

Agreement to Grant Easement

Top Energy Limited **Error! Bookmark not defined.**
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Far North District Council **Error! Bookmark not defined.**
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Kaikohe and Districts Sportsville Incorporated **Error! Bookmark not defined.**
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Date:

PARTIES

- 1 Top Energy Limited **Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.** (*Top Energy*)

Address: John Butler Centre (level 2)
60 Kerikeri Road, Kerikeri
Phone: (09) 407-0604
Email: Taryn.Collins@topenergy.co.nz

- 2 Far North District Council **Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.Error! Bookmark not defined.** (*Owner*)

Address: Private Bag 752, Kaihohe 0440
Email:

- 3 Kaikohe and Districts Sportsville Incorporated (*KDSI*)

Address: Far North District Council, Memorial Avenue, Kaikohe 0405
Email: s.herzogbell@scopeprojectsnz.com
Phone: [Sophie Herzog-Bell - 0276742259](tel:0276742259)
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BACKGROUND

- A The Owner is the owner of the Land.
- B Top Energy is the electricity lines network company responsible for electricity transmission servicing the Land.
- C KDSI operates a sports facility on the Land.
- D Top Energy, the Owner and KDSI have reached agreement on the terms upon which, amongst other things, Top Energy will undertake the Works, and the Owner will grant the Easement in favour of Top Energy in respect of the Works on the terms as set out in this agreement.

AGREEMENT

1 **DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions:** In this agreement:

Bond means that part of the Estimated Costs detailed in Schedule 1, amounting to \$4,347.83 plus GST.

Conditions means any condition set out in clause 3.

Dealing means the registration of the Easement in accordance with clause 6.

Easement means an easement granting a right to convey electricity and telecommunications in gross in favour of Top Energy over the Easement Area, on the terms set out in the form of easement instrument attached as Schedule 2, which shall be amended to include the provisions of this agreement where necessary.

Easement Area means the area shown marked with white stripes on the Plan in respect of the Works, such areas to be finalised by Top Energy during the survey process in clause 6 following completion of the Works.

Estimated Costs means the sum of \$141,663.09 plus GST as recorded in the Sales Quotation No. 20006466 dated 28 February 2022 attached as Schedule 1.

KDSI means Kaikohe and Districts Sportsville Incorporated.

Land means the estate in fee simple in Part Lot 3 Deposited Plan 22327 described in Record of Title NA1008/196 being approximately 5.3603 hectares more or less, being a recreation reserve subject to the Reserves Act 1977.

Land Transfer Plan means an easement plan complying with the Land Transfer Act 2017;

LINZ means Land Information New Zealand.

Owner means the Owner, the Owner's successors and/or the registered owner(s) for the time being of the Land.

Plan means the indicative plan attached as Schedule 3.

Top Energy means Top Energy Limited, its successors and permitted transferees, assigns, lessees, sublessees and licensees together with Top Energy's servants, agents, employees, workers, invitees, licensees and contractors.

Transmission Line means the electricity infrastructure (including the transformer) and associated works to be constructed the Land as shown on the Plan and as further described on the Plan and in the Sales Quotation No. 20006466 dated 28 February 2022 attached as Schedule 1.

Works means the works to install the Transmission Line and associated works.

1.2 INTERPRETATION

In this agreement:

- (i) The words including the singular shall be deemed to include the plural and vice versa.
- (ii) References to Top Energy, Owner and KDSI shall include their successors and/or permitted transferees/assigns.

- (iii) References to any document or agreement shall be deemed to include references to that document or agreement as amended, novated, supplemented, varied or replaced.
- (iv) Headings are inserted for convenience and shall be ignored in interpreting this Agreement.
- (v) References to a clause or a paragraph are a reference to clauses of this Agreement and, unless stated otherwise, to the Part of this Agreement in which such reference appears.

