

Exemptions and Objections Committee Agenda

Date: Wednesday, 4 November, 2020

Time: 9:30 am

Location: Council Chamber
Forum North, Rust Avenue
Whangarei

Elected Members: Cr Shelley Deeming
Her Worship the Mayor Sheryl Mai
Ken Couper
Cr Greg Innes (Chairperson)

For any queries regarding this meeting please contact
the Whangarei District Council on (09) 430-4200.

1. **Declarations of Interest**
2. **Apologies**
3. **Confirmation of Minutes of Previous Exemptions and Objections Committee Meeting**
4. **Decision Reports**
 - 4.1. Objection to Menacing Dog Classification - Griffin - 'Minka' 3
 - 4.2. Objection to Menacng Dog Classification - Butler - 'Horse' 31
5. **Closure of Meeting**

Recommendations contained in the agenda are not the decisions of the meeting.

Please refer to minutes for resolutions.

Exemptions and Objections Sub Committee – Terms of Reference

Parent Committee: **Strategy, Planning and Development Committee**

Membership

Chairperson: Councillor Shelley Deeming

Members: Her Worship the Mayor Sheryl Mai
 Councillors Ken Couper and Greg Innes

Meetings: As required.
 The relevant legislative requirements shall be taken into consideration when setting meeting dates.

Quorum: **2**

Purpose

To hear and determine objections, appeals and applications in respect of the regulatory functions and responsibilities of Council.

Delegations

- Hear and decide s357, s356A and 357B objections under the Resource Management Act where staff recommend decline.
- Determine and grant of Territorial Authority consents under S100 of the Gambling Act 2003 (as it relates to Class 4 Gambling Venues) and s65C of the Racing Act 2003 (as it relates to Board Venues).
- Consider objections relating to the classification of any dog as a dangerous dog under the Dog Control Act 1996.
- Consider objections relating to the classification of a person disqualified from owning a dog under s26 of the Dog Control Act 1996.
- Power to consider an objection to classification as a menacing dog under s33A and s33C of the Dog Control Act 1996.
- Power to consider and determine an objection to any notice issued requiring abatement of a barking dog nuisance under s55 of the Dog Control Act 1996.
- Hear and determine appeals in respect of assessments under Council's Development Contribution Policy (no ability to waiver).
- Hear and determine statutory appeals or objections in respect to any matter where no specific delegation applies.

4.1 Objection to Menacing Dog Classification

Meeting: Exemptions and Objections Committee

Date of meeting: 4 November 2020

Reporting officer: Report Prepared by: Peter Banks (Animal Management Executive Officer - Armourguard),
Submitted by: Nina Darling – Bylaws Enforcement Co-ordinator - WDC

Time	Hearing	Name
9.30am	Objection to Menacing Dog Classification (Sections 33A and 33B of the Dog Control Act 1996)	Barbara Griffin

Hearing Procedure

Objection under the Dog Control Act 1996

- 1 The Chairperson opens the proceedings by introducing the committee and asks parties to introduce themselves and their witnesses.
- 2 Staff will briefly outline the objection.
- 3 The Council Officer's/Contractor's report, which has been circulated prior to the hearing, is taken as read.
- 4 The objector presents his/her case including any supporting evidence from witnesses.
- 5 Council Officers/Contractors will speak on his/her report and is available to answer questions.
- 6 Only the objector is given the opportunity to have a right to reply. This gives him/her the chance to clarify matters raised in the Council officer's/Contractor's report but not to present new evidence.
- 7 Final questions of clarification.
- 8 The Chairperson adjourns the hearing to deliberate on its decision based on the evidence submitted, following which the objector will be notified in writing of the decision.

A written decision will be issued as soon as practicable.

Report to Exemptions and Objections Committee

1 Introduction

The purpose of this hearing is to hear and determine the objection made by Barbara Griffin to a menacing classification imposed by letter dated 3rd August 2020 (**Attachment One**) against her dog Minka.

2 Background

S33A of the Dog Control Act 1996 ('the Act') provides that a territorial authority may classify a dog as menacing where it considers the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

If a dog is classified as menacing under s33A of the Act, as in the case of Minka, the owner of the dog:

- (a) Must not allow the dog to be at large or in any public place, or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction.

Under S33B of the Act, Mrs Griffin was entitled to object within 14 days of receiving the classification and has the right to be heard. The classification notice is dated 3 August 2020 and was mailed on 19 August 2020. Mrs Griffin lodged an objection on 7 September 2020 (**Attachment Two**) and therefore lodged her objection in sufficient time given accepted mailing delays.

3 Statutory Considerations

Section 33B gives the power to the Committee to consider the objection, which may uphold or rescind the classification. In making its determination the committee must have regard to:

- (a) The evidence which formed the basis for the classification; and
- (b) Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
- (c) The matters relied on in support of the objection; and
- (d) Any other relevant matters.

The territorial authority must, as soon as practicable, give written notice to the owner of:

- (a) Its determination of the objection; and
- (b) The reasons for its determination.

4 Discussion

4.1 Classification

The classification of the dog Minka as menacing followed an incident that was reported to Whangarei District Council's animal management and enforcement contractor Armourguard. The incident has been summarised below:

On 20 March 2020 Mr Griffin was walking his dog Minka, on an extendable lead, along a familiar public walkway at the rear of number 10 Hoihere Drive, One Tree Point. Number 10 is a fully fenced property and is occupied by the complainant's dog Zara who tends to bark at passers-by on the walkway. As Minka walked past the address Zara was at the boundary fence barking and placed her head through the fence bars. In doing so Minka was able to reach Zara and has bitten her by closing her jaws over the throat area of Zara's neck. The bite was of sufficient force that it caused a number of puncture wounds to Zara's neck which required stitches and veterinary treatment. A copy of a statement from the victim dog owner is attached (**Attachment Three**). Photographs of the wounds to Zara's neck are attached. (**Attachment Four**).

Under s33A of the Act a territorial authority may classify a dog as menacing where it considers the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

4.2 Other History

The dog Minka has been classified as menacing based on the incident that occurred on 20 March 2020. Minka has no other known history of attacks however, it is important to remember that no dog has a history until the first reported incident. The intention of the classification is to ensure that Minka does not create further history as she may pose a threat to people, domestic animals, stock, poultry or protected wildlife.

4.3 Assessment

As noted above, in making its determination the committee must have regard to:

- a) The evidence which formed the basis for the classification; and
- b) Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
- c) The matters relied on in support of the objection; and
- d) Any other relevant matters.

These matters are reviewed below:

The evidence which formed the basis for the classification

As noted above the classification was imposed based on the behaviour of the dog reported by the victim Zara's owner in the incident on 20 March 2020 (**Attachment Three**) and is supported by the photographs of the injuries to Zara as a result of the attack. (**Attachment four**)

The nature of Minka's actions were not to nip at Zara but after a seemingly non provoking meeting of the two dogs at the fence boundary Minka has aggressively bitten Zara around the throat area causing serious injury. This type of bite is not the action of a well socialised dog but indicates a possible tendency to act aggressively towards another dog under certain circumstances.

Any steps taken by the owner to prevent any threat to the safety of persons or animals

It is acknowledged that Mr and Mrs Griffin have moved away from using the extendable style lead which was being used on Minka on 20 March 2020. They now use a harness and a fixed lead offering better control of the dog.

The matters relied on in support of the objection

The committee must consider the information set out in Mrs Griffins objection dated 7 September 2020. (**Attachment two**).

5. Conclusion

Under S33A of the Dog Control Act 1996 the Whangarei District Council may classify a dog as menacing if it considers that a dog **may** pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

On 20 March 2020 Minka was observed grabbing the victim dog Zara around the throat area of the neck which inflicted serious injury. Minka in her actions has shown she can show considerable aggression towards another dog. Although the Griffins have produced various letters in support of Minka's friendly disposition and lack of aggression in varying circumstances, (**Attachment two**) the attack did still occur. Animal Management's consideration is solely to mitigate the risk to the community by a possible future attack taking place and also to protect both Minka and her owners Mr and Mrs Griffin from potential prosecution if that should occur.

Although the Menacing Classification has been placed on Minka the only legislative condition subsequently imposed as a result of the classification is that she wears a muzzle whilst in public. It should be noted it is not uncommon for dogs to wear a muzzle in public for various reasons.

Recommendation

That the Committee:

- a. Hear the objection to the menacing classification against the dog Minka owned by Barbara Griffin.

Following deliberations:

That the Committee:

- a. Determine that the menacing dog classification imposed on the dog Minka owned by Barbara Griffin on 20 March 2020, be **either** upheld or not upheld.

6 Attachments

1. Copy of the imposed classification letter relating to Minka
2. Letter of Objection and supportive letters in favour of Minka
3. Complainants statement (Personal details of Complainant redacted)
4. Copies of photographs of injuries received to victim dog Zara

03/08/2020

Barbara Griffin

One Tree Point
Whangarei 0118

Dear Barbara Griffin

FILE COPY.

'KETE' ✓



Forum North, Private Bag 9023
Whangarei 0148, New Zealand
P +64 9 430 4200
F +64 9 438 7632
E mailroom@wdc.govt.nz
www.wdc.govt.nz

Notice of Classification of a Menacing Dog – Section 33A, Dog Control Act 1996

Dog ID:	62183	Primary Breed:	Shar Pei
Microchip No:	900108000987403	Secondary Breed:	
Name:	Minka	Primary Colour	Tan
Sex:	Female	Secondary Colour	
Age:	6 years 6 months		
Address where dog is usually kept:		Five, One Tree Point	

This is to notify you* that the above mentioned dog has been classified as a menacing dog under section 33A of the Dog Control Act 1996.

This is because Whangarei District Council considers that the dog may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of observed or reported behaviour of the dog, namely being involved in an attack on a dog on the walkway behind 10 Houhere Drive, One Tree Point on the 20th of March 2020.

I hereby notify you that the dog described herein has been classified as a MENACING DOG with effect from the date of issue of this notice.

A summary of this classification and your right to object is provided on the reverse.

Please note:

- Your dog must now be muzzled when it is at large or in any public place or private way
- Your dog must be kept under control at all times

Yours sincerely

A handwritten signature in black ink, appearing to read "Reiner Mussle".

Reiner Mussle

Manager Health and Bylaws

*For the purposes of the Dog Control Act 1996, you are the owner of a dog if:

- You own the dog; or
- You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
- You are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

Effect of classification as menacing dog
Sections 33E, 33F, and 36A, Dog Control Act 1996

You—

(a) must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and

(b) must, if required by the Whangarei District Council, produce to the Whangarei District Council, within 1 month after receipt of this notice, a certificate issued by a veterinarian certifying—

(i) that the dog is or has been neutered; or

(ii) that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and

(c) where a certificate under paragraph (b)(ii) is produced to the Whangarei District Council, produce to the Whangarei District Council, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (c) above.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (c) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (c).

As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Whangarei District Council in accordance with the reasonable instructions of the Whangarei District Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement—

- within 2 months from 1 July 2006 if your dog is classified as menacing on or after 1 December 2003 but before 1 July 2006; or
- within 2 months after the dog is classified as menacing if your dog is classified as menacing after 1 July 2006.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of objection to classification under section 33C
Section 33D, Dog Control Act 1996

You may object to the classification of your dog as menacing by lodging with the Whangarei District Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

You must provide evidence to the Whangarei District Council that the dog is not of a breed or type listed in Schedule 4 of the Dog Control Act 1996.

SERVICES

2020

INGAREI
ICT COUNCIL

One Tree Point 0118

7 September 2020

Dear Reiner

We request that the Menacing Dog classification imposed on Minka be reviewed and changed to normal status.

We request this for the following reasons:

- The incident that led to the classification was a one off with fault on both sides. We were walking along a regular route and she was sniffing along as she normally does. In my opinion the incident occurred for two reasons, 1) I had her on an extending lead and 2) the other dog was able to get most of it's body through the fence on it's section. Minka was in a world of her own sniffing smells and the other dog without warning appeared halfway through the fence charging at her. She simply acted in self defence as any dog would.
- She is 6 years old and has never attacked another dog
- Approx 2 weeks prior to this incident a small dog which had slipped it's lead and was running excitedly and uncontrolled bit her on the lower jaw. Minka did not retaliate other than a growl. When the dog came back for a second attempt Minka gave it a whack. Minka was bleeding from her jaw and there was a lot of blood and presumably some pain but no serious harm so we told the owner to take better control and left it at that. Minka no doubt had that exchange still fairly fresh in her mind when this dog charged at her.
- She is highly respected and liked by the daycare facilities she goes to.
- She has attended daycare since she was a puppy to ensure she is well socialised and all reports from such facilities are very positive. Refer attached notes from Barkleys and Marnies
- She had to share another dog's house while we had this house built. The dog in question was a similar dog to the dog involved in this incident and there were absolutely no problems. They got along fine. Refer letter from Phil Cattin.
- She is happy for anyone to pet her when out on a walk whether they are 8 months or 80 yrs old
- She is SharPei cross (probably with Ridgeback) so is not of a breed or type listed under Schedule 4 of the Dog Control Act 1996 as menacing

In summary the incident would not have happened had I had her on a non-extending lead and had the other dog been properly contained in it's section. We do not use that style of lead anymore and she is also walked in a harness. We also do not walk that route anymore.

We would like the opportunity to discuss this further.

Yours faithfully

Colin and Barbara Griffin

03/08/2020

Barbara Griffin

One Tree Point
Whangarei 0118

Dear Barbara Griffin

RECEIVED - CUSTOMER SERVICES

7 SEP 2020

WHANGAREI
DISTRICT COUNCIL

Forum North, Private Bag 9023
 Whangarei 0148, New Zealand
 P +64 9 430 4200
 F +64 9 438 7832
 E mailroom@wdc.govt.nz
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Notice of Classification of a Menacing Dog – Section 33A, Dog Control Act 1996

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Name:	Minka	Primary Colour	Tan
Sex:	Female	Secondary Colour	
Age:	6 years 6 months		
Address where dog is usually kept		10, One Tree Point	

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- Your dog must be kept under control at all times

Yours sincerely

Reiner Mussle
 Manager Health and Bylaws

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- You own the dog; or
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- You are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

.ct)

is <...js@gmail.com>
ingriffin@gmail.com

23 March 2020 at 16:35

from it may concern,

Minka has been visiting our dog home stay Home Sweet Home for many years and has been mingled with little and big dogs. Minka has never shown any aggression towards any dog or person. She is very sociable and easy going, such a cool dog to have here.

Welcome to contact me any time.
Cheers Marni

m>

On The River <admin@barkleys.co.nz>
Griffin <iamcolingriffin@gmail.com>

2 April 2020 at 19:46

John

Apologies for the delay in getting back to you. I have the following statement from the Day Care Team Leader,
Wish you guys well.

To Whom It May Concern

Minka has attended our day care centre since 17/02/2017.

She has always been an easy to manage no fuss dog, she mixes well with all sizes, breeds and ages.

We can confidently put her in any of our packs.

When Minka comes to attend day care for the day, it is generally around midday, when everyone is already here, she has no issues going into the pen and finding friends to interact and play with.

