

Appendix H – Side Agreement between Taharoa C and the Director-General of Conservation



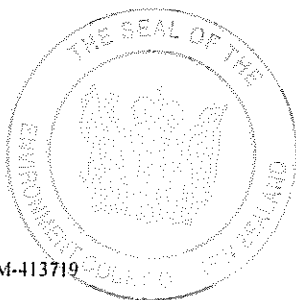
AGREEMENT

between

THE PROPRIETORS OF TAHAROA C BLOCK

and

DIRECTOR-GENERAL OF CONSERVATION



DOCDM-413719

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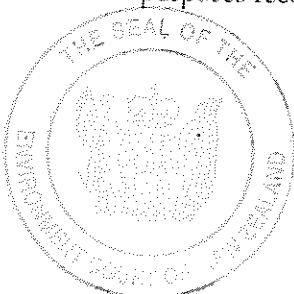
THIS AGREEMENT is made this 30th day of MARCH, 2009

PARTIES:

1. THE PROPRIETORS OF TAHAROA C BLOCK (Taharoa C)
2. DIRECTOR-GENERAL OF CONSERVATION (Director-General)

BACKGROUND:

- A. The Director-General is the chief executive officer of the Department of Conservation.
- B. The Department of Conservation (DOC) is a Department of State established pursuant to the Conservation Act 1987, the functions of which are set out in section 6 of that Act. These functions include administering the Wildlife Act 1953, protecting freshwater fish habitats, advocating the conservation of natural resources, and advising the Minister of Conservation on matters relating to conservation generally. The Director-General is authorised to enter into agreements under section 53 of the Conservation Act.
- C. Taharoa C is a Maori Incorporation formed under the Maori Affairs Amendment Act 1967, now replaced by the Te Ture Whenua Maori Act 1993, being an incorporation of the traditional owners of the Taharoa C Block, south of Kawhia Harbour. Taharoa C is the owner of the Taharoa C Block land and has, under section 253 of the Te Ture Whenua Maori Act, the capacity, powers and legal standing to enter into this Agreement.
- D. Taharoa C was granted resource consent (Consent Number: WDC 050095) by the Waitomo District Council to construct and operate a wind farm on the Taharoa C Block.
- E. The Director-General filed a notice of appeal against the Waitomo District Council's decision to grant resource consent, on the basis of DOC's concerns about potential effects on avifauna.
- F. The Parties have since undertaken research and engaged in discussions which have allowed them to agree on a package of measures to address DOC's concerns. This package is primarily recorded in Revised Resource Consent Conditions attached to the Memorandum of Counsel and draft consent order being submitted to the Environment Court to settle the Director-General's appeal.
- G. As an adjunct to certain of the Revised Resource Consent Conditions, the Parties wish to record their agreement with respect to the annual payment of funds by Taharoa C to DOC, by way of a trust or otherwise, in order that such funds are applied for the purposes recorded in this Agreement.



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THE PARTIES AGREE as follows

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

"Agreement" means this Agreement together with the attached schedules and any amendments or variations to this Agreement from time to time agreed to in writing and signed by both Parties.

"Business Days" means any day of the week other than Saturday or Sunday, on which registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) are generally open for normal business in both Auckland and Wellington.

"Commissioned" means that date three (3) months after the last-constructed turbine becomes operational and is connected to the national grid, or eight (8) months after the construction of the first turbine, whichever shall first occur.

"Consumers Price Index" means the quarterly index for "all groups" published by Statistics New Zealand (or such other nationally accepted index of the change in the real value of money as may be agreed between the Parties).

"Disposal" means:

(a) any sale, lease, licence, easement, encumbrance or other disposal of the underlying Taharoa C Block land on which the Wind Farm will operate and includes any situation where Taharoa C is about to be placed into receivership or liquidation; and/or

(b) the transfer (as the case may require) of the Resource Consent for the proposed Wind Farm;

to another legal entity.

"RMA" means the Resource Management Act 1991.