2 COSTS

- 2.1 KDSI shall pay Top Energy the Estimated Costs immediately on signing this agreement (if not paid already).
- 2.2 The Bond shall be used to pay for the actual costs incurred by Top Energy in preparing this agreement, undertaking the survey of the Easement Area and registering the Easement with LINZ.
- 2.3 If the actual costs to Top Energy (as described in clause 2.2) will:
 - (a) exceed the Bond, then KDSI shall, on demand, increase the Bond payment accordingly by making an additional payment to Top Energy; or
 - (b) be less than the Bond, then Top Energy will refund to KDSI the excess held.

3 CONDITIONS

- 3.1 This agreement is conditional upon the Owner (as owner of the Land and as an administering body) complying with all laws and legal requirements necessary to register the Easement, including complying with any obligations under the Reserves Act 1977.
- 3.2 The date for satisfaction of the condition contained in clause 3.1 is the date that is two (2) months from the date this agreement is signed by all parties.

4 WORKS

- 4.1 In consideration of the payment of the Estimated Costs to Top Energy by KDSI, Top Energy shall, from the date the Estimated Costs are paid and the Conditions are satisfied, be entitled to enter, re-enter and remain on the Land at all reasonable times with or without such assistance, machinery, vehicles and equipment as is reasonably necessary to undertake the Works.
- 4.2 Top Energy shall undertake the Works with all due care, speed and diligence, provided always that Top Energy shall use reasonable endeavours to cause as little interference as practicable to the Owner and KDSI.
- 4.3 Any change to the Easement Area (being solely as a result of an adjustment in accordance with the final route of the Transmission Line), must be approved in writing by the Owner and KDSI, such approval not to be unreasonably withheld or delayed.

- 4.4 KDSI shall be responsible, at its sole cost, for obtaining any resource consents required in respect of the Works.

5 EASEMENT

- 5.1 From the date the Conditions are satisfied:
- (a) the Owner grants, and Top Energy accepts, the Easement over the Easement Area; and
 - (b) Top Energy and the Owner agree to be bound by the Easement as if it had been executed by both parties and registered against the record of title to the Land, its terms being implied into this agreement.

6 SURVEY AND REGISTRATION

- 6.1 Following completion of the Works, Top Energy will:
- (a) undertake a survey and produce a Land Transfer Plan identifying the Easement Area;
 - (b) submit the Land Transfer Plan to LINZ for approval and deposit and take such steps as are necessary to obtain LINZ's approval of the Land Transfer Plan; and
 - (c) create a Landonline Workspace for the Dealing.
- 6.2 The Owner will promptly, at its cost, obtain the consent of any chargee or mortgagee of the Land to the Dealing on terms reasonably acceptable to Top Energy. The Owner will also procure the signing, certification and release of the Dealing to Top Energy for submission.
- 6.3 As soon as reasonably practicable after Top Energy receives notice that LINZ has registered the Easement, it will notify the Owner of the same.

7 COVENANTS

- 7.1 The Owner and KDSI acknowledge that there is no liability for any, and will make no claim for, compensation for or from Top Energy arising whether in relation to the Works, the grant of the Easement, injurious affection or loss of profit but excluding however any claim for breach of this agreement or the Easement or any negligence on the part of Top Energy.
- 7.2 The Owner and KDSI agree, warrants and undertake to Top Energy that the Owner will not:
- (a) negotiate or grant any rights to any person over the Easement Area between the date of this agreement and the registration of the Easement at LINZ; or
 - (b) undertake any building construction on the Easement Area without obtaining the prior consent of Top Energy, such consent not to be unreasonably withheld or delayed.
- 7.3 The Owner and KDSI will not, in their capacity as owner or occupier of the Land or both, either directly or indirectly:

- (a) object to, advocate against, oppose or impede any action taken by Top Energy to give effect to any of the matters referred to in this agreement or for the purpose of undertaking the Works so long as it is acting in accordance with this agreement, the Easement and all applicable statutory and regulatory obligations, whether national, regional or local;
- (b) object to the granting of any consent required by Top Energy to undertake the Works; and
- (c) fund, facilitate, assist or promote any other person to take any action that would be in breach of this agreement if done by the Owner.