Regards

Carol



Carol Thompson

Merchandising | Finance | Barkleys On The River

027 225 3429 | 027 333 4425 | E: carol@barkleys.co.nz
PO Box 100, 100, 100, 100, 100, 100, 100, 100, 100, 100

[Quoted text hidden]

Griffin

24 March 2020 at 12:48

Colin

24 March, 2020

To whom it may Concern

Ref: Colin Griffin & Minka

Just a quick note of support for Minka as I have known her for 4 or 5 years both thru work and also when Colin, Barbara and Minka stayed with me for several months during the construction of their new House.

During the time at work and at my place Minka often associated with Basil our little Shih Tzu, Poodle Cross and despite the fact that he was quite assertive around Minka (little dog syndrome) never once did she retaliate or show any sign of aggression towards Basil or for that matter any other dogs or people that I'm aware of.

During her frequent visits to work if anything she was on the shy side and would keep out of peoples way.

Please feel free to contact direct if required.

Regards

Phil Cattin

Let me know if you need any additional character reference for her.

Cheers

Phil

Marine
Projects

mcraesglobal
hydraulics · pneumatics · controls

D

M

E

W



**ANIMAL MANAGEMENT – PROSECUTION FILE
COMPLAINANT**

Tick all that apply:

- ☐ Statement & Declaration
- ☐ Photos
- ☐ Injury information sheet
- ☐ Consent to access medical/ veterinary records
- ☐ Medical bills/ reports
- ☐ Complainant dog details
- ☐ Veterinary bills/ reports
- ☐ Victim impact statement
- ☐ Correspondence
- ☐ Other:

ANIMAL MANAGEMENT PROSECUTION FILE



COMPLAINANT

Personal Details	
<input checked="" type="checkbox"/> Complainant	<input type="checkbox"/> Victim
Title: Mr	Date of Birth:
Name:	
Address:	3 One Tree Point
Home Phone:	Work Phone:
Mobile Phone:	
Email:	

DOG DETAILS	
Number of dogs involved: <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 or more (attach separate sheet)	
Dog 1	Dog 2
Gender:	Gender:
Size: Med - Large	Size:
Ears:	Ears:
Tail: Long	Tail:
Breed: Pitbull X	Breed:
Colour: light-brown	Colour:
Collar:	Collar:
Distinguishing Features:	Distinguishing Features:

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



DOG IDENTIFICATION

- ☐ Dog not positively identified
- ☒ I am familiar with offending dog(s)
- ☐ I have seen offending dog confined on property at: _____
- ☒ Positive identification of the dog(s) in Animal Management Vehicle on
(date) 23-03-20 at (time) 12:10
- ☒ Positive identification of the dog(s) at Animal Shelter on
(date) 23-03-20 at (time) 12:10
- ☐ Positively identified from photos provided by Animal Management Officer #: X

DOG OWNER IDENTIFICATION

- ☐ I do not know who owns the dog
- ☒ I know the owner of the dog

Description of dog owner (ethnicity, gender, build, approximate age, clothing, vehicle, etc.)
Older Male
Name: Colin
Address: /

ANIMAL MANAGEMENT PROSECUTION FILE



COMPLAINANT

Complainant Statement

On the (date) 19 - 03 - 2020 at approximately (time) 3pm
 I was at (place) Home
 What happened? My dog was attacked by a dog being walked past our fence.

Our dog was inside our fenced property, as every normal dog does she runs to edge of fence ^(barking) to say hello. The owner gives ~~the~~ his dog enough lead to get to the fence. His dog proceeds to ~~grab~~ ^{grab} our dog around the neck.

- Owner pulls dogs away.
- Dog still has Zara ^(our dog) in mouth and pulls her ribs through fence and gets stuck.
- Offending dog lets go.
- Owner walks away saying
 "Our dog charged at his dog"
 "Our fence is too big and our dog can get through".
- He walks away not offering to help, check if ^(our dog) Zara is ok.

- Neighbour's ¹ comes to help out and witnessed it happen.

Signature

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



- I take our dog to Waipua Vet, see him walking and confront him. Just to let him know his dog attacked our dog and ^{that} I have to take her to the Vet.

- He said our dog attacked his...

Note: NO BITE MARKS ON HIS DOG!!

Once again said our fence was too big and our dog can get out.

- Zara's ribs measure 120mm

- Fence gap measures 85mm

We've had our fence up for 9 months and has not once got out.

Colin showed no regard for the health of our dog and zero respect to us as dog owners.

Zara was lucky to live as 3 puncture wounds ~~near~~ near her windpipe and main blood vessels.

- Vet bills cost \$253.90

Signature

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Signature

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



Declaration

This statement is true and I have made with the knowledge that it is to be used in court proceedings (Pursuant to section 82 of the Criminal Procedure Act 2011).

Print Name: _____

Signature: _____

Date: 23 03 20

Name of parent/guardian: _____

(where complainant is less than 16 years old)

Signature of parent/guardian: _____

(where complainant is less than 16 years old)

Statement recorded at: _____

AMO Name: _____

AMO Number: _____

AMO Signature: _____

Date and Time: _____

Please Note: if the Whangarei District Council finds evidence of an offence and your matter goes to court, you may be required to attend court to give evidence. If the Council decides to pursue a prosecution, a court order for the destruction of any offending dogs will be sought

(Office Use Only: Animal Management Officer Tick one)

- ☐ Complainant has confirmed that they are prepared to attend a court hearing and give evidence if necessary.
- ☐ Complainant has confirmed that they are NOT prepared to attend a court hearing and give evidence.

Signature _____

Date _____

INJURY INFORMATION SHEET - PERSON

Medical

Did you/ the victim seek medical treatment following the incident?

☐ No☐ Yes

Date _____

Time _____

Where did you/ the victim receive treatment?

ANIMAL MANAGEMENT PROSECUTION FILE
COMPLAINANT



Describe your/ victim's injuries:

Describe the medical treatment you/ the victim received:

Injuries

Did you/ the victim receive injuries?

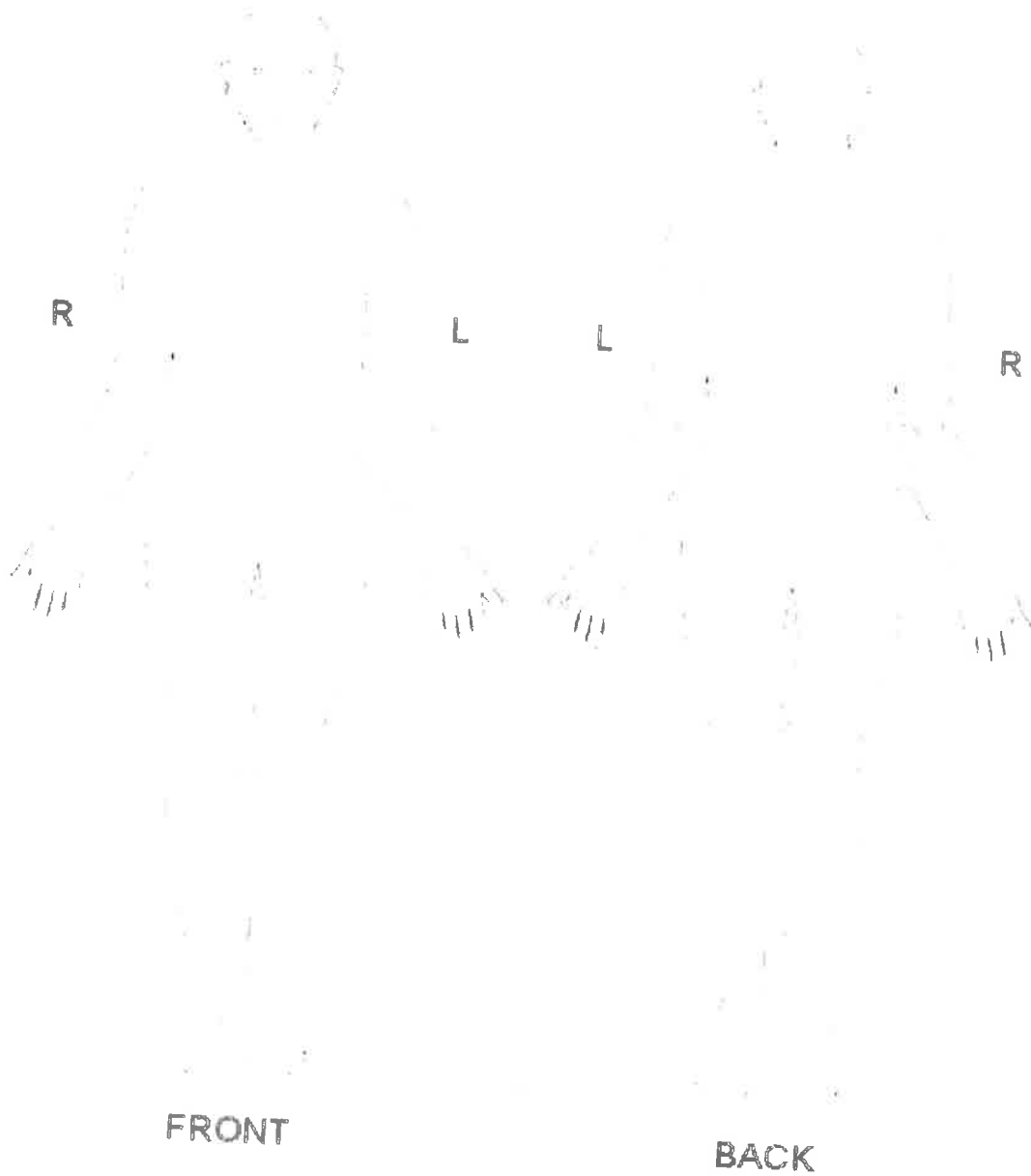
☐ No

☐ Yes

Please indicate on the diagrams the part of the body that was injured

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



LEFT



RIGHT

INJURY INFORMATION SHEET - ANIMAL

Veterinary

Did you seek veterinary treatment for your animal (s) following the incident?

☐ No ☒ Yes Date: 19.03.2020 Time: 4pm

Where did your animal(s) receive treatment?

The Vet Centre, Whangarei

Nature of the animal's injuries:

Bite to neck

Describe the veterinary treatment your animal(s) received:

Stitches to bite marks around neck

Veterinary costs: \$ 253.90 (attach veterinary bills/invoices)

Injuries

Did your animal(s) receive injuries?

☐ No

☒ Yes

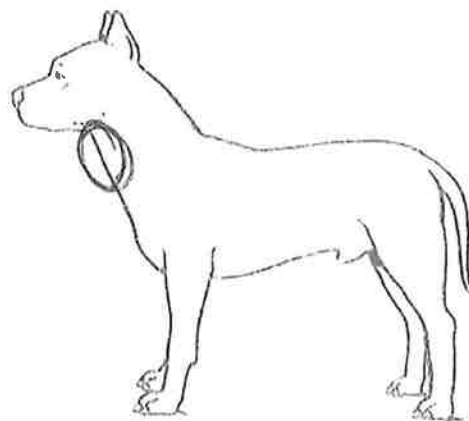
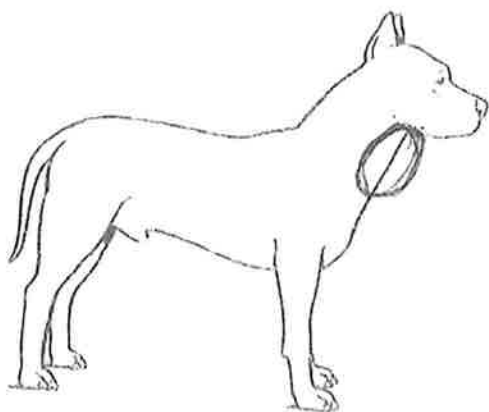
Please indicate on the diagrams the part of the body that is injured

ANIMAL MANAGEMENT PROSECUTION FILE
COMPLAINANT



Domestic Animals

☒ Dog



☐ Cat



☐ Other domestic animal

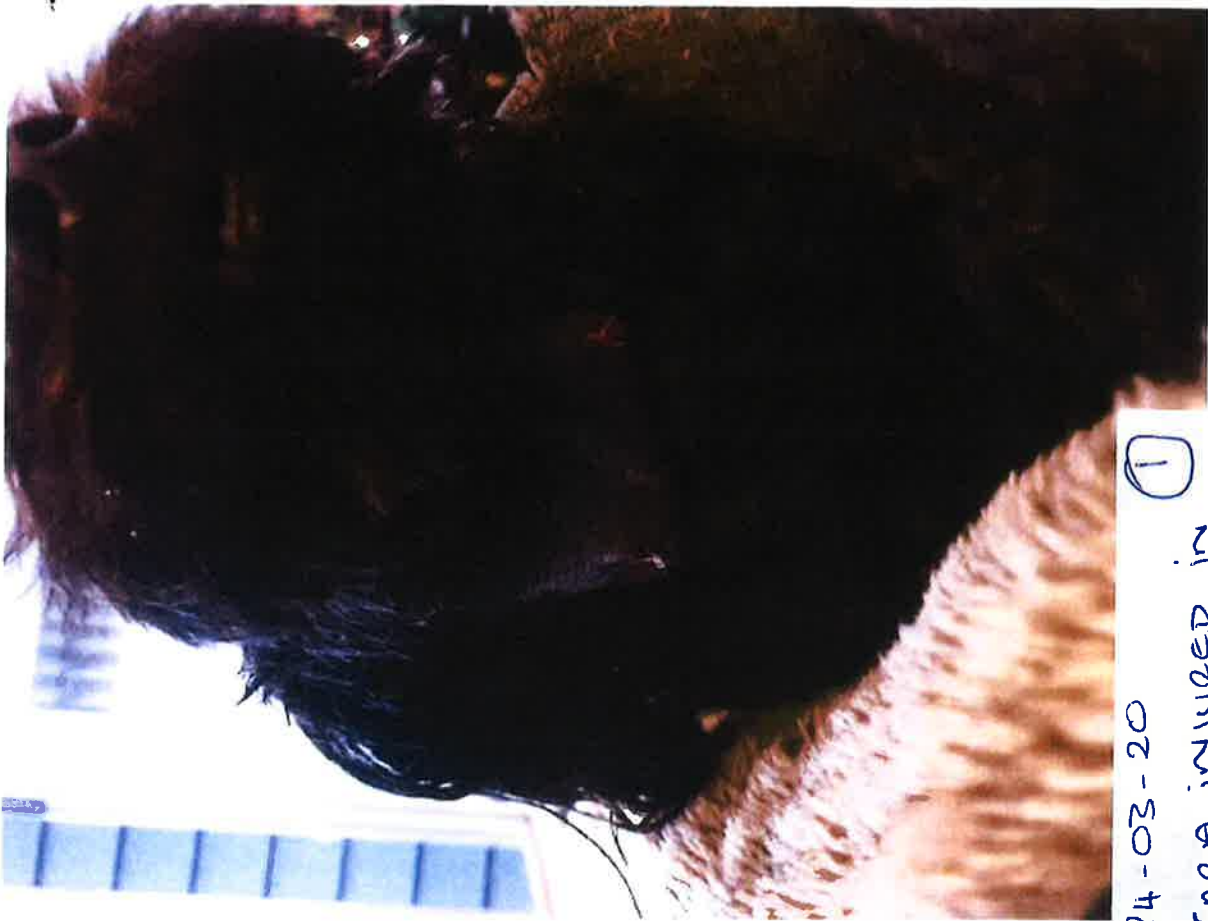
Livestock

Animal type:

No. of animals injured:

No. of animals deceased

INJURY RECEIVED



①

①

24-03-20

ZAGA INJURED IN

ATTACK

Comps Doc



24-03-20 | 3

(3)

ZARA INJURYS
OBTAINED IN
ATTACK.