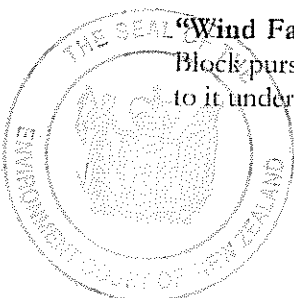
"Resource Consent" means the consent granted to Taharoa C by the Waitomo District Council on 29 August 2006 (Consent Number: WDC 050095)

"Revised Resource Consent Conditions" means the conditions attached to the memorandum of counsel and the draft consent order being submitted to the Environment Court to settle the Director-General's appeal (and includes any changes or alterations made by the Environment Court), and dated on or about 26 March 2009.

"Taharoa C Block" means that land held in a single certificate of title, being SA 34B/688.

"Trust" means the trust to be settled by Taharoa C as a consequence of this agreement.

"Wind Farm" means the Wind Farm to be constructed and operated on the Taharoa C Block pursuant to the Resource Consent or any part of it and including any changes made to it under sections 127-132 of the RMA.



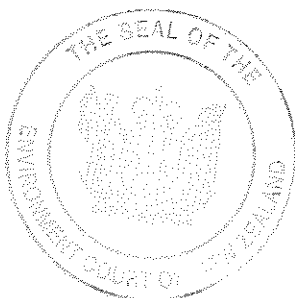
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1.2 In this Agreement unless the context otherwise requires:

- (a) Each and every reference to a Party shall include that Party's executors, administrators, successors (including successors in title), incorporated owners, members, and where permitted assigns, and where not repugnant to the context, includes the employees, agents, licensees, invitees, contractors and any other person under the control or direction of that Party.
- (b) A reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality).
- (c) Paragraph or clause headings are included for the sake of convenience and do not affect the interpretation of this Agreement.
- (d) Words in a singular number include the plural and vice versa.
- (e) Words importing one gender include the other gender.
- (f) A reference to "\$" is to New Zealand currency.
- (g) References to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Agreement.
- (h) Words used in the Background to this Agreement have the same meaning as given to them in clause 1.1.
- (i) Derivations of defined terms have similar meanings.

2 TAHAROA C'S OBLIGATIONS

- 2.1 Taharoa C will settle a trust by way of deed and/or other necessary instrument(s) (Trust), and will ensure that the deed and/or other instrument(s) record(s) and direct(s) that the object of the Trust is to pay funds to DOC, and will ensure the funds are paid to DOC:
- (a) Annually, and without the need for DOC to request the payment with the first payment to be made on the date the Wind Farm is Commissioned and subsequent payments on the anniversary of that date; and
 - (b) In the annual sum of \$35,000 (plus GST, if any), adjusted annually by the percentage increase in the Statistics New Zealand Consumers Price Index.



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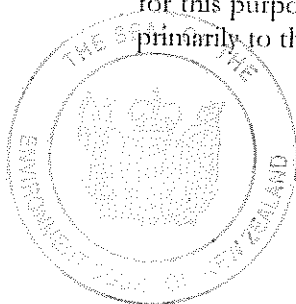
- 2.2 Payments made in accordance with clause 2.1 will continue for as long as the Wind Farm is in operation.
- 2.3 Taharoa C will be responsible for transferring to the Trust sufficient funds to provide for:
- (a) The payments to DOC detailed in clause 2.1 of this Agreement;
 - (b) Trust administration and expenses; and
 - (c) Taxation (if applicable).
- 2.4 Taharoa C will abide the Revised Resource Consent Conditions.
- 2.5 Taharoa C's obligations under clauses 2.1 to 2.4 will endure for as long as the Wind Farm remains in operation, notwithstanding any changes made to the Revised Resource Consent Conditions under sections 127 – 132 of the Resource Management Act 1991 after the date the Resource Consent commences.
- 2.6 Taharoa C agrees to provide DOC with all monitoring results, including raw data entered into an appropriate database such as the Access database, generated from the operation of the Resource Consent (as required under condition 77 of the Revised Resource Consent Conditions). Taharoa C agrees that DOC can use these data for its own purposes, including making them publicly available, and that the data are not confidential, or subject to copyright/intellectual privilege.
- 2.7 Taharoa C will act in good faith in supporting the Trust in the achievement of its objectives and in meeting its obligations in 2.1 to 2.6 above.