7.4 The Owner and KDSI will promptly give, sign and deliver all written approvals or consents requested by Top Energy that are reasonably necessary to:

- (a) enable Top Energy to undertake the Works; or
- (b) enable the registration of the Easement.

8 HEALTH AND SAFETY

8.1 Top Energy will comply with all obligations imposed on Top Energy at law as the person in charge of a place of work and will be responsible for the health and safety of any person who enters the Land at the request of Top Energy.

8.2 The Owner will comply with all obligations imposed on the Owner at law as owner of the Land relating to the health and safety of persons on or in the vicinity of the Land.

8.3 KDSI will comply with all obligations imposed on the KDSI at law as occupier of the Land relating to the health and safety of persons on or in the vicinity of the Land.

8.4 COSTS

8.5 KDSI agrees to reimburse, upon demand, all Top Energy's costs incurred in the perusal, execution and performance of this agreement, including but without limitation, internal and external legal, surveying, valuation, construction, engineering and management costs.

9 DISPUTE RESOLUTION

9.1 If any dispute arises between the parties concerning the rights and obligations contained within this agreement, the parties will enter into negotiations in good faith to resolve the dispute themselves or through any informal dispute process they agree upon.

9.2 If the dispute is not resolved within 14 days then any party may at any time serve a mediation notice on the other parties requiring the dispute be referred to mediation. The mediation notice shall set out the nature of the dispute. The parties shall in good faith endeavour to agree upon a mediator within 7 days of the date of service of the mediation notice. If the parties cannot agree on the mediator, the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee will appoint an independent mediator. The mediator's costs are to be borne equally by the parties.

- 9.3 If the dispute is not resolved within 28 days of the date on which the mediation notice is served, the parties will submit to the arbitration of an independent arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator within a further 14 days the President for the time being of the New Zealand Law Society (or any successor organisation) or the President's nominee will appoint an independent arbitrator.
- 9.4 Any arbitration proceedings will be conducted in accordance with the Arbitration Act 1996 and the substantive law of New Zealand.

10 **ASSIGNMENT**

- 10.1 Top Energy may assign, sub-license, novate or otherwise transfer the whole, but not any part of, their interest in this agreement to any party, provided that the transferee or assignee party enters into a deed of covenant with the other party to comply with the provisions of this agreement in place of Top Energy.
- 10.2 The Owner shall not transfer or assign any of its interest in the Land or this agreement or grant any interest, mortgage or charge over the Land without first obtaining the consent of Top Energy. Top Energy must give its consent if the assignee, transferee or recipient of the interest in the Land enters into a deed of covenant with Top Energy, that it will comply with the provisions of this agreement instead of the Owner or, in the case of the grant of an interest in the Land, in addition to the Owner.
- 10.3 KDSI shall not transfer or assign any of its interest in this agreement.

11 **COMPLIANCE WITH LAWS**

- 11.1 Each party must comply with all laws and other legal requirements that apply to the use or occupation of the Land or to activities undertaken on the Land, including under the Resource Management Act 1991, Reserves Act 1977, and the Building Act 2004.

12 **COUNTERPARTS**

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

EXECUTION

Signed by Top Energy Limited in the presence of:

.....
Authorised Signatory

.....
Witness signature

.....
Name

.....
Full name (please print)

.....
Occupation (please print)

.....
Address (please print)

Signed by Far North District Council in the presence of:

.....
Authorised Signatory

.....
Witness signature

.....
Name

.....
Full name (please print)

.....
Occupation (please print)

.....
Address (please print)

Signed for and on behalf of the **Kaikohe and Districts Sportsville Incorporated** in the presence of:

.....
Authorised Signatory

.....
Witness signature

.....
Name

.....
Full name (please print)

.....
Authorised Signatory

.....
Occupation (please print)

.....
Name

.....
Address (please print)

SCHEDULE 1 – ESTIMATED COSTS

Cost of the Works: \$141,663.09 plus GST as detailed in Sales Quotation No.
20006466 dated 28 February 2022 as attached

SCHEDULE 2 – EASEMENT INSTRUMENT

Easement instrument to grant easement or *profit à prendre*

Section 109, Land Transfer Act 2017

Grantor

Surname(s) must be underlined.