(2)

24-03-20
ZARA INJURY TO
NECK AREA.

4.2 Objection to Menacing Dog Classification

Meeting: Exemptions and Objections Committee
Date of meeting: 4 November 2020
Reporting officer: Nina Darling, Bylaws Enforcement Co-ordinator
 Reiner Mussle, Manager – Health and Bylaws

Time	Hearing	Name
10.30am	Objection to Menacing Dog Classification (Sections 33A and 33B of the Dog Control Act 1996)	Carla Butler

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- 2 Staff will briefly outline the objection.
- 3 The Council Officer's/Contractor's report, which has been circulated prior to the hearing, is taken as read.
- 4 The objector presents his/her case including any supporting evidence from witnesses.
- 5 Council officers/contractors will speak on his/her report and is available to answer questions.
- 6 Only the objector is given the opportunity to have a right to reply. This gives him/her the chance to clarify matters raised in the Council Officer's/Contractor's report but not to present new evidence.
- 7 Final questions of clarification.
- 8 The Chairperson adjourns the hearing to deliberate on its decision based on the evidence submitted, following which the objector will be notified in writing of the decision.

A written decision will be issued as soon as practicable.

Report to Exemptions and Objections Committee

1 Introduction

The purpose of this hearing is to hear and determine the objection made by Carla Butler to a menacing classification imposed by letter dated 31 August 2020 (**Attachment One**) against her dog 'Horse'.

2 Background

S33A of the Dog Control Act 1996 ('the Act') provides that a territorial authority may classify a dog as menacing where it considers that the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

If a dog is classified as menacing under s33A of the Act, the owner of the dog:

- (a) Must not allow the dog to be at large or in any public place, or in any private way, except when confined completely within a vehicle or cage, without being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and
- (b) Must, if required by the territorial authority, within 1 month after receipt of notice of the classification, produce to the territorial authority a certificate issued by a veterinarian certifying:
 - (i) That the dog is or has been neutered; or
 - (ii) That for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and
- (c) Must, if a certificate under paragraph (b)(ii) is produced to the territorial authority, produce to the territorial authority, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

Under S33B of the Act Mrs Butler was entitled to object within 14 days of receiving the classification and has the right to be heard. The classification notice is dated 31 August 2020 and Mrs Butler lodged an objection on 7 September 2020 (**Attachment Two**) and therefore lodged her objection in sufficient time.

3 Statutory Considerations

Section 33B gives the power to the Committee to consider the objection, which may uphold or rescind the classification. In making its determination the committee must have regard to:

- (a) The evidence which formed the basis for the classification; and
- (b) Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
- (c) The matters relied on in support of the objection; and
- (d) Any other relevant matters.

The territorial authority must, as soon as practicable, give written notice to the owner of:

- (a) Its determination of the objection; and
- (b) The reasons for its determination.

4 Discussion

4.1 Classification

The classification of the dog 'Horse' as menacing followed an incident that occurred on 20 March 2020. A copy of a statement from the victim and his wife and also Mrs Butler's statement is attached (**Attachment Three**). The victim reported that 'Horse' was one of three dogs that rushed him and his own dog. The other two dogs have since passed away. It is not alleged that the dog 'Horse' injured the victim dog. The victim stated that:

[...]That is when the third dog 'Horse' then came running down the driveway and onto the road and came round behind us and tried to get a grip on the back of [victim dog's name] above the tail when I grabbed 'Horse's collar and gave it a twist to let go of [victim dog's name] [...]

The incident occurred on a track that diverges off a 'paper' road within the Butler's property ('the track'). Maps attached (**Attachment Four**).

The track which cuts through the Butler's property over which there is a right of way was created for forestry access for the forestry company its employees, agents, invitees and contractors (**Attachment Five**). Local people, however, are known to use the track. This is a practice which Council understands the Butler's would like to discourage and prevent, however the track remains accessible to the public.

It is important to note that 'Public Place' is specifically defined within the Dog Control Act 1996:

public place—

- a) means a place that, at any material time, is open to or is being used by the public, whether free or on payment of a charge, and whether any owner or occupier of the place is lawfully entitled to exclude or eject any person from that place; and
- b) includes any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle carrying or available to carry passengers for reward

However, it is not a requirement under the Act that an observed or reported behaviour of a dog occur in a public place for a menacing classification to be imposed.

Where an incident must occur in a 'public place' for a sanction to be imposed this is specified in the Act. For example, a charge of 'rushing' under s57A of the Act may only be laid in the District Court where the incident occurred in a 'public place'.

Under s33A of the Act a territorial authority may classify a dog as menacing where it considers that the dog may pose a threat to any person, (or stock, poultry, domestic animal, or protected wildlife) because of any observed or reported behaviour of the dog.

4.2 Other History

The dog 'Horse' was classified as menacing based on the incident that occurred on 20 March 2020.

However, a previous incident involving the dog 'Horse' was reported to Council on 12 August 2018 and another incident on 5 February 2018 which Armourguard's Senior Dog Control Officer has advised links to the dog "Horse" in Council systems. A copy of the Customer Request Memos are attached (**Attachment Six**).

4.3 Assessment

As noted above, in making its determination the committee must have regard to:

- a) The evidence which formed the basis for the classification; and
- b) Any steps taken by the owner to prevent any threat to the safety of persons or animals; and
- c) The matters relied on in support of the objection; and
- d) Any other relevant matters.

These matters are reviewed below:

The evidence which formed the basis for the classification

As noted above the classification was imposed based on the behaviour of the dog reported by the victim in the incident on 20 March 2020 (**Attachment Three**)

Any steps taken by the owner to prevent any threat to the safety of persons or animals

It is acknowledged that in December 2018 the Butler's erected a sign which advised 'Keep out Trespassers may be Prosecuted'. Following internal advice provided by Council's roading department this sign was requested to be taken down by the Manager Health and Bylaws.

However, the sign was not augmented with any fencing or barrier, or other measure to exclude the public. (Any such barrier would also however need to continue to provide for allow for access to the actual continuation the unformed or 'paper' road that runs down the side of the Butlers boundary.)

In her statement Mrs Butler states that while over approximately four years the victim had permission to walk his dog on their property in 2019 the forestry block began to be milled and forestry workers asked them to prohibit access due to health and safety concerns. Mrs Butler notes in her statement that the forestry company installed a sign that states dogs are prohibited.

It is also noted that the dog owner arrived at the scene of the incident on 20 March 2020 and called the three dogs including 'Horse', taking them away in her vehicle, preventing any further escalation of that incident.

Other matters

In the absence of an appropriate physical barrier that is effective in preventing public access to the track it is submitted that the dog 'Horse' needs to be kept within a properly fenced area and should be muzzled when in a public place.

The matters relied on in support of the objection

The committee must consider the information set out in Mrs Butler's objection dated 7 September 2020. (**Attachment two**).

4.4 Impact of the Menacing Classification within the Butler's own Property Boundary

It is acknowledged that if the interpretation of a 'Public Place' set out in the Act is applied strictly to the track within the Butler's own property then the dog owner would be required to muzzle her dog within her own property boundary in areas that the public use from time to time.

However, so long as the dog 'Horse' is:

- contained or confined within a suitably fenced portion of the property at all times to protect members of the public who may use or wander onto either the track, or who may choose to

access the unformed 'paper' road that runs down the side of the property; and

- is kept under the immediate, continuous, and effective control of the dog owner herself at all other times on the property

then the muzzling of the dog 'Horse' while it is within the dog owner's own property boundary is not anticipated.

Recommendation

That the Committee:

- hear the objection to the menacing classification against the dog 'Horse' owned by Carla Butler.

Following deliberations:

That the Committee:

- Determine that the menacing dog classification imposed on the dog 'Horse' owned by Carla Butler on 31 August 2020, be **either** upheld or not upheld; and
- If upheld, determine if a clarification regarding the circumstances in which muzzling within the dog owner's own property boundary is required should be issued.

Attachments

Attachment One - Menacing classification imposed by letter dated 31 August 2020

Attachment Two - Objection received on 7 September 2020

Attachment Three - Copy of a statement from the victim and his wife, and also Mrs Butler

Attachment Four - Maps depicting the property, paper road, right of way and location of incident

Attachment Five - Title information showing right of way in favour of forestry company

Attachment Six - Customer Request Memos – previous incidents concerning 'Horse' in 2018

31 August 2020

Carla Butler
436 Glenmohr Road
Waipu
Whangarei 0582

Dear Carla Butler



Forum North, Private Bag 9023
Whangarei 0148, New Zealand
P +64 9 430 4200
F +64 9 438 7632
E mailroom@wdc.govt.nz
www.wdc.govt.nz

Notice of Classification of a Menacing Dog – Section 33A, Dog Control Act 1996

Dog ID:	67101	Primary Breed:	Rhodesian Ridgeback
Microchip No:	900108001639186	Secondary Breed:	
Name:	Horse	Primary Colour	Brindle
Sex:	Male	Secondary Colour	
Age:	5 years and 5 months		
Address where dog is usually kept: 436 Glenmohr Road, Waipu			

This is to notify you* that the above mentioned dog has been classified as a menacing dog under section 33A of the Dog Control Act 1996.

This is because Whangarei District Council considers that the dog may pose a threat to any person, stock, poultry, domestic animal, or protected wildlife because of observed or reported behaviour of the dog, namely: **Failure to control resulting in Horse being involved in a dog attack on the 20th of March 2020.**

I hereby notify you that the dog described herein has been classified as a MENACING DOG with effect from the date of issue of this notice.

A summary of this classification and your right to object is provided on the reverse.

Please note:

- Your dog must now be de-sexed with a veterinary certificate for proof of de-sexing provided by **01 October 2020**
- Your dog must now be muzzled when it is at large or in any public place or private way
- Your dog must be kept under control at all times

Documents requested above can be sent to: Armourguard Security, P O Box 99, Whangarei, 0140

Yours sincerely

Reiner Mussle
Manager Health and Bylaws

- *For the purposes of the Dog Control Act 1996, you are the owner of a dog if:
- You own the dog; or
 - You have the dog in your possession (otherwise than for a period not exceeding 72 hours for the purpose of preventing the dog causing injury, or damage, or distress, or for the sole purpose of restoring a lost dog to its owner); or
 - You are the parent or guardian of a person under 16 who is the owner of the dog and who is a member of your household living with and dependent on you.

Effect of classification as menacing dog
Sections 33E, 33F, and 36A, Dog Control Act 1996

You—

(a)

must not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction; and

(b)

must, if required by the Whangarei District Council, produce to the Whangarei District Council, within 1 month after receipt of this notice, a certificate issued by a veterinarian certifying—

(i)

that the dog is or has been neutered; or

(ii)

that for reasons that are specified in the certificate, the dog will not be in a fit condition to be neutered before a date specified in the certificate; and

(c)

where a certificate under paragraph (b)(ii) is produced to the Whangarei District Council, produce to the Whangarei District Council, within 1 month after the date specified in that certificate, a further certificate under paragraph (b)(i).

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with all of the matters in paragraphs (a) to (c) above.

A dog control officer or dog ranger may seize and remove the dog from you if you fail to comply with all of the matters in paragraphs (a) to (c) above. The officer or ranger may keep the dog until you demonstrate that you are willing to comply with paragraphs (a) to (c).

As from 1 July 2006, you are also required, for the purpose of providing permanent identification of the dog, to arrange for the dog to be implanted with a functioning microchip transponder. This must be confirmed by making the dog available to the Whangarei District Council in accordance with the reasonable instructions of the Whangarei District Council for verification that the dog has been implanted with a functioning microchip transponder of the prescribed type and in the prescribed location.

You will commit an offence and be liable on conviction to a fine not exceeding \$3,000 if you fail to comply with this requirement—

- within 2 months from 1 July 2006 if your dog is classified as menacing on or after 1 December 2003 but before 1 July 2006; or
- within 2 months after the dog is classified as menacing if your dog is classified as menacing after 1 July 2006.

If the dog is in the possession of another person for a period not exceeding 72 hours, you must advise that person of the requirement to not allow the dog to be at large or in any public place or in any private way (other than when confined completely within a vehicle or cage) without the dog being muzzled in such a manner as to prevent the dog from biting but to allow it to breathe and drink without obstruction. You will commit an offence and be liable on conviction to a fine not exceeding \$500 if you fail to comply with this requirement.

Full details of the effect of the classification of a dog as menacing are provided in the Dog Control Act 1996.

Right of objection to classification under section 33A
Section 33B, Dog Control Act 1996

You may object to the classification of your dog as menacing by lodging with the Whangarei District Council a written objection within 14 days of receipt of this notice setting out the grounds on which you object.

You have the right to be heard in support of your objection and will be notified of the time and place at which your objection will be heard.

7th September 2020

Reiner Mussie
Whangarei District Council
Forum North
Private Bag 9023
Whangarei 0148

Dear Reiner

This letter is written to object to the recent classification of our dog as menacing outlined in a letter dated 31/8/20. We received this letter on Saturday 6/2/20 and understand we have 14 days to respond. I will email this document through and also send via post to ensure you receive this in a timely manner.

We object to Horse being classified as a menacing dog for the following reasons:

In the incident on 20th of March, 2020 Horse was not the aggressor, Kora and Sam who have subsequently passed away were the problem. Horse was held by his collar by [redacted], and was not being aggressive.

This incident happened on our land, [redacted] and [redacted] did not have permission to be on our land.

In 2018 we put signs up advising the public that this road was a private road, that permission must be sought, and trespasses would be prosecuted. The council ordered us to take the signs down or we would be prosecuted, incorrectly believing that the gravel road was the paper road, we should have taken this further to establish at that point what was and wasn't private land. It is our view that the council have put this issue in the too hard basket, but this needs to be resolved so everybody knows what is and isn't private land.

I look forward to your response.

