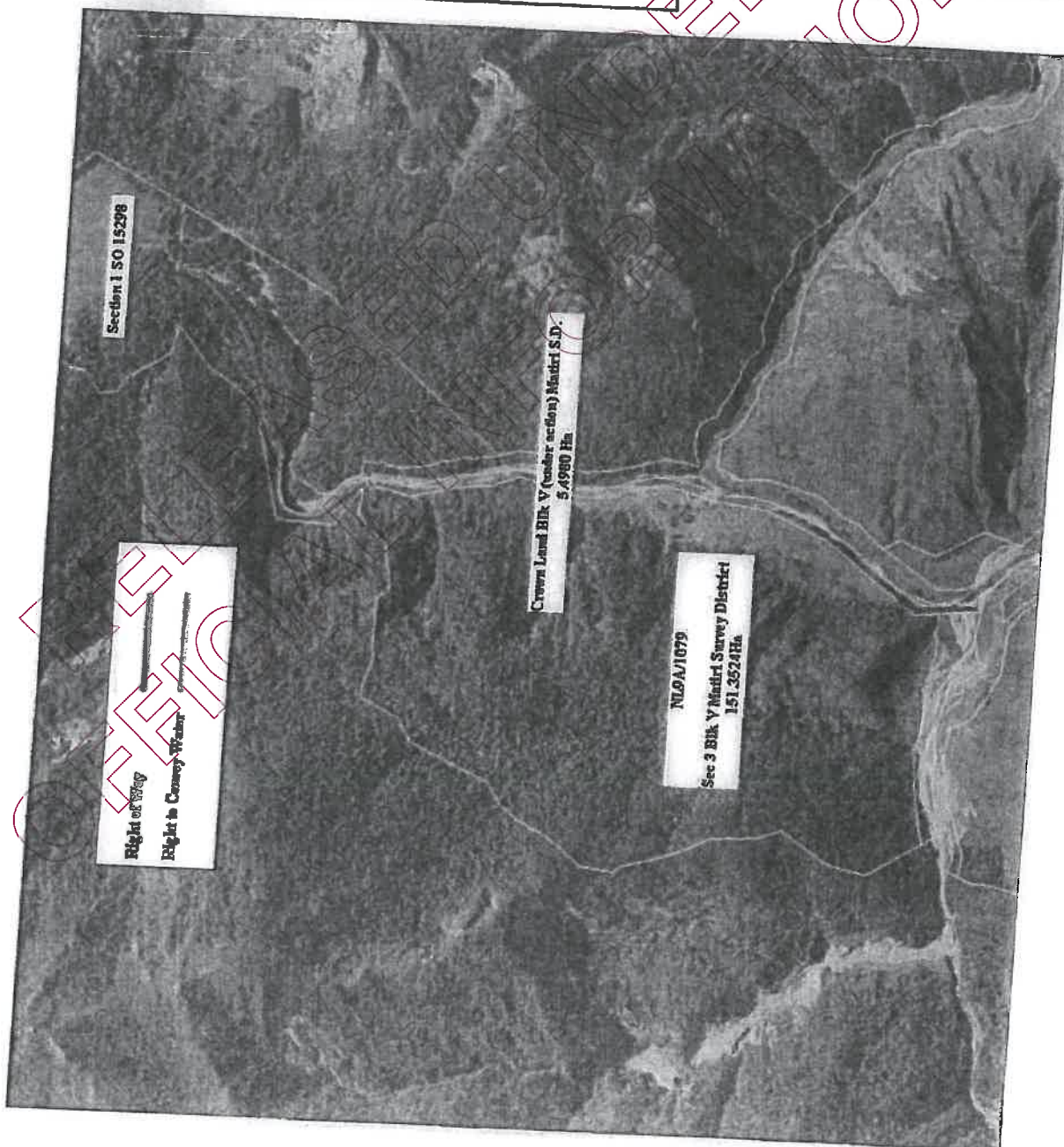
File Reference: PAC 10-04-046

Location ID: 22009



Grantor's initials

Concessionaire's initials *[Handwritten signature]*



Section 1 SO 15298

Right of Way
Right to Carry Water

Crown Land Blk V (under action) Matiri S.D.
5,4980 Ha.

NLD/A/1070

Sec 3 Blk V Matiri Survey District
151,3524Ha.

SCHEDULE 5

EASEMENT INSTRUMENT TO GRANT EASEMENT

Sections 90A Land Transfer Act 1952

Land registration district

NELSON

BARCODE

Grantor *Surname must be underlined*

Her Majesty the Queen (acting through the Minister of Conservation)

Concessionaire (Grantee) *Surname must be underlined*

New Zealand Energy Limited

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Annexure Schedule 1 Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) set out in Schedule A, with the rights and powers or provisions set out in Annexure Schedule 2 for 35 years for the period commencing on and including 24 June 2011 and expiring on and including 23 June 2046.