3 DOC'S OBLIGATIONS

- 3.1 DOC will reasonably co-operate with Taharoa C in the exercise of the Resource Consent.
- 3.2 In the event that GST is payable on the sums paid to DOC by the Trust, DOC will provide the Trust with a valid invoice, remittance, and/or other documentation necessary to allow the Trust to meet its taxation and reporting obligations.
- 3.3 DOC will operate in good faith with Taharoa C in the exercise of the Resource Consent and in its dealing with the Trust.

4 PURPOSE OF FUNDING TO DOC

- 4.1 The Parties record that the purpose of the payments detailed in clause 2.1 is to primarily protect wrybill and incidentally protect other avifauna species that are potentially affected by the operation of the Wind Farm. The parties have agreed that an appropriate method for this purpose is to supplement the existing DOC O Tu Wharekai programme, directed primarily to the protection of wrybill. If the above programme is no longer in place when



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payment(s) occur(s), the payment(s) will be applied by DOC for one or all of the following purposes:

- (a) Programmes seeking the protection of wrybill nest sites through predator control and other forms of habitat enhancement at a site or sites chosen by DOC;
- (b) Programmes seeking an increase in productivity leading to additional wrybill annually reaching maturity from the chosen population(s) than would be the case without intervention; and/or
- (c) Research and monitoring programmes in respect of the wrybill population.

4.2 The parties agree that Taharoa C's obligations under clauses 2.1 to 2.4 above will satisfy the requirements in condition 65 of the Revised Resource Consent Conditions and are not in addition thereto.

5 INDEMNITY FOR TRUST PAYMENT

5.1 Taharoa C shall, for as long as the Wind Farm remains in operation, indemnify DOC (or the corresponding state organisation set up to replace DOC should it be disestablished) for and against the non-payment of the amount(s) detailed in clause 2.1 of this Agreement when due and payable. In the event that payment is not made by Trust by the due date as set out in clause 2.1(a), the amount(s) payable shall be paid direct from Taharoa C to DOC as set out in clause 2.1(a) and (b) or upon demand being made by DOC.

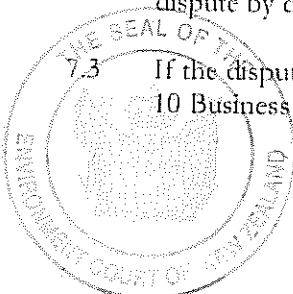
6 CONSIDERATION

- 6.1 Taharoa C agrees to all undertakings as set out in this Agreement on the basis that the Director-General agrees to settle his appeal on the Resource Consent granted by the Waitomo District Council, through signing the Memorandum of Counsel attached to the Revised Resource Consent Conditions.
- 6.2 The Director-General undertakes to settle his appeal on the Resource Consent granted by the Waitomo District Council, through signing the Memorandum of Counsel attached to the Revised Resource Consent Conditions on the basis that Taharoa C agrees to all of the undertakings set out in this Agreement.

7 DISPUTE RESOLUTION

- 7.1 The Parties agree that any dispute of whatever nature arising between them in respect of this Agreement is to be notified in writing by one Party to the other Party to set out the concerns ("Dispute Notice").
- 7.2 On receipt of a Dispute Notice, the Parties will use their best endeavours to resolve the dispute by discussion, meeting, and/or other informal means.

7.3 If the dispute is not resolved by discussion, meeting, and/or other informal means within 10 Business Days of receipt of the Dispute Notice, then either of the Parties may request



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that a mediator be appointed by agreement of the Parties to hear the dispute. If the Parties cannot agree on a mediator, then the President for the time being of the New Zealand Law Society will be requested to appoint a mediator and such appointment will be accepted by the Parties.

7.4 The Parties agree that if one Party requests mediation under clause 7.3 the other Party will be required to participate in that mediation. The costs of the mediator shall be paid by both Parties equally.

7.5 The Parties agree that they will attempt in good faith to resolve any dispute informally or by mediation before seeking resolution through legal proceedings before the New Zealand Courts.