Regards

Carla Butler

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



Complainant Statement

On the (date) 20-3-2020

at approximately (time) 0845

I was at (place) Old Farm Road

What happened?

and I were walking our dog along Old Farm Road and as we were walking past Craig and Carla's house a white dog and it's brindle pup came rushing across the paddock from the side of Craig and Carla's house onto the road when I put [redacted] between my legs, I had [redacted] on a harness and lead and fought off the two dogs by waving my cap at them. I can't remember if one of the dogs grabbed the hat off me or if I dropped it. That is when the third dog Horse then came running down the driveway and onto the road and came round behind us and tried to get a grip on the back of Harley above the tail when I grabbed Horse's collar and gave it a twist to let go of [redacted]. Carla arrived in her vehicle and yelled at her dogs from about 2 metres away to get in the car, she was too scared to come near them. The white dog ^{and her} puppy which looked about 16-24 months old got in the boot and she then called Horse who had calmed down

Signature

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



Complainant Statement

On the (date) 20-3-2020

at approximately (time) 0845

I was at (place) Old Farm Road

What happened?

and I were walking our dog along Old Farm Road and as we were walking past Craig and Carla's house ^{Tom} and white dog and it's Brindle pup came rushing across the paddock from the side of Craig and Carla's house onto the road where Ken put Harley between his legs and fought the rushing dogs of with his cap, I tried to push the white dog away with my foot and the white dog grabbed hold of my pants, I pulled my leg away and the white dog let go of my pants, there were no holes left in my pants from the dog grabbing them. The third dog Horse then came running down the driveway and onto the road and rushed at Harley and I managed to grab hold of Horse's collar while still holding Harley between his legs when Carla arrived in her vehicle and yelled at her dogs to get in the boot which they did, Carla looked like she was scared of her dogs and she was hesitant to grab them. Carla put Horse in the front of the car. After Carla took her dogs away

Signature

Tom

ANIMAL MANAGEMENT PROSECUTION FILE

COMPLAINANT



we came home and I contacted Animal Control and informed them of the incident and Ken took Harley to the vet. I did not see the dogs bite but had saliva on her back and rear end above the tail. The vet found no broken skin on but did confirm Harley had been bitten.

Signature

A handwritten signature in dark ink, appearing to be the letters "DM" with a stylized flourish.

ANIMAL MANAGEMENT PROSECUTION FILE

DOG OWNER



Dog Owner Details	
Title:	MRS
Name:	CARLA BUTLER
Address:	436 GLENMOOR RD, WAIPU
Home Phone:	Work Phone:
Mobile Phone:	
Email:	
Place of work:	

Dog Owner Statement	
CAUTION	
I have been advised of the following:	
<ul style="list-style-type: none"> i. I have the right not to make a statement and to remain silent; ii. I have the right to speak with a lawyer without delay and in private before deciding whether to answer questions; iii. That anything I say will be recorded and may be used as evidence. 	
I understand this Caution and my rights and I am prepared to make a statement.	
On the (date)	20/3/20
	at approximately (time) 0800hrs. approximate.
I was at (place)	Home.
What happened?	As per normal, I let the dogs off, as I walked back to the house I heard barking. On investigation I saw Kora + Sam barking at a dog. I jumped into my car and drove direct to where they were. I had held off Horse by his collar. I opened my boot and commanded Kora + Sam to get in; which they did. I then opened the front door and

CFM

ANIMAL MANAGEMENT PROSECUTION FILE

DOG OWNER



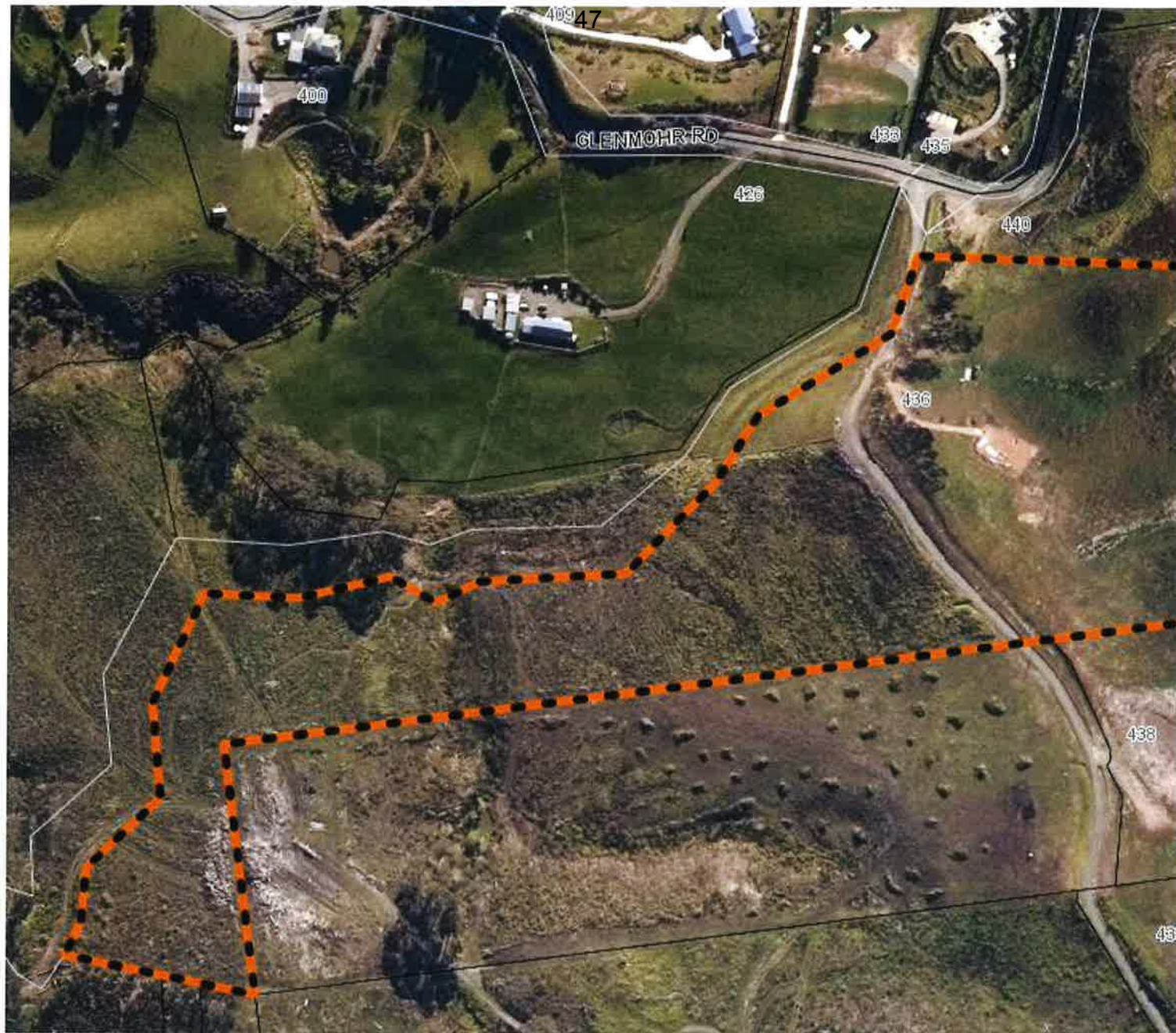
commanded Horse to get in, my daughter arrived on the quad at that point Horse jumped onto the back of the quad, by this stage "I" had walked on.

We have lived here for approximately 4 yrs during that time "I" had permission to walk on our property. However back in September 2019 the forestry began to be milled, the forestry workers asked us to prohibit access due to health + safety concerns. They installed a sign at the beginning of the road which clearly states dogs are prohibited from walking down private rd. Those conditions had not changed, "I" did not have permission to re-enter our property.

I was concerned by Kora's behaviour. We have since put Kora down due to behavioural issues.

Signature

C. Butler



Attachment Four

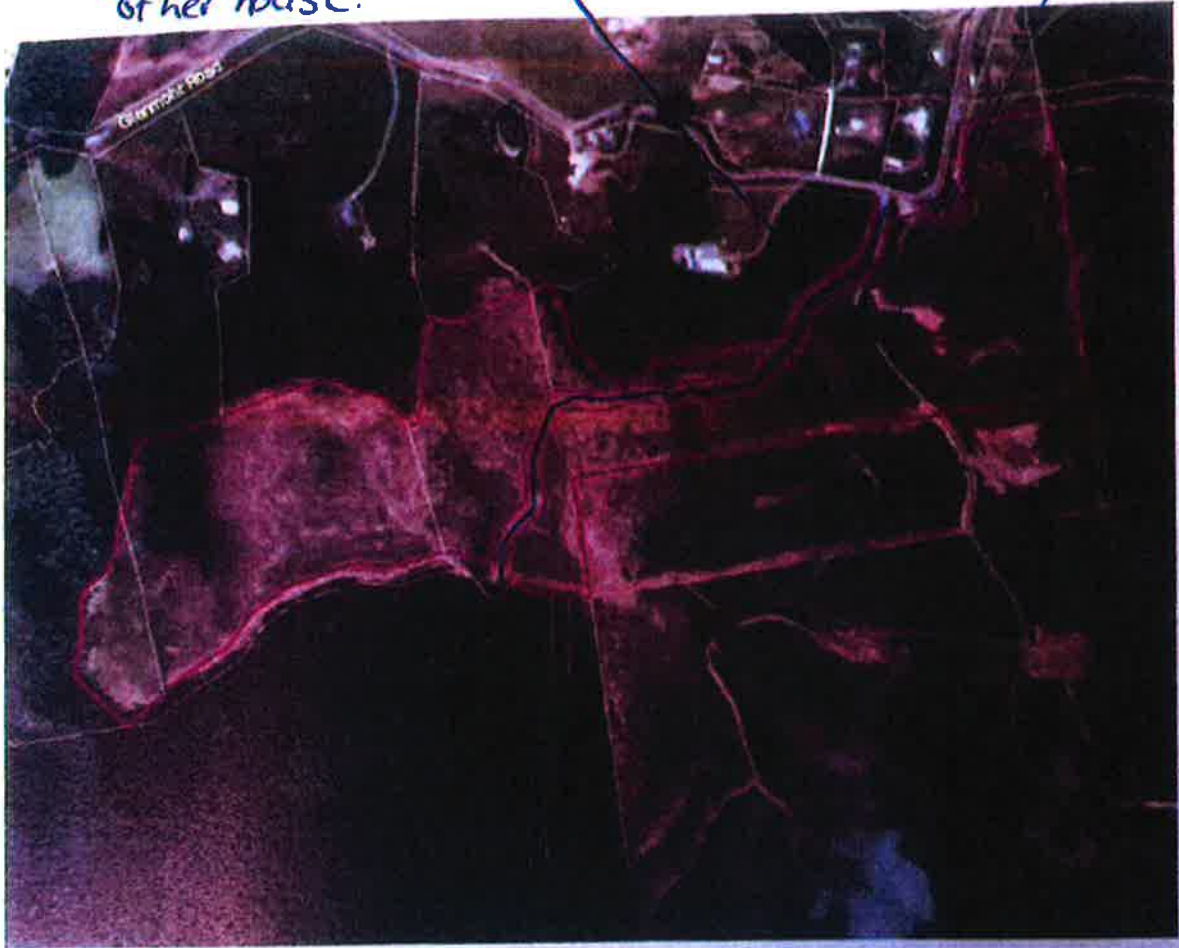
70

Land

Carla informed me that this is the paper road being confused with the private gravel rd in front of the driveway of her house.

48

Where incident took place



The above aerial photo shows the subject property outlined in purple. A paper road separates Lot 4 from the remaining 4 Lots, however this is unformed. A right of way which commences at the northern end of that paper road passes through Lot 4 and services forestry land to the south.

The photograph on the header page displays the existing buildings on the property.



The above two photographs were taken from the intended dwelling site and view in an easterly direction over surrounding farmland, and in the background, Bream Bay.



COMPUTER FREEHOLD REGISTER UNDER LAND TRANSFER ACT 1952



R. W. Muir
Registrar-General
of Land

**Guaranteed Search Copy issued under Section 172A
of the Land Transfer Act 1952**

Identifier NA127C/901
Land Registration District North Auckland
Date Issued 17 March 2000

Prior References

NA1324/61 NA33A/1182 NA372/124
NA69A/92 NA95C/720

Estate Fee Simple
Area 24.0044 hectares more or less
Legal Description Lot 7 Deposited Plan 198866, Lot 1-4
Deposited Plan 201610 and Allotment 603
Parish of Waipu

Proprietors

Waipu Green Limited

Interests

Subject to Section 241(2) Resource Management Act 1991

Appurtenant hereto are electricity and water supply rights specified in Easement Certificate C695792.2 - 20.12.1994 at 2.06 pm (affects Lot 7 DP 198866)

The easements specified in Easement Certificate C695792.2 are subject to Section 243 (a) Resource Management Act 1991

Land Covenant in Easement Instrument 7135252.3 - 29.11.2006 at 9:00 am

Land Covenant in Easement Instrument 7135252.23 - 29.11.2006 at 9:00 am

Subject to a right to emit noise, dust and smoke created by Easement Instrument 7135252.23 - 29.11.2006 at 9:00 am

Subject to a right (in gross) to emit noise, dust, smoke and light over the within land in favour of Taumata Plantations Limited created by Transfer 7157858.1 - 12.12.2006 at 9:00 am

Subject to a right of way over part marked A on DP 407001 created by Easement Instrument 8092524.1 - 7.7.2009 at 2:21 pm

Subject to a right of way over part marked A on DP 407001 created by Easement Instrument 8092524.2 - 7.7.2009 at 2:21 pm

Subject to a right (in gross) to right of way over part marked A in favour of Carter Holt Harvey Limited created by Easement Instrument 8092524.3 - 7.7.2009 at 2:21 pm

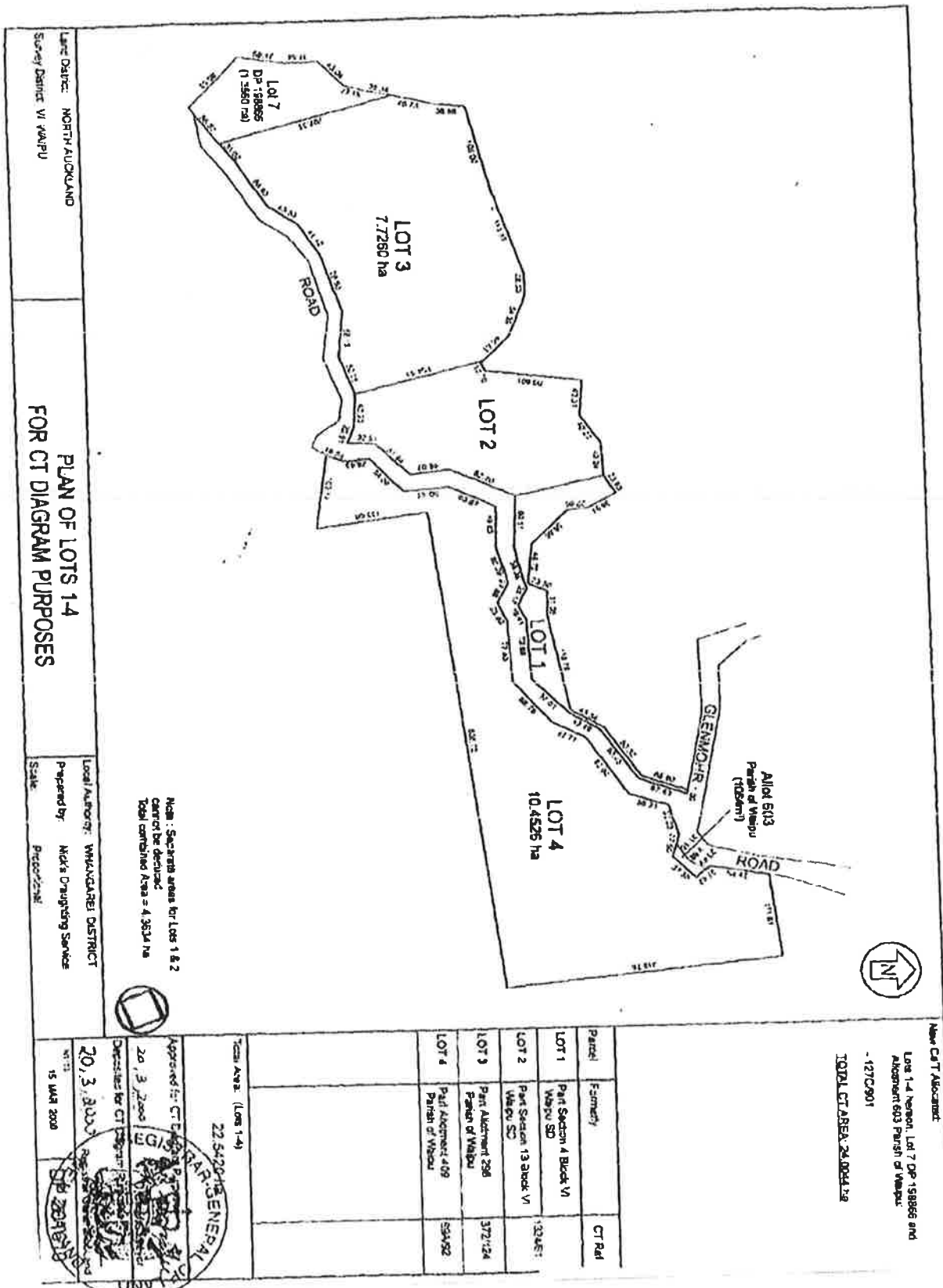
Subject to a right (in gross) to right of way over part marked A on DP 407001 in favour of AHI Group Limited created by Easement Instrument 8092524.4 - 7.7.2009 at 2:21 pm