RELEASED UNDER THE OFFICIAL INFORMATION ACT

Schedule A *Continue in additional Annexure Schedule if required*

Purpose (nature and extent) of easement,	Shown (plan reference)	Servient tenement (Identifier/CI)	Dominant tenement (Identifier/CT or in gross)
(i) a right to convey water. (ii) a right of way.		Section 1 SO 15298 And Crown Land Blk V (under action) Matiri Survey District adjacent to Section 3 Blk V Matiri S.D.	Section 3 Blk V Matiri Survey District NL9A/1079

Easements rights and powers (including terms, covenants, and conditions)

The implied rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007 are negatived.

RELEASED UNDER OFFICIAL INFORMATION ACT

Annexure Schedule 1

1. The within easement is subject to the following terms and conditions set out in the Sub Schedules below

1.	Concession Activity <i>(clause 2)</i>	<p>(a) A right to convey water. (As marked green on the attached plan or map in Schedule 4.)</p> <p>The concession activity includes the construction and operation of:</p> <ul style="list-style-type: none"> Three weirs at the outlet of Lake Matiri A concrete channel upstream of weir 1 A control hut at the outlet of Lake Matiri A penstock intake at weir 1 1.6m diameter penstock in forest at Lake Matiri Conservation Area Penstock and rock armouring in Matiri River Tailrace on Marginal Strip Matiri River <p>(b) A right of way. (As marked in red on the attached plan or map in schedule 4.)</p> <p>The concession activity includes the construction and operation of:</p> <ul style="list-style-type: none"> Vehicle turning area at the outlet to Lake Matiri Access track on Marginal Strip Matiri River Access track in Lake Matiri Conservation Area
2.	Term <i>(clause 3)</i>	<p>Thirty five (35) years commencing on 24 June 2011.</p> <p>This concession shall lapse on expiry of five (5) years after the date of execution of this document unless the concession is exercised before the end of that period.</p>
3.	Final Expiry Date <i>(clause 3)</i>	<p>23 June 2046.</p>
4.	Concession Fee <i>(clause 4)</i>	<p><u>Concession Activity Fee:</u> 31.37% of 2% of the Gross Generating Revenue (plus GST) of the power scheme associated with the concession activity.</p> <p><u>Concession Management Fee:</u> \$500 (plus GST) per annum</p> <p><u>Concession Activity Fee (Construction Period):</u> \$4,000 (plus GST)</p> <p><u>Concession Management Fee (Prior to Commissioning):</u> Cost recovery of Departmental staff time and mileage to a maximum of \$2,000 (plus GST) per annum.</p>
5.	Concession Payment Dates <i>(clause 4)</i>	<p>Fee</p> <p><u>Concession Activity Fee:</u> Annually in arrears on receipt of invoice issued subsequent to the completed Activity Return Form (Schedule 6). The completed Activity Return Form</p>

		shall be forwarded to the Grantor no later than 01 July each year. Concession Activity Fee (Construction Period): Within 1 month of commencing construction activity on the Easement Land. Concession Management Fee: On receipt of invoice.
6.	Penalty Interest Rate (clause 4)	Double the Grantor's bank's highest 90 day bank bill buy rate.
7	Insurance (To be obtained by Concessionaire) (clause 11)	Types and amounts: (ii) Public Liability Insurance for: (a) general indemnity for an amount no less than \$2,000,000; and (b) Forest and Rural Fires Act extension for an amount no less than \$100,000. Insurance amounts subject to review (clause 11)
8	Addresses for Notices (clause 20)	The Grantor's address is: Department of Conservation Munro State Building 186 Bridge Street Nelson 7010 New Zealand. Phone: 03 546 9335 Fax: 03 548 2805 Email: nelson-marlboroughco@doc.govt.nz
		The Concessionaire's address in New Zealand is: 222 High Street Motueka New Zealand Phone: 03 528 1068 Fax: 03 528 1064 Email: david@nzenergy.co.nz
9.	Health and Safety (clause 12)	Is an audited safety plan required? Yes
10.	Special Conditions (clause 24)	See Schedule 3

Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions set out below in Sub Schedule 2.

SUB SCHEDULE 2

STANDARD CONDITIONS

1 Interpretation

1.1 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Easement Land), as if the breach had been committed by the Concessionaire.

1.2 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

2 What is being authorised?

2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.

3 How long is the Concession for- the Term?

3.1 This Concession commences on the date specified in Item 2 of Schedule 1 and ends on the Final Expiry Date specified in Item 3 of Schedule 1.

4 What are the fees and when are they to be paid?

4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 4, and 5 of Schedule 1.

4.2 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 6 of Schedule 1.

5 When can the fee be reviewed?

5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

(a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.

(b) Subject to clause 5.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.

(c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new

Concession Fee the new Concession Fee is to be determined in accordance with clause 5.2(a) or (b).

- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

5.2 Immediately the Concessionaire gives notice to the Grantor under clause 5.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (c) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 19) or, if the parties agree,
- (d) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y (2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Easement Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.

- (e) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (f) (i) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (ii) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 5.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
- (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1.

6 Are there any other charges?

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement Land or the carrying on of the Concession Activity.
- 6.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 6.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 6 of Schedule 1.

7 When can the Concession be assigned?

- 7.1 If in Schedule A the easement is expressed as being in gross the Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.
- 7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 7.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.

- 7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.
- 8 What are the obligations to protect the environment?**
- 8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.
- 8.2 The Concessionaire must at its cost keep the easement facility (as defined in the Land Transfer Regulations 2002) now or hereafter upon the Easement Land, in good order, condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.
- 9 When can structures be erected?**
- 9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.
- 10 What if the Concessionaire wishes to surrender the Concession?**
- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.
- 11 What are the liabilities and who insures?**
- 11.1 The Concessionaire agrees to use the Easement Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Easement Land.
- 11.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 11.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 11.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land, the Concession Activity, or to any structures, equipment or facilities on the Easement Land or any other indirect or consequential

damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.

- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 10 of Schedule 1 with a substantial and reputable insurer.
- 11.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 11.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 11.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
 - (b) a copy of the current certificate of such policies.

12 What about Health and Safety?

- 12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with any safety directions of the Grantor.

13 What are the compliance obligations of the Concessionaire?

- 13.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987; Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Easement Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Easement Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife

Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and

- (c) with all notices and requisitions of any competent authority affecting or relating to the Easement Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Easement Land

13.2 The Concessionaire must comply with this Concession.

13.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 13.1.(a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14 When can the Concession be terminated?

14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. Before electing to so remedy in accordance with this clause the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.

15 What happens on termination or expiry of the Concession?

15.1 On expiry or termination of this Concession, either as to all or part of the Easement Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Easement Land.

15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition.

- 15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Easement Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.
- 16 When is the Grantor's consent required?**
- 16.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
- 17 Are there limitations on public access and closure?**
- 17.1 The Concessionaire acknowledges that the Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.
- 18 What about other concessions?**
- 18.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.
- 19 How will disputes be resolved?**
- 19.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 19.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 19.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

- 19.4 The arbitrator must include in the arbitration award reasons for the determination.
- 19.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.
- 20 How are notices sent and when are they received?**
- 20.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 11 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of fax, on the date of dispatch;
 - (c) in the case of post, on the 3rd working day after posting;
 - (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 20.2 If either party's details specified in Item 11 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.
- 21 What about the payment of costs?**
- 21.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.
- 21.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.
- 22 What about the powers implied by statute?**
- 22.2 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 **DO NOT APPLY** to this Easement. The rights and powers relating to this Easement are set out in the Special Conditions contained in Schedule 3.
- 23 What about Co-Siting?**
- 23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.
- 23.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's

activity on the Easement Land.

- 23.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
 - (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.
- 23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Land.
- 23.6 Where the Concessionaire maintains that Co-Siting by a third party on the Easement Land would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Land; or
 - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
 - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Easement Land; or
 - (e) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 23.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 23.6.
- 23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.
- 23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (d) any written comments or submissions of the Concessionaire and third party;
 - (e) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
 - (f) any other matters the Grantor considers relevant.
- 23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.
- 23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be

required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitce's activity on the Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.

23.11 The Grantor must not authorise the third party to commence work on the Easement Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

24 Are there any Special Conditions?

24.1 Special conditions are specified in Schedule 3. If there is a conflict between this Sub Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

25 The Law

25.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

RELEASED UNDER THE ACT
OFFICIAL INFORMATION ACT

SUB SCHEDULE 3

SPECIAL CONDITIONS

(Insert any special conditions)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

SCHEDULE 6 - ACTIVITY RETURN FORM

CONFIDENTIAL

CONCESSION ACTIVITY FEE RETURN:
 Department of Conservation
NEW ZEALAND ENERGY LIMITED PAC 10.04 046
 for the period _____ to _____

CALCULATION OF CONCESSION FEE		
A	Total energy production for the period stated above (kWh)	
B	Average cents per kWh for the period stated above	
C	Actual Gross Generation Revenue for the period stated above	
D	2% of Gross Generation Revenue	\$ _____ .00
E	31.37% of the sum at D	\$ _____ .00
F	GST	\$ _____ .00
TOTAL FEE PAYABLE (E + F)		\$ _____ .00

I, David Graeme INCH, solemnly and sincerely declare that the calculation of concession fees above has been prepared by me or on my instructions and accurately reflects the operation of the concession over the relevant period, and I make this solemn declaration conscientiously believing the same to be true under and by virtue of the Oaths and Declarations Act 1957.

Signed _____
 David Graeme Inch

Declared at: _____

Date: _____

Before: _____ (Solicitor of the High Court/Justice of the Peace)

RELEASED UNDER THE
OFFICIAL INFORMATION ACT