FAR NORTH DISTRICT COUNCIL

Grantee

Surname(s) must be underlined.

TOP ENERGY LIMITED

Grant of Easement or *Profit à prendre*

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

Schedule A

Continue in additional Annexure Schedule if required.

Purpose of Easement or <i>Profit à prendre</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title) or in gross
Right to convey electricity and telecommunications	Marked "" and "" on Deposited Plan	NA1008/196	In gross

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

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

Continue in additional Annexure Schedule if required.

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

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

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

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

Annexure Schedule B**1 Interpretation**

1.1 In this instrument, unless the context otherwise requires:

- (a) "Burdened Land" means the land owned by the Grantor and contained in Record of Title NA1008/196;
- (b) "Easement Area" means that/those part(s) of the Burdened Land marked on Deposited Plan with the letter(s) " ";
- (c) "Emergency Situation" means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of electricity by means of the Transmission Line;
- (d) "Transmission Line" means wires or conductors of any other kind (including fibre optic or coaxial cables) used or intended to be used for the transmission of electricity and/or telecommunication signals, waves or impulses; and includes any insulators, foundations, casings, tubes, tunnels, minor fixtures and other items, equipment or material used or intended to be used for supporting, securing, enclosing, surrounding and protecting a Transmission Line; and also includes any fuses, fuse holders, pillars and transformers, automatic switches, voltage regulators, capacitors or other instruments, apparatus or devices used in association with a Transmission Line; and anything in replacement or substitution of any of the foregoing;
- (e) words importing the singular include the plural and vice versa; and
- (f) references to the Grantor and Grantee include their respective heirs, executors, transferees, administrators, successors and assigns.

2 Grant of electricity and telecommunications easements

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

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

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

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

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

- (b) to install such infrastructure both on or under the surface of the Burdened Land as is necessary for the effective transmission of electricity by means of the Transmission Line;
- (c) to inspect, operate, use, maintain, repair, renew, upgrade, replace, change the size of and remove the Transmission Line;
- (d) with the Grantee’s agents, contractors and employees, and with any vehicles, equipment, tools and materials, to enter and remain for a reasonable time on the Burdened Land for any purposes necessary or convenient for the Grantee to exercise its rights under this instrument (including the right to extinguish fires);
- (e) to construct on the Burdened Land whatever roads, tracks, access ways, fences, gates and other works are deemed necessary by the Grantee for it to exercise its rights under this instrument and which are approved by the Grantor (that approval not to be unreasonably withheld);
- (f) to keep the Easement Area cleared of all buildings and structures by any means the Grantee considers necessary;
- (g) to keep the Easement Area cleared of all fences, trees and vegetation by any means the Grantee considers necessary where such:
 - (i) breach any statutory or regulatory requirements or standards or codes of practice or otherwise breach generally accepted engineering standards as to the minimum clearance of the Transmission Line;
 - (ii) impede the exercise by the Grantee of its rights under this instrument or the Grantee's access over the Burdened Land or the Easement Area or to the Transmission Line; or
 - (iii) inhibit the safe and efficient operation of the Transmission Line;
- (h) to remove at the Grantor’s expense trees and/or vegetation on the Burdened Land where the Grantee, acting reasonably considers such trees and/or vegetation pose a risk to the safe and efficient operation of the Transmission Line and the Grantor having been given notice of the requirement for the removal of such trees and/or vegetation pursuant to clause 5(b) of this instrument has failed to act.

2.3 The Grantee has no obligation to construct the Transmission Line or convey electricity through it or them continuously or at all.