Subject to a telephone, electricity and computer media easement over part Lot 4 DP 201610 marked A on DP 407001 created by Easement Instrument 10199771.1 - 29.9.2015 at 12:44 pm

Appurtenant hereto is a telephone, electricity and computer media easement created by Easement Instrument 10199771.1 - 29.9.2015 at 12:44 pm

Identifier

NA127C/901



Approved by Registrar-General of Land under No. 2002/1026

Transfer instrument
Section 90, Land Transfer Act 1952

Land registration district

NORTH AUCKLAND



EI 7157858.1 Easemen

Cpy - 01/03, Pgs - 008, 06/08/07, 14:19



DocID: 312761196

Unique Identifier(s)
or C/T(s)

All/part

Area/description of part or stratum

See attached
Annexure Schedule A

Transferor

Surname(s) must be underlined or in CAPITALS.

Carter Holt Harvey Rural Property Limited

Transferee

Surname(s) must be underlined or in CAPITALS.

Taumata Plantations Limited

Estate or interest to be transferred, or easement(s) or profit(s) à prendre to be created
State if fencing covenant imposed.

Easement in gross (continued on Page 2 Annexure Schedule B)

Operative clause

The Transferor transfers to the Transferee the above estate or interest in the land in the above certificate(s) of title or computer register(s) and, if an easement or profit à prendre is described above, that easement or profit à prendre is granted or created.

Dated this 1st day of December 2006

Attestation (If the transferee or grantee is to execute this transfer, include the attestation in an Annexure Schedule).

 Director	Signed in my presence by the Transferor
 Director	 Signature of witness
Signature (common seal) of Transferor	Witness to complete in BLOCK letters (unless legibly printed) Witness name
	Occupation Address
	Victoria Jane Hyde Solicitor Auckland

Certified correct for the purposes of the Land Transfer Act 1952.

[Solicitor for] the Transferee

Approved by Registrar-General of Land under No. 2002/5032

Annexure ScheduleInsert type of instrument
"Mortgage", "Transfer", "Lease" etc

Transfer

Dated

1 December 2006

Page 1 of 1 Pages

(Continue in additional Annexure Schedule, if required.)

Annexure AContinuation of "Unique Identifier(s) or CT(s)."

NA24C/588	All
NA127C/901	All
NA220/255	All
NA573/264	All

Annexure BContinuation of "Estate" or "Interest of Easement to be created".

(Form of easement attached)

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

1. Definitions

1.1 Unless the context otherwise requires, the following terms have the following meanings in this instrument:

"Forestry Activities" means all forestry activities associated with a commercial forest and all normal quarrying activities for the extraction of metal for roading from any quarry within the Grantee's Estate;

"Grantee" means the Transferee, Taumata Plantations Limited, and/or its subsidiaries (as that term is defined in section 2 of the Companies Act 1993), and includes its successors in title and assigns;

"Grantee's Estate" means the fee simple and leasehold estates of the Grantee and any other estates or interests in land (including without limitation any forests rights pursuant to the Forestry Rights Registration Act 1983) held by the Grantee adjoining, adjacent, contiguous to or within the vicinity of the Servient Land;

"Grantor" means the Transferors as registered proprietor of the Servient Land, and includes its successors in title and assigns;

"Resource Consent" includes any variation or renewal of a resource consent or a future resource consent; and

"Servient Land" means those certificates of title listed as the "servient tenement" in Schedule A, either in whole or in part.

1.2 Unless the context otherwise requires, a reference to a statute or other law includes regulations and other instruments under it including national standards and policy statements, regional policy statements and plans, and district plans and bylaws, and consolidation, amendments, re-enactments or replacements of any of them (whether before or after the date of this instrument).

2. Right to discharge noise, dust and smoke

The Grantee shall have the full free uninterrupted and unrestricted right, liberty, and privilege for the Grantee and its servants, tenants, agents, licensees, contractors and invitees to discharge:

- (i) noise;
- (ii) dust;
- (iii) smoke;
- (iv) light;

from the Grantee's Estate (and from any quarry therein), **PROVIDED HOWEVER** such discharges are in accordance with the Resource Management Act 1991 or any resource consent issued by a consent authority and in accordance with any other legislative requirements affecting the Forestry Activities carried out on the Grantee's Estate or any part thereof, **AND** to allow the emissions to escape, pass over, under or through, or deposit (as the case may be) in, on, or under the Servient Land or any part thereof in the course of use of the Grantee's Estate (including any quarry therein), with the intent that such easement shall run with the Servient Land.

WJH *JP*
WJH

3. Term of Rights

The rights granted pursuant to clause 2 within shall be granted for a term of seventy five (75) years commencing 1/12/2006, PROVIDED THAT the Grantor will at any time when called upon to do so execute in favour of the Grantee a variation extending the term set out in this clause 3 for a period of up to a further seventy five (75) years as requested by the Grantee.

4. Continuation of Forestry Activities

The Grantor will allow the Grantee to carry on the Forestry Activities on the Grantee's Estate or any part thereof without interference or restraint from the Grantor, PROVIDED THAT the Grantee shall carry out the Forestry Activities in accordance with the Resource Management Act 1991 or any resource consent issued by a consent authority, and in accordance with any other legislative requirement affecting the Forestry Activities.

5. No objection to Forestry Activities

The Grantor shall not at any time:

- (i) make or lodge; nor
- (ii) be a party to or otherwise support in any way; nor
- (iii) finance or contribute to the cost of,

any submission, application, proceeding or appeal (either pursuant to the Resource Management Act 1991 or otherwise) which has the effect of limiting, prohibiting or restricting the commencement or continuance or re-commencement by the Grantee of the Forestry Activities on the Grantee's Estate or any part thereof (including access to and egress from the Grantee's Estate by logging trucks passing over the Servient Land in accordance with reasonable forestry industry standards).

6. No claims

- 6.1 Provided the Grantee shall carry out the Forestry Activities on the Grantee's Estate in accordance with the Resource Management Act 1991 or any resource consent issued by a consent authority, and in accordance with any other legislative requirement affecting the Forestry Activities, then the Grantor shall not at any time make any claim or demand or take any action or proceedings for damages, directly or indirectly, arising out of the Forestry Activities carried out on the Grantee's Estate or any part thereof other than a claim for loss or damage arising out of:

- (a) negligence or deliberate act of the Grantee or of any of its employees; or
- (b) nuisance caused by the Grantee or any of its employees to the extent such nuisance is caused by breach by the Grantee or any of its employees of the Resource Management Act 1991 or any resource consent issued by a consent authority or any other legislative requirement affecting the Forestry Activities.

- 6.2 Any claim made by the Grantor in respect of loss or damage, or nuisance to the extent permitted by clause 6.1 above, due to the Grantee's negligence or deliberate act of the Grantee or any of its employees shall be limited to direct loss or damage suffered by the Grantor and shall exclude all special, consequential or indirect losses or damages, including exclusion of any claim for loss of profits.

[Handwritten signatures]

7. Application

Clauses 4-6 above apply notwithstanding any intensification in or change in the method of the Grantee's Forestry Activities on the Grantee's Estate or any part thereof.

8. Acknowledgement by Grantor

Notwithstanding that this covenant does not permit the Grantee to discharge spray from the Grantee's Estate and to allow it to escape, pass over, under or through or deposit or stay in, on, or under the Servient Land, nevertheless the Grantor acknowledges that the Grantee will be undertaking within the Grantee's Estate spraying (chemical or otherwise) as part of its Forestry Activities in accordance with the Resource Management Act 1991 or any resource consent issued by a consent authority.

WJH
JH

Approved by Registrar-General of Land under No. 2002/5032
Annexure Schedule



Insert type of instrument
 "Mortgage", "Transfer", "Lease" etc

Dated 15 May 2007

Page 1 of 1 pages

(Continue in additional Annexure Schedule, if required.)

Continuation of Attestation

<p>Executed by the Transferee:</p> <p><u>[Signature]</u> Director</p> <p><u>[Signature]</u> Director</p>	<p>Signed in my presence by the Transferee Signature of Witness</p> <p><u>[Signature]</u> Witness to complete in BLOCK letters (unless typewritten or legibly stamped)</p> <p>Witness name <u>KAREN BOWEN</u></p> <p>Occupation <u>EXE. AST.</u></p> <p>Address <u>Plainsville, MA</u></p>
------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or solicitors must sign or initial in this box.

mjm AK K3

COMMONWEALTH OF MASSACHUSETTS)
)ss.
COUNTY OF SUFFOLK)

I, Karen Marie Bonner a Notary Public, do hereby certify that Daniel P. Christensen and Michael J. Morgan, Directors of Taumata Plantations Limited (the Company), personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the Company.

WITNESS my hand and official seal, this the 15th day of May, 2007.



Karen Marie Barr
Notary Public

Print Name: Karen Marie Bonner

My Commission expires: July 23, 2010

Landonline User ID: russellman

LODGING FIRM: RUSSELL MCVEAGH

Address: PO BOX 8 (DX CX 10085)

AUCKLAND

Uplifting Box Number:

CXL

ASSOCIATED FIRM:

Client Code / Ref: 1424217

HEREWITH

Survey Plan (#)

Title Plan (#)

Traverse Sheets (#)

Field Notes (#)

Calc Sheets (#)

Survey Report

Dealing / SUD Number:
(LINZ Use only)

Priority Barcode/Date Stamp
(LINZ use only)

Reg Seal 14/3/07

Plan Number Pre-Allocated or
to be Deposited

Rejected Dealing Number:

Other (state) NORTH AUCKLAND

Priority Order	CT Ref	Type of Instrument	Names of Parties	DOCUMENT OR SURVEY FEES	MULTI-TITLE FEES	NOTICES	ADVERTISING	NEW TITLES	OTHER	RE-SUBMISSION & PRIORITY FEE	FEES \$ GST INCLUSIVE
*1	24C/588,127C/901 220/255,573/264	E	CARTER HOLT/ TAUMATA	50.00	3	\$6					\$56.00
*2	SEE SCHEDULE (a)	E	CARTER HOLT/ TAUMATA	50.00	11	\$22					\$72.00
*3	SEE SCHEDULE (b)	E	CARTER HOLT/ TAUMATA	50.00	5	\$10					\$60.00
*4	9A/955,70A/527	E	CARTER HOLT/ TAUMATA	50.00	1	\$2					\$52.00
5											
6											

Land Information New Zealand Logos/Stamp Form

Annotations (LINZ use only)

Less Fees paid on Dealing *

Subtotal (for this page)

Total for this dealing

Debit my Account for

Original Signatures?

Fees Receipt and Tax Invoice

GST Registered Number 17-022-895

LINZ Form P005

LINZ Form P005 - PDF

Version 1.7: 28 May 2004

EI 7157858.1 Easemen

Copy - 02/03, Page - 008, 05/06/07, 14.19

Copies

(inc. original)

DocID: 312761196



view instrument Details

Instrument No. 8092524.1
Status Registered
Date & Time Lodged 07 Jul 2009 14:21
Lodged By Simons, Jonathan Allan
Instrument Type Easement Instrument

Toitu te
Land whenua
Information
New Zealand



Affected Computer Registers	Land District
NA127C/901	North Auckland
NA220/255	North Auckland
NA573/264	North Auckland
NA69A/91	North Auckland

Annexure Schedule: Contains 12 Pages.

Grantor Certifications

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

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

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

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

Mortgage 7402997.3 does not affect the servient tenement, therefore the consent of the Mortgagee is not required ☒

Signature

Signed by Peter John Reid Sargent as Grantor Representative on 07/07/2009 12:42 PM

Grantee Certifications

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

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

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

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

Signature

Signed by Jonathan Allan Simons as Grantee Representative on 07/07/2009 09:38 AM

*** End of Report ***

Form B

Easement Instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90P Land Transfer Act 1952)

Grantor

CARTER HOLT HARVEY RURAL PROPERTY LIMITED

Grantee

AHI GROUP LIMITED**Grant of Easement or *Profit à prendre* or Creation of Covenant**

The Grantor being the registered proprietor of the servient tenement(s) 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, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement, profit or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	Marked "A" on Plan 407001	Lot 4 on DP 201610 (CFR NA127C/901)	Part Allotment 375, Parish of Waipu (CFR 69A/81)
	Marked "B" on Plan 407001	Allotment 265, Parish of Waipu (CFR NA220/255)	
	Marked "C" and "D" on Plan 407001	Allotment 117 Parish of Waipu (CFR NA573/264)	

Form B - continued**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 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby substituted by:

[the provisions set out in Annexure Schedule]

Form L

Annexure Schedule

Page 1 of 10 Pages

Insert instrument type

Continue in additional Annexure Schedule, if required

Rights, powers, terms and conditions in relation to easement creating right of way over easement areas marked "A", "B", "C" and "D" on Plan 407001 and defined herein as "Road"

1. INTERPRETATION

1.1 Definitions

In this Instrument, unless the context otherwise requires:

Business Day means any day (other than a Saturday or Sunday) on which registered banks in New Zealand are open for business;

Dispute Process means the dispute resolution process set down in clause 9;

Environment has the same meaning as the definition contained in the Resource Management Act 1991;

Expert means the independent expert appointed in accordance with clause 9.2;

Forestry Use means the reasonable use of the Road for all forestry activities associated with the operation of a normal commercial forest of a comparable size and nature to any forestry estate owned by the party using that Road for those activities;

Grantor means the owner of the Servient Tenement, and includes its successors and assigns;

Grantee means the owner of the Dominant Tenement, and includes its successors and assigns;

Land Loss means the permanent loss by the Grantee of the use of an area of land for forestry purposes in order to allow the construction or upgrade of the Road in accordance with clause 3.1 which shall be deemed to include the permanent loss of the use of an area of land for boundary planting set backs that are reasonable for the Road;

Primary User means, in relation to a Road and a year, the user of that Road which plans to have the greatest proportionate usage of the Road (which may include the Grantor) that year, based on tonnage and frequency of use; determined in accordance with clause 5;

Related Company has the meaning set out in section 2(3) of the Companies Act 1993;

Relevant Trees means all the *Pinus radiata*, eucalyptus and Douglas fir trees and timber and any other exotic and fast growing species of trees and timber grown for commercial forestry purposes, whether standing or otherwise, on the relevant land from time to time;

Road means the road(s) on the easement area, marked "A", "B", "C" and "D" on Plan 407001;

Timber Loss means the permanent loss of Relevant Trees on the relevant freehold land owned by the Grantee in order to allow the construction or upgrade of the Road in accordance with clause 3.1.