8 DISPOSAL

8.1 Prior to any Disposal to any third party Taharoa C shall:

- (a) notify the third party to whom Disposal is to be made of the existence and contents of this Agreement; and
- (b) obtain a Deed of Covenant from that third party binding them to the contents of this Agreement. In such circumstances, the obligations of Taharoa C under this Agreement will endure notwithstanding such a Disposal.

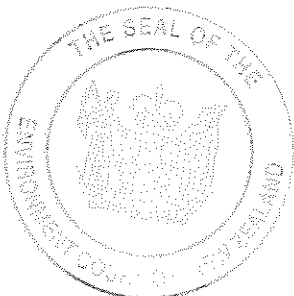
8.2 The intention of clause 8.1 is to ensure that the commitments contained in this Agreement are notified to and binding on any party to whom Disposal is made and this Agreement is not in any way defeated by Disposal in circumstances where the Wind Farm continues to operate under the Resource Consent (as confirmed by the Environment Court). For the avoidance of doubt, once the Disposal has occurred, every reference to Taharoa C is to be read also as a reference to the party to whom Disposal has been made.

9 ASSIGNMENT

9.1 The Parties agree that neither of them shall transfer or assign any rights or obligations in this Agreement without first obtaining the written consent of the other Party, which shall not be unreasonably withheld.

10 AMENDMENT

10.1 No amendment to this Agreement shall be effective unless it is in writing and signed by both Parties.



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11 COSTS OF AGREEMENT

- 11.1 Except as otherwise provided in this Agreement, the Parties will meet their own costs relating to the negotiation, preparation, and completion of this Agreement and any amendment to it.

12 FURTHER ASSURANCES

- 12.1 Each Party agrees to execute and deliver any documents, and to do all things as may reasonably be required by the other Party to obtain the full benefit of this Agreement according to its true intent.
- 12.2 The Parties acknowledge that this Agreement does not in any way intend to derogate from or alter the rights and responsibilities of the Minister of Conservation, the Director-General or the Department under the RMA, the Wildlife Act 1953, or any other relevant legislation.
- 12.3 The Parties further acknowledge the rights and status of Taharoa C under the Te Ture Whenua Maori Act 1993.

13 APPROVALS

- 13.1 The Parties agree that any approval to be given by any Party under this Agreement shall not be unreasonably withheld or delayed.

14 PUBLIC DISCLOSURE

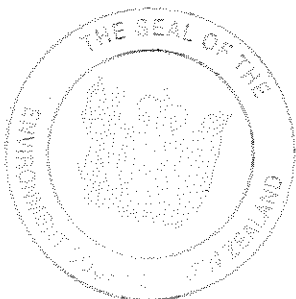
- 14.1 The Parties to this Agreement will publicly announce this agreement once the Resource Consent commences.
- 14.2 The public announcement will include the making of the entire contents of this Agreement publicly available. For the avoidance of doubt, no confidentiality attaches to this Agreement.

15 NOTICES

- 15.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall:

- (a) Be delivered or sent to the addresses set out below:

The Proprietors of Taharoa C Block
c/- The Secretary
Bowker & Associates
P O Box 10302
Te Rapa



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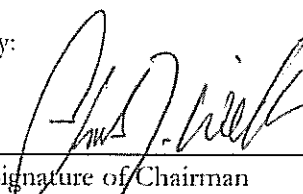
Facsimile: (07) 849 0179

Director-General of Conservation
c/- Greg Martin
Level 5
73 Rostrevor Street
Hamilton 3204
Private Bag 3072
Hamilton 3240

Email: waikato@doc.govt.nz

- (b) Be delivered personally, sent by registered post, or (where details of the appropriate number appear) sent by facsimile transmission (or email for DOC); and
- (c) Be deemed to have been given when so delivered personally or sent by facsimile transmission or email transmission, but if sent by registered post within New Zealand shall be deemed to have been given on the day after the relevant notice or communication was sent.