3 Access

3.1 The Grantee must, before exercising the right of entry in clause 2.2:

- (a) make reasonable efforts to identify the Grantor or the occupier of the Burdened Land;
- (b) give reasonable notice, and in any event not less than three (3) days’ notice, to the Grantor or the occupier of the Burdened Land of the Grantee’s intention

to enter the Burdened Land, except in an Emergency Situation when prior notice is not required; and

(c) identify the work it intends to carry out.

3.2 The Grantee is not required by reason of the obligations in this clause to delay entry onto the Burdened Land from the date notified.

3.3 The Grantee, in entering the Land, will take reasonable steps to minimise inconvenience to the Grantor or the occupier of the Burdened Land, including;

(a) liaising with the Grantor to arrange a suitable time of entry to the Easement Area (unless this is not possible due to an Emergency Situation);

(b) leaving gates as they are found (if applicable);

(c) driving in a safe manner and taking reasonable steps not to disturb stock (if applicable); and

(d) Avoiding access through specific areas identified by the Grantor unless necessary to access the Transmission Line.

3.4 The Grantee is not required to delay entry onto the Burdened Land or to pay any money or other consideration to the Grantor or any occupier of the Burdened Land by reason of the obligations in this clause.

3.5 When accessing the Easement Area, the Grantee will:

(a) complete work on the Transmission Line as soon as possible with as little damage as possible to the Burdened Land and any vegetation, fences or improvements on it; and

(b) use all reasonable endeavours to repair and make good all damage caused to the Burdened Land by the Grantee or the Grantee's agents, contractors or employees as a result of carrying out work on the Transmission Line.

4 Ownership of the Transmission Line

The Transmission Line will at all times remain the property of the Grantee.

5 Grantor's Continued Use of Burdened Land

Subject to clause 6, the Grantor:

(a) may use the Burdened Land as long as that use does not unreasonably interfere with the enjoyment of the Grantee's rights and interests granted under this instrument; and

(b) (at its cost) shall remove trees and vegetation on the Burdened Land where the Grantee, acting reasonably gives notice to the Grantor that it considers it necessary that such trees and/or vegetation be removed to ensure that such trees and vegetation do not pose a risk to the safe and efficient operation of the Transmission Line.

6 Restrictions on Grantor's use

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

so then the Grantee may meet those obligations (and enter the Burdened Land for that purpose) and the Grantor is liable to pay to the Grantee the costs incurred in doing so.

7 Indemnity against third party claims

- 7.1 Each party ("Indemnifying Party") must indemnify the other ("Indemnified Party") against all claims or demands from third parties for any loss, damage or liability in respect of, or arising out of, the use of the land by the Indemnifying Party (or any person authorised, whether expressly or impliedly by it) **EXCEPT THAT** it will not be liable to indemnify where such loss, damage or liability was caused by the Indemnified Party. Where the actions of the Indemnified Party contribute to that loss, damage or liability, the indemnity given by the Indemnifying Party will be reduced in proportion to that contribution.

8 Licence and assignment

- 8.1 The Grantee may assign, licence or otherwise grant any right of all or any part of any estate or interest conferred by this instrument.

9 Perpetual easement

- 9.1 There is no power implied in this instrument for the Grantor to terminate the easement for any breach of this instrument or for any other reason. It is the intention of the parties that the easement created by this instrument will continue forever unless surrendered.

10 Arbitration

- 10.1 If any dispute arises between the parties in relation to this instrument or any matter arising under it and that dispute cannot be resolved by negotiation, then the parties must submit the dispute to arbitration in accordance with the Arbitration Act 1996 (and its amendments or any statute which replaces it). The arbitration will be commenced by either party giving written notice to the other of the details of the dispute and that party's desire to have the matter referred to arbitration. The arbitration will be by one arbitrator, if the parties can agree upon one, and, if not, then by two arbitrators, one to be appointed by each party, and their umpire to be appointed by the arbitrators before they begin to consider the dispute. The award in the arbitration will be final and binding on the parties.

SCHEDULE 3- PLAN