1.2 General references

In this instrument, unless the context otherwise requires:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this instrument);
- (b) the provisions of this Instrument apply to the exclusion of the Fifth Schedule to the Property Law Act 2007, and the Fourth Schedule to the Land Transfer Regulations 2002;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) unless otherwise specified, a reference to \$ or dollars is a reference to New Zealand dollars and, unless otherwise specified, all amounts payable by a party under this instrument are to be paid in that currency; and
- (h) words importing one gender including the other genders.

1.3 Headings

Ignore headings in construing this Instrument.

2. GRANT OF RIGHT OF WAY

The Grantee, together with its servants, tenants, agents, workmen, licensees, and invitees (in common with the Grantor, the Grantor's tenants and any other person lawfully entitled) shall have the right at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the Road.

- (b) based on the estimates provided in accordance with clause 4(a); the Grantee and the Grantor shall determine who shall be the Primary User for the following calendar year; and
- (c) the Grantee and the Grantor will determine the basis for the allocation of charge for the following calendar year for the purposes of clause 5.1 and the mechanism for collecting such charges.

5. FEES AND CHARGES

5.1 Usage fees

- (a) Each Primary User of the Road which is responsible for maintaining that Road under clause 6.1 is entitled to charge the Grantor and each other user of that Road their proportionate share of the maintenance costs incurred by the Primary User in relation to that Road based on the relative proportionate usage by the Primary User, the Grantor and other users of that Road based on tonnage carried and frequency of use;
- (b) For the purposes of this clause 5.1 only, the use of the Road by the agents, contractors, invitees, lessees, licensees and employees of a party, or any third party granted access rights over the Road by that party, will be deemed to be use of the Road by that party;
- (c) The occasional light vehicle usage of the Road will not constitute usage of the Road for the purposes of charging for the use of the Road.

5.2 Rates

For the avoidance of doubt, the parties acknowledge that the Grantor will be responsible for all rates and other statutory levies charged with respect to the Road on the Servient Tenement.

5.3 Dispute as to charges

If the Grantor, the Grantee, or any other user disputes the charges proposed by a Primary User under clause 5.1, they may refer the dispute to be resolved in accordance with the Dispute Process, with all necessary modifications.

6. MAINTENANCE

6.1 Primary User generally responsible

Each Primary User of the Road is responsible for the maintenance of the Road to a reasonable standard and condition for the type of use of the Primary User, provided that, where the Road was of a standard and condition suitable for Forestry Use, the construction or upgrade must not be less than that standard, except as set out in clause 6.2.

6.2 User to repair damage

Subject to clause 6.3 where the Grantee has caused damage to the Road, or the Grantor has caused damage to a Road that is maintained by a Primary User in accordance with clause 6.1, (such party being the Damaging Party) in each case in excess of fair wear and tear:

- (a) the Damaging Party is responsible for the repair and reinstatement of the Road

to the same standard and condition that the Road was in before that damage was caused, to the satisfaction of the Primary User, acting reasonably;

- (b) the Damaging Party is responsible for meeting all costs of reinstating the Road in accordance with clause 6.2(a); and
- (c) the Damaging Party must procure that the Road is repaired as soon as is reasonably practicable following the damage occurring to avoid danger, delay or inconvenience to users of the Road.

If the Damaging Party fails to repair and reinstate the damaged Road in accordance with this clause 6.2 including within the time period described in paragraph (c) above, the Primary User responsible for maintaining the Road may itself procure that the Road is repaired to the standards set out in paragraph (a) above and the Damaging Party must indemnify the Primary User against all costs reasonably incurred by the Primary User in relation to that repair.

6.3 **Exception for Forestry Use**

Where the Grantee or Grantor has constructed or upgraded a Road under clause 3.1 to a standard or condition not suitable for Forestry Use, a Damaging Party's liability for damage caused to the Road by Forestry Use by that Damaging Party under clauses 6.2(a) and (b) shall be to repair and reinstate the damaged Road to a reasonable standard and condition suitable for Forestry Use.

7. Clause 7 is deleted.

8. **GENERAL PROVISIONS REGARDING ACCESS**

8.1 **Safety**

The Grantor:

- (a) is at all times responsible for ensuring compliance with the provisions of the Health and Safety in Employment Act 1992; and
- (b) must comply with all the Grantee's reasonable road user rules, including all reasonable health and safety, security and fire safety and prevention requirements and directions,

in relation to its use of the Road.

8.2 **Compliance with laws**

Without limiting clause 8.1, the Grantor must comply with all statutes, codes, regulations, standards and other laws, including the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996, relating to forestry, agricultural uses, the Environment, fire prevention and safety in relation to its use of the Road.

8.3 **Grantor to minimise disturbance**

In using the Road, the Grantor must use its reasonable endeavours to ensure that there is as little disturbance, inconvenience or interruption as is reasonably practicable which shall be determined, where the Road is used for forestry purposes, by reference to what is reasonable in the context of Forestry Use caused to:

- (a) the Road; or

- (b) the Grantee's use of the Road; or
- (c) the use of the Road by any other licensee or invitee of the Grantee; or
- (d) the activities of the Grantee on the Servient Tenement.

8.4 Restrictions on use

The Grantor must not:

- (a) bring or allow to be brought upon the Road any machinery, goods or other things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Road in excess of fair wear and tear; or
- (b) use the Road for any noxious, illegal or offensive business; or
- (c) allow any act or thing to be done on the Road which may be or grow to be a nuisance, disturbance or annoyance to the Grantee or any other person; or
- (d) trespass upon, damage or disturb, any of the Grantee's land adjacent to the Road or otherwise;

provided that this clause 8.4 will not prevent any party from utilising its access rights to have logging trucks or carriers of agricultural goods (in each case complying with general industry standards) pass over the Road.

8.5 Insurance

The Grantor agrees to take out and maintain a public liability insurance policy with a reputable insurer to an appropriate level of cover having regard to all of its activities on the Dominant Tenement and prudent commercial practice. The Grantor will provide to the Grantee, on request, a copy of the certificate of insurance and policy for that insurance.

9 DISPUTE PROCESS

9.1 Dispute

Any dispute under this Instrument to be resolved in accordance with the Dispute Process will be determined in accordance with this clause 9.

9.2 Appointment of expert

If the Grantor and the Grantee agree on the independent person to be appointed as the Expert within 20 Business Days of first attempting to do so, that person will be appointed as the Expert. If the Grantee and Grantor are unable to agree upon the Expert to be appointed within 20 Business Days of first attempting to do so, either party may request the President of the New Zealand Law Society to appoint the Expert.

9.3 Other provisions applying the Expert determination

The following provisions will apply to a determination by the Expert under this instrument:

- (a) the Expert will be required to complete his or her determination as soon as possible;

- (b) any determination by the Expert will be final and binding on the parties except in the case of manifest error and the parties will comply with the Expert's directions as to how that determination is to be implemented;
- (c) except as set out elsewhere in this Instrument, the Expert's costs will be borne equally by the Grantor and the Grantee;
- (d) the Expert may:
 - (i) arrange to meet with the Grantor and the Grantee, either together or individually, to discuss the dispute;
 - (ii) require the Grantor and the Grantee to provide such evidence as the Expert considers reasonably necessary to determine the dispute; and
 - (iii) establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this Instrument;
- (e) the Grantor and the Grantee must give the Expert all reasonable co-operation and assistance in relation to the dispute requiring determination; and
- (f) the dispute determination is to be entirely confidential. There will be no disclosure outside the dispute determination of any information or documentation disclosed for the purposes of the dispute determination by any party or the Expert, except for the purpose of obtaining legal or other professional advice, unless that party or the Expert is required to do so by order of a court or by law or under the rules of any stock exchange or securities market.

9.4 Arbitration not to apply

A reference to a dispute under this Instrument to the Expert will not be a submission to arbitration for the purposes of the arbitration statutes and, without limiting the foregoing, the provisions of the Arbitration Act 1996 will not apply to the dispute.

9.5 Default in payment

If any party to this instrument defaults for any reason in payment of any amount to the due date (time being strictly of the essence), the party in default must pay on demand interest at the rate of 12% per annum calculated on a daily basis on the amount so unpaid from the due date for payment until payment in full is made. The parties acknowledge that the demand for the payment of interest is without prejudice to any of the other rights or remedies available to a party either under this Instrument or otherwise in respect of such default.

10. GENERAL

10.1 Grantee's employees and agents

The Grantee will be entitled to allow its employees, agents, invitees and contractors to utilise its rights of access under this Instrument for the purposes of operations on the Grantee's land or operations of the Grantee under any interest held by the Grantee as grantee, licensee, or lessee under a forestry right, licence, or lease, provided that the Grantee will be responsible for ensuring all such persons comply with the Grantee's obligations under this instrument in relation to such access.

10.2 Non-exclusive rights

The rights of access granted to the Grantee herein are nonexclusive and, for clarity, do not restrict:

- (a) use of the Road by the Grantor and Its Related Companies and their agents, contractors, invitees, lessees, licensees and employees; and
- (b) the Grantor from granting further access rights to any other third party over the Road.

10.3 No liability

Under no circumstances will a Grantor be liable in contract, tort or otherwise to a Grantee for any expense, loss, injury or damage whether consequential or otherwise, arising directly or indirectly from:

- (a) any activity undertaken by the Grantor on its land, including a Road; or
- (b) any activity undertaken by the Grantee on the Grantee's land; or
- (c) the state of the Road or the Grantor's land,

whether the expense, loss, injury or damage is the direct or indirect result of negligence or otherwise provided that this clause 10.3 will not excuse the Grantor from liability for a breach of a term of this Instrument.

10.4 Severability

Any provision of this Instrument which is prohibited or unenforceable in any jurisdiction will be ineffective as to such jurisdiction to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this Instrument or affecting the validity or enforceability of that provision in any other jurisdiction.

10.5 Form of notice

- (a) Each notice or other communication under this instrument is to be in writing, is to be made by facsimile, personal delivery, email or by post to the addresses at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties;
- (b) No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
 - (i) In the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day after the date of despatch;
 - (ii) In the case of personal delivery, when delivered;
 - (iii) In the case of email, by the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 8); and
 - (iv) In the case of a letter, on the third Business Day after posting by airmail.

10.6 Waiver

No waiver by any party of any term or right under this Instrument will be of any legal effect unless in writing and signed by all the parties. No waiver of any default or potential default on any one occasion will constitute a waiver of any subsequent or other default or potential default, and no single or partial exercise of any such right, power or privilege will preclude the further or full exercise thereof.

10.7 No economic or consequential loss

Except as expressly set out in this Instrument, no party will be liable for any economic or financial loss including, but not limited to, loss of use, loss of revenue, loss of profit cost for replacement production, business interruption (in each case whether direct or indirect) or for any indirect or consequential loss or damage. This clause 10.7 will extend beyond termination of this Instrument.

10.8 Governing law

This Instrument is to be governed by and construed in accordance with the laws of New Zealand.

10.9 Jurisdiction

- (a) The parties irrevocably and unconditionally agree that the Courts of New Zealand will have jurisdiction to hear and determine each action or proceeding (Proceedings), or dispute, which may arise out of or in connection with this Instrument and for those purposes each of the parties irrevocably submits to the non-exclusive jurisdiction of those Courts;
- (b) The submission to jurisdiction in clause 10.9(a) does not (and is not to be construed to) limit the rights of any party to take Proceedings against any other party in another Court of competent jurisdiction nor is the taking of Proceedings in one or more jurisdictions to preclude the taking of Proceedings in another jurisdiction, whether concurrently or not.

11. THE ROAD MAY VEST AS PUBLIC ROAD

If the Grantee determines that the Road may vest as public road in the local authority;

- 11.1 The Grantor shall consent to the road vesting as public road in the local authority; and
- 11.2 All costs of such vesting of the Road, including the formation of the Road to local authority standards and legal costs shall be shared by the Grantor and the Grantee as shall be agreed, bearing in mind the benefits that will be enjoyed by each party if the Road vests as public road; and
- 11.3 The Grantor shall sign all necessary documentation and do all things to effect such vesting; and
- 11.4 No compensation shall be paid to the Grantor for the vesting as public road; and
- 11.5 Upon the vesting neither the Grantor nor the Grantee shall be responsible for the maintenance of the Road, and
- 11.6 Any dispute shall be determined in accordance with clause 9 herein.

12. FURTHER CONDITIONS RELATING TO THE GRANTEE'S USE OF THE ROAD

- 12.1 The Grantor shall not move any stock onfoot on or over the Road.
- 12.2 The Grantor shall use the Road as if it were a public road and comply with all rules and regulations that apply to a public road and in particular observe any traffic signs erected by the Grantee including but not limited to speed signs.
- 12.3 The Grantor shall operate vehicles with lights on at all times when using the Road.
- 12.4 The Grantor shall erect and observe compulsory signs at the junction of where each lot enters upon the Road.

13. RIGHT OF WAY MAY BE SURRENDERED IN WHOLE OR IN PART

- 13.1 At the option of the Grantee these conditions in this right of way easement may be surrendered in whole or in part by the Grantee at any time without payment and the Grantor shall accept such surrender and shall execute all documents to implement such surrender.



View Instrument Details⁷¹

Instrument No. 8092524.2
Status Registered
Date & Time Lodged 07 Jul 2009 14:21
Lodged By Simons, Jonathan Allan
Instrument Type Easement Instrument



Affected Computer Registers	Land District
NA127C/901	North Auckland
NA220/255	North Auckland
NA573/264	North Auckland

Annexure Schedule: Contains 12 Pages.