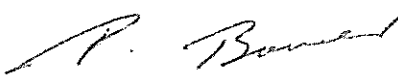
SIGNED for and on behalf of
THE PROPRIETORS OF TAHAROA C BLOCK by:



Signature of Chairman

Charles J. Williams

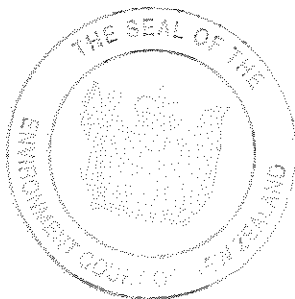
Name of Chairman



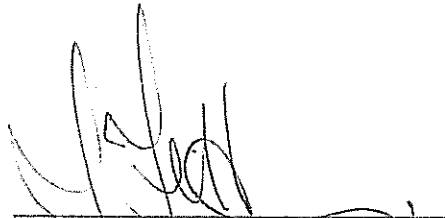
Signature of Secretary

PETER BOWER


Name of Secretary





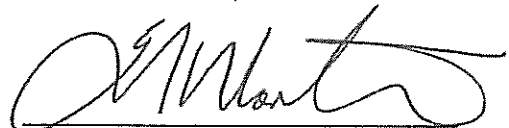


Signature of Board Member



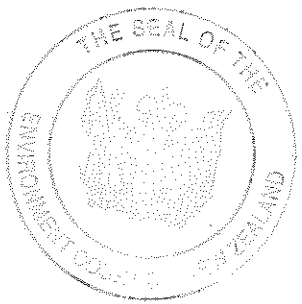
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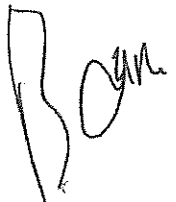
SIGNED for and on behalf of the
DIRECTOR-GENERAL OF CONSERVATION
By:



Waikato Conservator

GREG MARTIN
Acting under delegated authority





CTW

AGREEMENT

between

THE PROPRIETORS OF TAHAROA C BLOCK

and

DIRECTOR-GENERAL OF CONSERVATION



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PARTIES:

1. THE PROPRIETORS OF TAHAROA C BLOCK (Taharoa C)
2. DIRECTOR-GENERAL OF CONSERVATION (Director-General)

BACKGROUND:

- A. The Director-General is the chief executive officer of the Department of Conservation.
- B. The Department of Conservation (DOC) is a Department of State established pursuant to the Conservation Act 1987, the functions of which are set out in section 6 of that Act. These functions include administering the Wildlife Act 1953, protecting freshwater fish habitats, advocating the conservation of natural resources, and advising the Minister of Conservation on matters relating to conservation generally. The Director-General is authorised to enter into agreements under section 53 of the Conservation Act.
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- D. Taharoa C was granted resource consent (Consent Number: WDC 050095) by the Waitomo District Council to construct and operate a wind farm on the Taharoa C Block.
- E. The Director-General filed a notice of appeal against the Waitomo District Council's decision to grant resource consent, on the basis of DOC's concerns about potential effects on avifauna.
- F. The Parties have since undertaken research and engaged in discussions which have allowed them to agree on a package of measures to address DOC's concerns. This package is primarily recorded in Revised Resource Consent Conditions attached to the Memorandum of Counsel and draft consent order being submitted to the Environment Court to settle the Director-General's appeal.
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THE PARTIES AGREE as follows

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

“**Agreement**” means this Agreement together with the attached schedules and any amendments or variations to this Agreement from time to time agreed to in writing and signed by both Parties.

“**Business Days**” means any day of the week other than Saturday or Sunday, on which registered banks (within the meaning of the Reserve Bank of New Zealand Act 1989) are generally open for normal business in both Auckland and Wellington.

“**Commissioned**” means that date three (3) months after the last-constructed turbine becomes operational and is connected to the national grid, or eight (8) months after the construction of the first turbine, whichever shall first occur.

“**Consumers Price Index**” means the quarterly index for “all groups” published by Statistics New Zealand (or such other nationally accepted index of the change in the real value of money as may be agreed between the Parties).

“**Disposal**” means:

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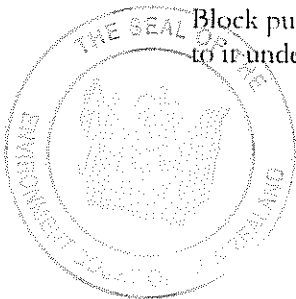
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“**Taharoa C Block**” means that land held in a single certificate of title, being SA 34B/688.