Grantor Certifications

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

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

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

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

Signature

Signed by Peter John Reid Sargent as Grantor Representative on 07/07/2009 12:44 PM

Grantee Certifications

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

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

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

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

Signature

Signed by Peter John Reid Sargent as Grantee Representative on 07/07/2009 12:44 PM

*** End of Report ***

Form B

Easement Instrument to grant easement or profit à prendre, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

CARTER HOLT HARVEY RURAL PROPERTY LIMITED

Grantee

CARTER HOLT HARVEY RURAL PROPERTY LIMITED**Grant of Easement or Profit à prendre or Creation of Covenant**

The Grantor being the registered proprietor of the servient tenement(s) 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, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; profit or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	Marked "A" on Plan 407001	Lot 4 on DP 201610 (CFR NA127C/901)	Allotments 265 and 117, Parish of Waipu (CFR's NA 220/255 and NA573/264)
	Marked "B" on Plan 407001	Allotment 265, Parish of Waipu (CFR NA220/255)	Allotment 117 Parish of Waipu (CFR NA573/264)

Form B - continued

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 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby substituted by:

[the provisions set out in Annexure Schedule]

Form L

Annexure Schedule

Page 1 of 10 Pages

Insert instrument type

Continue in additional Annexure Schedule, if required

Rights, powers, terms and conditions in relation to easement creating right of way over easement areas marked "A" and "B" on Plan 407001 and defined herein as "Road"

1. INTERPRETATION

1.1 Definitions

In this instrument, unless the context otherwise requires:

Business Day means any day (other than a Saturday or Sunday) on which registered banks in New Zealand are open for business;

Dispute Process means the dispute resolution process set down in clause 9;

Environment has the same meaning as the definition contained in the Resource Management Act 1991;

Expert means the independent expert appointed in accordance with clause 9.2;

Forestry Use means the reasonable use of the Road for all forestry activities associated with the operation of a normal commercial forest of a comparable size and nature to any forestry estate owned by the party using that Road for those activities;

Grantor means the owner of the Servient Tenement, and includes its successors and assigns;

Grantee means the owner of the Dominant Tenement, and includes its successors and assigns;

Land Loss means the permanent loss by the Grantor of the use of an area of land for forestry purposes in order to allow the construction or upgrade of the Road in accordance with clause 3.1 which shall be deemed to include the permanent loss of the use of an area of land for boundary planting set backs that are reasonable for the Road;

Primary User means, in relation to a Road and a year, the user of that Road which plans to have the greatest proportionate usage of the Road (which may include the Grantor) that year, based on tonnage and frequency of use; determined in accordance with clause 5;

Related Company has the meaning set out in section 2(3) of the Companies Act 1993;

Relevant Trees means all the *Pinus radiata*, eucalyptus and Douglas fir trees and timber and any other exotic and fast growing species of trees and timber grown for commercial forestry purposes, whether standing or otherwise, on the relevant land from time to time;

Road means the road(s) on the easement area, marked "A" and "B" on Plan 407001;

Timber Loss means the permanent loss of Relevant Trees on the relevant freehold land owned by the Grantor in order to allow the construction or upgrade of the Road in accordance with clause 3.1.

1.2 General references

In this instrument, unless the context otherwise requires:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this instrument);
- (b) the provisions of this Instrument apply to the exclusion of the Fifth Schedule to the Property Law Act 2007, and the Fourth Schedule to the Land Transfer Regulations 2002;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) unless otherwise specified, a reference to \$ or dollars is a reference to New Zealand dollars and, unless otherwise specified, all amounts payable by a party under this instrument are to be paid in that currency; and
- (h) words importing one gender including the other genders.

1.3 Headings

Ignore headings in construing this Instrument.

2. GRANT OF RIGHT OF WAY

The Grantee, together with its servants, tenants, agents, workmen, licensees, and invitees (in common with the Grantor, the Grantor's tenants and any other person lawfully entitled) shall have the right at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the Road.

3. CONSTRUCTION AND UPGRADE OF ROADS

3.1 Grantor can construct or upgrade a Road

The Grantor has the right to construct the Road or upgrade the Road at its discretion provided that:

- (a) the costs of the construction or upgrading are the responsibility of the Grantor and no contribution to those costs can be required from any other user or the Grantee;
- (b) the Road must be constructed or upgraded to a reasonable standard and condition for the Grantor's proposed uses or where the Road was of a standard and condition suitable for Forestry Use, then the construction or upgrade shall be not less than to that standard;
- (c) Clause (c) is deleted.
- (d) the Grantor gives reasonable written notice to the Grantee of the date(s) on which it proposes to carry out the construction or upgrade works;
- (e) the Grantor complies with all statutory and regulatory requirements in respect of the construction or upgrade works; and
- (f) the Grantor complies with the Grantee's reasonable directions regarding health and safety, security, and fire safety and prevention in respect of the construction or upgrade.

3.2 Grantee responsible for its own upgrades

If the Grantee elects to construct, upgrade or restore the Road, then the Grantee will be responsible for costs of that construction, upgrading or restoration and no contribution to those costs can be required from the Grantor except in accordance with clause 5.1 to the extent that clause applies. In carrying out such works the Grantee must:

- (a) give reasonable written notice to the Grantor of the date(s) on which it proposes to carry out the construction, upgrade, or restoration;
- (b) comply with all statutory and regulatory requirements in respect of the construction, upgrade, or restoration; and
- (c) in relation to any construction or upgrade, such construction or upgrade shall be to a reasonable standard and condition for the Grantee's proposed use.

3.3 Party to minimise disturbance

Any party that is upgrading or constructing the Road must ensure that there is as little disturbance, damage, inconvenience or interruption caused to the use of the Road and the Grantee's use of its land as is reasonably practicable.

4. ANNUAL MEETINGS

The Grantee and the Grantor shall meet together not less frequently than annually and in any event no later than 1 October in each year and, in respect of the Road:

- (a) each of the Grantee and the Grantor shall provide to the other with its best estimate of its projected use of the Road for the following calendar year;
- (b) based on the estimates provided in accordance with clause 4(a); the Grantee and the Grantor shall determine who shall be the Primary User for the following calendar year; and
- (c) the Grantee and the Grantor will determine the basis for the allocation of charge for the following calendar year for the purposes of clause 5.1 and the mechanism for collecting such charges.

5. FEES AND CHARGES

5.1 Usage fees

- (a) Each Primary User of the Road which is responsible for maintaining that Road under clause 6.1 is entitled to charge the Grantor and each other user of that Road their proportionate share of the maintenance costs incurred by the Primary User in relation to that Road based on the relative proportionate usage by the Primary User, the Grantor and other users of that Road based on tonnage carried and frequency of use;
- (b) For the purposes of this clause 5.1 only, the use of the Road by the agents, contractors, invitees, lessees, licensees and employees of a party, or any third party granted access rights over the Road by that party, will be deemed to be use of the Road by that party;
- (c) The occasional light vehicle usage of the Road will not constitute usage of the Road for the purposes of charging for the use of the Road.

5.2 Rates

For the avoidance of doubt, the parties acknowledge that the Grantor will be responsible for all rates and other statutory levies charged with respect to the Road on the Servient Tenement.

5.3 Dispute as to charges

If the Grantor, the Grantee, or any other user disputes the charges proposed by a Primary User under clause 5.1, they may refer the dispute to be resolved in accordance with the Dispute Process, with all necessary modifications.

6. MAINTENANCE

6.1 Primary User generally responsible

Each Primary User of the Road is responsible for the maintenance of the Road to a reasonable standard and condition for the type of use of the Primary User, provided that, where the Road was of a standard and condition suitable for Forestry Use, the construction or upgrade must not be less than that standard, except as set out in clause 6.2.

6.2 User to repair damage

Subject to clause 6.3 where the Grantee has caused damage to the Road, or the

Grantor has caused damage to a Road that is maintained by a Primary User in accordance with clause 6.1, (such party being the Damaging Party) in each case in excess of fair wear and tear:

- (a) the Damaging Party is responsible for the repair and reinstatement of the Road to the same standard and condition that the Road was in before that damage was caused, to the satisfaction of the Primary User, acting reasonably;
- (b) the Damaging Party is responsible for meeting all costs of reinstating the Road in accordance with clause 6.2(a); and
- (c) the Damaging Party must procure that the Road is repaired as soon as is reasonably practicable following the damage occurring to avoid danger, delay or inconvenience to users of the Road.

If the Damaging Party fails to repair and reinstate the damaged Road in accordance with this clause 6.2, including within the time period described in paragraph (c) above, the Primary User responsible for maintaining the Road may itself procure that the Road is repaired to the standards set out in paragraph (a) above and the Damaging Party must indemnify the Primary User against all costs reasonably incurred by the Primary User in relation to that repair.

6.3 Exception for Forestry Use

Where the Grantee or Grantor has constructed or upgraded a Road under clause 3.1 to a standard or condition not suitable for Forestry Use, a Damaging Party's liability for damage caused to the Road by Forestry Use by that Damaging Party under clauses 6.2(a) and (b) shall be to repair and reinstate the damaged Road to a reasonable standard and condition suitable for Forestry Use.

7. Clause 7 is deleted.

8. GENERAL PROVISIONS REGARDING ACCESS

8.1 Safety

The Grantee:

- (a) is at all times responsible for ensuring compliance with the provisions of the Health and Safety in Employment Act 1992; and
- (b) must comply with all the Grantor's reasonable road user rules, including all reasonable health and safety, security and fire safety and prevention requirements and directions.

in relation to its use of the Road.

8.2 Compliance with laws

Without limiting clause 8.1, the Grantee must comply with all statutes, codes, regulations, standards and other laws, including the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996, relating to forestry, agricultural uses, the Environment, fire prevention and safety in relation to its use of the Road.

8.3 Grantee to minimise disturbance

In using the Road, the Grantee must use its reasonable endeavours to ensure that there is as little disturbance, inconvenience or interruption as is reasonably practicable which shall be determined, where the Road is used for forestry purposes, by reference to what is reasonable in the context of Forestry Use caused to:

- (a) the Road; or
- (b) the Grantor's use of the Road; or
- (c) the use of the Road by any other licensee or invitee of the Grantor; or
- (d) the activities of the Grantor on the Servient Tenement.

8.4 Restrictions on use

The Grantee must not:

- (a) bring or allow to be brought upon the Road any machinery, goods or other things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Road in excess of fair wear and tear; or
- (b) use the Road for any noxious, illegal or offensive business; or
- (c) allow any act or thing to be done on the Road which may be or grow to be a nuisance, disturbance or annoyance to the Grantor or any other person; or
- (d) trespass upon, damage or disturb, any of the Grantor's land adjacent to the Road or otherwise;

provided that this clause 8.4 will not prevent any party from utilising its access rights to have logging trucks or carriers of agricultural goods (in each case complying with general industry standards) pass over the Road.

8.5 Insurance

The Grantee agrees to take out and maintain a public liability insurance policy with a reputable insurer to an appropriate level of cover having regard to all of its activities on the Dominant Tenement and prudent commercial practice. The Grantee will provide to the Grantor, on request, a copy of the certificate of insurance and policy for that insurance.

9. DISPUTE PROCESS**9.1 Dispute**

Any dispute under this Instrument to be resolved in accordance with the Dispute Process will be determined in accordance with this clause 9.

9.2 Appointment of expert

If the Grantor and the Grantee agree on the independent person to be appointed as the Expert within 20 Business Days of first attempting to do so, that person will be

appointed as the Expert. If the Grantee and Grantor are unable to agree upon the Expert to be appointed within 20 Business Days of first attempting to do so, either party may request the President of the New Zealand Law Society to appoint the Expert.

9.3 Other provisions applying the Expert determination

The following provisions will apply to a determination by the Expert under this instrument:

- (a) the Expert will be required to complete his or her determination as soon as possible;
- (b) any determination by the Expert will be final and binding on the parties except in the case of manifest error and the parties will comply with the Expert's directions as to how that determination is to be implemented;
- (c) except as set out elsewhere in this Instrument, the Expert's costs will be borne equally by the Grantor and the Grantee;
- (d) the Expert may:
 - (i) arrange to meet with the Grantor and the Grantee, either together or individually, to discuss the dispute;
 - (ii) require the Grantor and the Grantee to provide such evidence as the Expert considers reasonably necessary to determine the dispute;
 and
 - (iii) establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this Instrument;
- (e) the Grantor and the Grantee must give the Expert all reasonable co-operation and assistance in relation to the dispute requiring determination; and
- (f) the dispute determination is to be entirely confidential. There will be no disclosure outside the dispute determination of any information or documentation disclosed for the purposes of the dispute determination by any party or the Expert, except for the purpose of obtaining legal or other professional advice, unless that party or the Expert is required to do so by order of a court or by law or under the rules of any stock exchange or securities market.

9.4 Arbitration not to apply

A reference to a dispute under this Instrument to the Expert will not be a submission to arbitration for the purposes of the arbitration statutes and, without limiting the foregoing, the provisions of the Arbitration Act 1996 will not apply to the dispute.

9.5 Default in payment

If any party to this instrument defaults for any reason in payment of any amount to the due date (time being strictly of the essence), the party in default must pay on demand interest at the rate of 12% per annum calculated on a daily basis on the

amount so unpaid from the due date for payment until payment in full is made. The parties acknowledge that the demand for the payment of interest is without prejudice to any of the other rights or remedies available to a party either under this Instrument or otherwise in respect of such default.

10. GENERAL

10.1 Grantee's employees and agents

The Grantee will be entitled to allow its employees, agents, invitees and contractors to utilise its rights of access under this Instrument for the purposes of operations on the Grantee's land or operations of the Grantee under any interest held by the Grantee as grantee, licensee, or lessee under a forestry right, licence, or lease, provided that the Grantee will be responsible for ensuring all such persons comply with the Grantee's obligations under this instrument in relation to such access.

10.2 Non-exclusive rights

The rights of access granted to the Grantee herein are nonexclusive and, for clarity, do not restrict:

- (a) use of the Road by the Grantor and its Related Companies and their agents, contractors, invitees, lessees, licensees and employees; and
- (b) the Grantor from granting further access rights to any other third party over the Road.

10.3 No liability

Under no circumstances will a Grantor be liable in contract, tort or otherwise to a Grantee for any expense, loss, injury or damage whether consequential or otherwise, arising directly or indirectly from:

- (a) any activity undertaken by the Grantor on its land, including a Road; or
- (b) any activity undertaken by the Grantee on the Grantee's land; or
- (c) the state of the Road or the Grantor's land,

whether the expense, loss, injury or damage is the direct or indirect result of negligence or otherwise provided that this clause 10.3 will not excuse the Grantor from liability for a breach of a term of this Instrument.

10.4 Severability

Any provision of this Instrument which is prohibited or unenforceable in any jurisdiction will be ineffective as to such jurisdiction to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this instrument or affecting the validity or enforceability of that provision in any other jurisdiction.

10.5 Form of notice

- (a) Each notice or other communication under this instrument is to be in writing, is to be made by facsimile, personal delivery, email or by post to the addresses at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties;

- (b) No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
- (i) in the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day after the date of despatch;
 - (ii) in the case of persona delivery, when delivered;
 - (iii) in the case of email, by the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 8); and
 - (iv) in the case of a letter, on the third Business Day after posting by airmail.

10.6 Waiver

No waiver by any party of any term or right under this Instrument will be of any legal effect unless in writing and signed by all the parties. No waiver of any default or potential default on any one occasion will constitute a waiver of any subsequent or other default or potential default, and no single or partial exercise of any such right, power or privilege will preclude the further or full exercise thereof.