“**Trust**” means the trust to be settled by Taharoa C as a consequence of this agreement.

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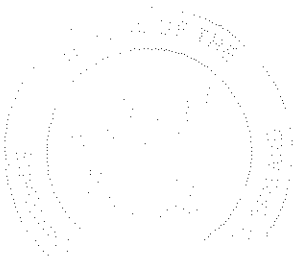
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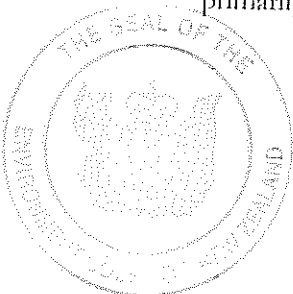
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6.1 Taharoa C agrees to all undertakings as set out in this Agreement on the basis that the Director-General agrees to settle his appeal on the Resource Consent granted by the Waitomo District Council, through signing the Memorandum of Counsel attached to the Revised Resource Consent Conditions.

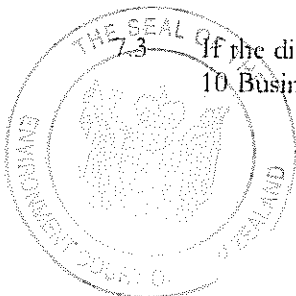
6.2 The Director-General undertakes to settle his appeal on the Resource Consent granted by the Waitomo District Council, through signing the Memorandum of Counsel attached to the Revised Resource Consent Conditions on the basis that Taharoa C agrees to all of the undertakings set out in this Agreement.

7 DISPUTE RESOLUTION

7.1 The Parties agree that any dispute of whatever nature arising between them in respect of this Agreement is to be notified in writing by one Party to the other Party to set out the concerns ("Dispute Notice").

7.2 On receipt of a Dispute Notice, the Parties will use their best endeavours to resolve the dispute by discussion, meeting, and/or other informal means.

If the dispute is not resolved by discussion, meeting, and/or other informal means within 10 Business Days of receipt of the Dispute Notice, then either of the Parties may request



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that a mediator be appointed by agreement of the Parties to hear the dispute. If the Parties cannot agree on a mediator, then the President for the time being of the New Zealand Law Society will be requested to appoint a mediator and such appointment will be accepted by the Parties.

- 7.4 The Parties agree that if one Party requests mediation under clause 7.3 the other Party will be required to participate in that mediation. The costs of the mediator shall be paid by both Parties equally.
- 7.5 The Parties agree that they will attempt in good faith to resolve any dispute informally or by mediation before seeking resolution through legal proceedings before the New Zealand Courts.

8 DISPOSAL

8.1 Prior to any Disposal to any third party Taharoa C shall:

- (a) notify the third party to whom Disposal is to be made of the existence and contents of this Agreement; and
- (b) obtain a Deed of Covenant from that third party binding them to the contents of this Agreement. In such circumstances, the obligations of Taharoa C under this Agreement will endure notwithstanding such a Disposal.

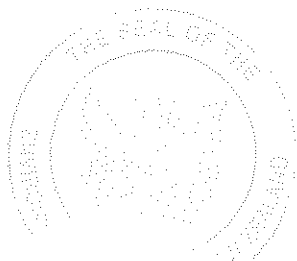
8.2 The intention of clause 8.1 is to ensure that the commitments contained in this Agreement are notified to and binding on any party to whom Disposal is made and this Agreement is not in any way defeated by Disposal in circumstances where the Wind Farm continues to operate under the Resource Consent (as confirmed by the Environment Court). For the avoidance of doubt, once the Disposal has occurred, every reference to Taharoa C is to be read also as a reference to the party to whom Disposal has been made.

9 ASSIGNMENT

9.1 The Parties agree that neither of them shall transfer or assign any rights or obligations in this Agreement without first obtaining the written consent of the other Party, which shall not be unreasonably withheld.

10 AMENDMENT

10.1 No amendment to this Agreement shall be effective unless it is in writing and signed by both Parties.



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11 COSTS OF AGREEMENT

- 11.1 Except as otherwise provided in this Agreement, the Parties will meet their own costs relating to the negotiation, preparation, and completion of this Agreement and any amendment to it.

12 FURTHER ASSURANCES

- 12.1 Each Party agrees to execute and deliver any documents, and to do all things as may reasonably be required by the other Party to obtain the full benefit of this Agreement according to its true intent.
- 12.2 The Parties acknowledge that this Agreement does not in any way intend to derogate from or alter the rights and responsibilities of the Minister of Conservation, the Director-General or the Department under the RMA, the Wildlife Act 1953, or any other relevant legislation.
- 12.3 The Parties further acknowledge the rights and status of Taharoa C under the Te Ture Whenua Maori Act 1993.

13 APPROVALS

- 13.1 The Parties agree that any approval to be given by any Party under this Agreement shall not be unreasonably withheld or delayed.

14 PUBLIC DISCLOSURE

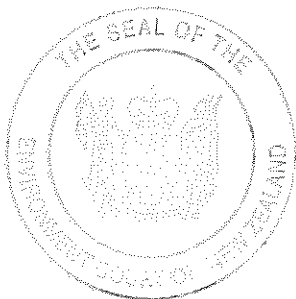
- 14.1 The Parties to this Agreement will publicly announce this agreement once the Resource Consent commences.
- 14.2 The public announcement will include the making of the entire contents of this Agreement publicly available. For the avoidance of doubt, no confidentiality attaches to this Agreement.

15 NOTICES

- 15.1 All notices and other communications required or permitted under this Agreement shall be in writing and shall:

- (a) Be delivered or sent to the addresses set out below:

The Proprietors of Taharoa C Block
c/- The Secretary
Bowker & Associates
P O Box 10302
Te Rapa



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HAMILTON

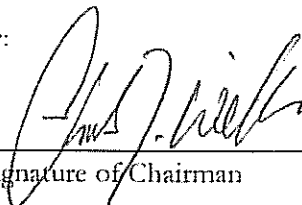
Facsimile: (07) 849 0179

Director-General of Conservation
c/- Greg Martin
Level 5
73 Rostrevor Street
Hamilton 3204
Private Bag 3072
Hamilton 3240

Email: waikato@doc.govt.nz

- (b) Be delivered personally, sent by registered post, or (where details of the appropriate number appear) sent by facsimile transmission (or email for DOC); and
- (c) Be deemed to have been given when so delivered personally or sent by facsimile transmission or email transmission, but if sent by registered post within New Zealand shall be deemed to have been given on the day after the relevant notice or communication was sent.


SIGNED for and on behalf of
THE PROPRIETORS OF TAHAROA C BLOCK by:



Signature of Chairman

Charles J. Williamson

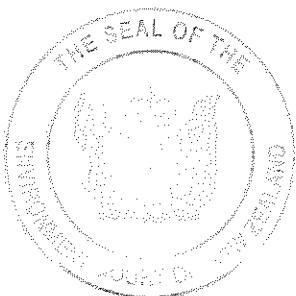
Name of Chairman



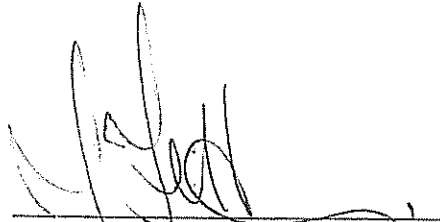
Signature of Secretary

PETER BOWER


Name of Secretary







Signature of Board Member



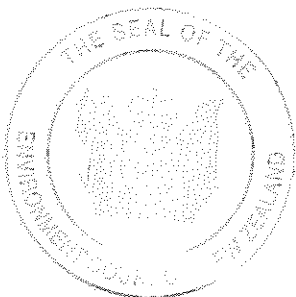
Name of Board Member


SIGNED for and on behalf of the
DIRECTOR-GENERAL OF CONSERVATION
By:



Waikato Conservator

GREG MARTIN
Acting under delegated authority





CTW