10.7 No economic or consequential loss

Except as expressly set out in this Instrument, no party will be liable for any economic or financial loss including, but not limited to, loss of use, loss of revenue, loss of profit, cost for replacement production, business interruption (in each case whether direct or indirect) or for any indirect or consequential loss or damage. This clause 10.7 will extend beyond termination of this Instrument.

10.8 Governing law

This Instrument is to be governed by and construed in accordance with the laws of New Zealand.

10.9 Jurisdiction

- (a) The parties irrevocably and unconditionally agree that the Courts of New Zealand will have jurisdiction to hear and determine each action or proceeding (Proceedings), or dispute, which may arise out of or in connection with this Instrument and for those purposes each of the parties irrevocably submits to the non-exclusive jurisdiction of those Courts;
- (b) The submission to jurisdiction in clause 10.9(a) does not (and is not to be construed to) limit the rights of any party to take Proceedings against any other party in another Court of competent jurisdiction nor is the taking of Proceedings in one or more jurisdictions to preclude the taking of Proceedings in another jurisdiction, whether concurrently or not.

11. THE ROAD MAY VEST AS PUBLIC ROAD

If the Grantor determines that the Road may vest as public road in the local authority;

11.1 The Grantee shall consent to the road vesting as public road in the local authority; and

11.2 All costs of such vesting of the Road, including the formation of the Road to local authority standards and legal costs shall be shared by the Grantor and the Grantee as shall be agreed, bearing in mind the benefits that will be enjoyed by each party if the Road vests as public road; and

11.3 The Grantee shall sign all necessary documentation and do all things to effect such vesting; and

11.4 No compensation shall be paid to the Grantee for the vesting as public road; and

11.5 Upon the vesting neither the Grantor nor the Grantee shall be responsible for the maintenance of the Road; and

11.6 Any dispute shall be determined in accordance with clause 9 herein.

12. FURTHER CONDITIONS RELATING TO THE GRANTEE'S USE OF THE ROAD

12.1 The Grantee shall not move any stock on-foot on or over the Road (other than from one side of the easement area to the other at crossing points agreed between the Grantee and the Grantor) without the prior approval of the Grantor which approval may be withheld in the absolute discretion of the Grantor.

12.2 The Grantee shall use the Road as if it were a public road and comply with all rules and regulations that apply to a public road and in particular observe any traffic signs erected by the Grantor including but not limited to speed signs.

12.3 The Grantee shall operate vehicles with lights on at all times when using the Road.

13. RIGHT OF WAY MAY BE SURRENDERED IN WHOLE OR IN PART

13.1 At the option of the Grantor these conditions in this right of way easement may be surrendered in whole or in part by the Grantee at anytime without payment and the Grantor shall accept such surrender and shall execute all documents to implement such surrender.



View Instrument Details

Instrument No. 8092524.3
Status Registered
Date & Time Lodged 07 Jul 2009 14:21
Lodged By Simons, Jonathan Allan
Instrument Type Easement Instrument



Affected Computer Registers	Land District
NA127C/901	North Auckland
NA220/255	North Auckland
NA573/264	North Auckland

Annexure Schedule: Contains 12 Pages.

Grantor Certifications

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

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

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

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

Signature

Signed by Peter John Reid Sargent as Grantor Representative on 07/07/2009 12:47 PM

Grantee Certifications

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

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

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

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

Signature

Signed by Peter John Reid Sargent as Grantee Representative on 07/07/2009 12:47 PM

*** End of Report ***

Form B

Easement Instrument to grant easement or *profit à prendre*, or create land covenant

(Sections 90A and 90F Land Transfer Act 1952)

Grantor

CARTER HOLT HARVEY RURAL PROPERTY LIMITED

Grantee

CARTER HOLT HARVEY LIMITED**Grant of Easement or *Profit à prendre* or Creation of Covenant**

The Grantor being the registered proprietor of the servient tenement(s) 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, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	Marked "A" on Plan 407001	Lot 4 on DP 201610 (CFR NA127C/901)	In gross Carter Holt Harvey Limited
	Marked "B" on Plan 407001	Allotment 285, Parish of Waipu (CFR NA220/255)	
	Marked "C" and "D" on Plan 407001	Allotment 117 Parish of Waipu (CFR NA573/264)	

Form B - continued

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 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby substituted by:

[the provisions set out in Annexure Schedule]

Form L**Annexure Schedule**

Page 1 of 10 Pages

*Insert instrument type**Continue in additional Annexure Schedule, if required*

Rights, powers, terms and conditions in relation to easement creating right of way over easement areas marked "A", "B", "C" and "D" on Plan 407001 and defined herein as "Road"

1. INTERPRETATION**1.1 Definitions**

In this Instrument, unless the context otherwise requires:

Business Day means any day (other than a Saturday or Sunday) on which registered banks in New Zealand are open for business;

Dispute Process means the dispute resolution process set down in clause 9;

Environment has the same meaning as the definition contained in the Resource Management Act 1991;

Expert means the independent expert appointed in accordance with clause 9.2;

Forestry Use means the reasonable use of the Road for all forestry activities associated with the operation of a normal commercial forest of a comparable size and nature to any forestry estate owned by the party using that Road for those activities;

Grantor means the owner of the Servient Tenement, and includes its successors and assigns;

Grantee means the owner of the Dominant Tenement, and includes its successors and assigns;

Land Loss means the permanent loss by the Grantee of the use of an area of land for forestry purposes in order to allow the construction or upgrade of the Road in accordance with clause 3.1 which shall be deemed to include the permanent loss of the use of an area of land for boundary planting set backs that are reasonable for the Road;

Primary User means, in relation to a Road and a year, the user of that Road which plans to have the greatest proportionate usage of the Road (which may include the Grantor) that year, based on tonnage and frequency of use; determined in accordance with clause 5;

Related Company has the meaning set out in section 2(3) of the Companies Act 1993;

Relevant Trees means all the *Pinus radiata*, eucalyptus and Douglas fir trees and timber and any other exotic and fast growing species of trees and timber grown for commercial forestry purposes, whether standing or otherwise, on the relevant land from time to time;

Road means the road(s) on the easement area, marked "A", "B", "C" and "D" on Plan 407001;

Timber Loss means the permanent loss of Relevant Trees on the relevant freehold land owned by the Grantee in order to allow the construction or upgrade of the Road in accordance with clause 3.1.

1.2 General references

In this Instrument, unless the context otherwise requires:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this instrument);
- (b) the provisions of this Instrument apply to the exclusion of the Fifth Schedule to the Property Law Act 2007, and the Fourth Schedule to the Land Transfer Regulations 2002;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) unless otherwise specified, a reference to \$ or dollars is a reference to New Zealand dollars and, unless otherwise specified, all amounts payable by a party under this instrument are to be paid in that currency; and
- (h) words importing one gender including the other genders.

1.3 Headings

Ignore headings in construing this Instrument.

2. GRANT OF RIGHT OF WAY

The Grantee, together with its servants, tenants, agents, workmen, licensees, and invitees (in common with the Grantor, the Grantor's tenants and any other person lawfully entitled) shall have the right at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the Road.

3. CONSTRUCTION AND UPGRADE OF ROADS

3.1 Grantor may construct or upgrade Road

The Grantor has the right to construct the Road or upgrade the Road at its discretion provided that:

- (a) the costs of the construction or upgrading are the responsibility of the Grantor and no contribution to those costs can be required from any other user or the Grantee;
- (b) the Road must be constructed or upgraded to a reasonable standard and condition for the Grantor's proposed uses or where the Road was of a standard and condition suitable for Forestry Use, then the construction or upgrade shall be not less than to that standard;
- (c) Clause (c) is deleted.
- (d) the Grantor gives reasonable written notice to the Grantee of the date(s) on which it proposes to carry out the construction or upgrade works;
- (e) the Grantor complies with all statutory and regulatory requirements in respect of the construction or upgrade works; and
- (f) the Grantor complies with the Grantee's reasonable directions regarding health and safety, security, and fire safety and prevention in respect of the construction or upgrade.

3.2 Grantee responsible for its own upgrades

If the Grantee elects to construct, upgrade or restore the Road, then the Grantee will be responsible for costs of that construction, upgrading or restoration and no contribution to those costs can be required from the Grantor except in accordance with clause 5.1 to the extent that clause applies. In carrying out such works the Grantee must:

- (a) give reasonable written notice to the Grantor of the date(s) on which it proposes to carry out the construction, upgrade, or restoration;
- (b) comply with all statutory and regulatory requirements in respect of the construction, upgrade, or restoration; and
- (c) in relation to any construction or upgrade, such construction or upgrade shall be to a reasonable standard and condition for the Grantee's proposed use.

3.3 Party to minimise disturbance

Any party that is upgrading or constructing the Road must ensure that there is as little disturbance, damage, inconvenience or interruption caused to the use of the Road and the Grantee's use of its land as is reasonably practicable.

4. ANNUAL MEETINGS

The Grantee and the Grantor shall meet together not less frequently than annually and in any event no later than 1 October in each year and, in respect of the Road:

- (a) each of the Grantee and the Grantor shall provide to the other with its best estimate of its projected use of the Road for the following calendar year;

- (b) based on the estimates provided in accordance with clause 4(a); the Grantee and the Grantor shall determine who shall be the Primary User for the following calendar year; and
- (c) the Grantee and the Grantor will determine the basis for the allocation of charge for the following calendar year for the purposes of clause 5.1 and the mechanism for collecting such charges.

5. FEES AND CHARGES

5.1 Usage fees

- (a) Each Primary User of the Road which is responsible for maintaining that Road under clause 6.1 is entitled to charge the Grantor and each other user of that Road their proportionate share of the maintenance costs incurred by the Primary User in relation to that Road based on the relative proportionate usage by the Primary User, the Grantor and other users of that Road based on tonnage carried and frequency of use;
- (b) For the purposes of this clause 5.1 only, the use of the Road by the agents, contractors, invitees, lessees, licensees and employees of a party, or any third party granted access rights over the Road by that party, will be deemed to be use of the Road by that party;
- (c) The occasional light vehicle usage of the Road will not constitute usage of the Road for the purposes of charging for the use of the Road.

5.2 Rates

For the avoidance of doubt, the parties acknowledge that the Grantor will be responsible for all rates and other statutory levies charged with respect to the Road on the Servient Tenement.

5.3 Dispute as to charges

If the Grantor, the Grantee, or any other user disputes the charges proposed by a Primary User under clause 5.1, they may refer the dispute to be resolved in accordance with the Dispute Process, with all necessary modifications.

6. MAINTENANCE

6.1 Primary User generally responsible

Each Primary User of the Road is responsible for the maintenance of the Road to a reasonable standard and condition for the type of use of the Primary User, provided that, where the Road was of a standard and condition suitable for Forestry Use, the construction or upgrade must not be less than that standard, except as set out in clause 6.2.

6.2 User to repair damage

Subject to clause 6.3 where the Grantee has caused damage to the Road, or the Grantor has caused damage to a Road that is maintained by a Primary User in accordance with clause 6.1, (such party being the Damaging Party) in each case in excess of fair wear and tear:

- (a) the Damaging Party is responsible for the repair and reinstatement of the Road

to the same standard and condition that the Road was in before that damage was caused, to the satisfaction of the Primary User, acting reasonably;

- (b) the Damaging Party is responsible for meeting all costs of reinstating the Road in accordance with clause 6.2(a); and
- (c) the Damaging Party must procure that the Road is repaired as soon as is reasonably practicable following the damage occurring to avoid danger, delay or inconvenience to users of the Road.

If the Damaging Party fails to repair and reinstate the damaged Road in accordance with this clause 6.2, including within the time period described in paragraph (c) above, the Primary User responsible for maintaining the Road may itself procure that the Road is repaired to the standards set out in paragraph (a) above and the Damaging Party must indemnify the Primary User against all costs reasonably incurred by the Primary User in relation to that repair.

6.3 Exception for Forestry Use

Where the Grantee or Grantor has constructed or upgraded a Road under clause 3.1 to a standard or condition not suitable for Forestry Use, a Damaging Party's liability for damage caused to the Road by Forestry Use by that Damaging Party under clauses 6.2(a) and (b) shall be to repair and reinstate the damaged Road to a reasonable standard and condition suitable for Forestry Use.

7. Clause 7 is deleted.

8. GENERAL PROVISIONS REGARDING ACCESS

8.1 Safety

The Grantor:

- (a) is at all times responsible for ensuring compliance with the provisions of the Health and Safety in Employment Act 1992; and
- (b) must comply with all the Grantee's reasonable road user rules, including all reasonable health and safety, security and fire safety and prevention requirements and directions,

in relation to its use of the Road.

8.2 Compliance with laws

Without limiting clause 8.1, the Grantor must comply with all statutes, codes, regulations, standards and other laws, including the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996, relating to forestry, agricultural uses, the Environment, fire prevention and safety in relation to its use of the Road.

8.3 Grantor to minimise disturbance

In using the Road, the Grantor must use its reasonable endeavours to ensure that there is as little disturbance, inconvenience or interruption as is reasonably practicable which shall be determined, where the Road is used for forestry purposes, by reference to what is reasonable in the context of Forestry Use caused to:

- (a) the Road; or

- (b) the Grantee's use of the Road; or
- (c) the use of the Road by any other licensee or invitee of the Grantee; or
- (d) the activities of the Grantee on the Servient Tenement.

8.4 Restrictions on use

The Grantor must not:

- (a) bring or allow to be brought upon the Road any machinery, goods or other things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Road in excess of fair wear and tear; or
- (b) use the Road for any noxious, illegal or offensive business; or
- (c) allow any act or thing to be done on the Road which may be or grow to be a nuisance, disturbance or annoyance to the Grantee or any other person; or
- (d) trespass upon, damage or disturb, any of the Grantee's land adjacent to the Road or otherwise;

provided that this clause 8.4 will not prevent any party from utilising its access rights to have logging trucks or carriers of agricultural goods (in each case complying with general industry standards) pass over the Road.

8.5 Insurance

The Grantor agrees to take out and maintain a public liability insurance policy with a reputable insurer to an appropriate level of cover having regard to all of its activities on the Dominant Tenement and prudent commercial practice. The Grantor will provide to the Grantee, on request, a copy of the certificate of insurance and policy for that insurance.

9. DISPUTE PROCESS

9.1 Dispute

Any dispute under this Instrument to be resolved in accordance with the Dispute Process will be determined in accordance with this clause 9.

9.2 Appointment of expert

If the Grantor and the Grantee agree on the independent person to be appointed as the Expert within 20 Business Days of first attempting to do so, that person will be appointed as the Expert. If the Grantee and Grantor are unable to agree upon the Expert to be appointed within 20 Business Days of first attempting to do so, either party may request the President of the New Zealand Law Society to appoint the Expert.

9.3 Other provisions applying the Expert determination

The following provisions will apply to a determination by the Expert under this instrument:

- (a) the Expert will be required to complete his or her determination as soon as possible;

- (b) any determination by the Expert will be final and binding on the parties except in the case of manifest error and the parties will comply with the Expert's directions as to how that determination is to be implemented;
- (c) except as set out elsewhere in this Instrument, the Expert's costs will be borne equally by the Grantor and the Grantee;
- (d) the Expert may:
 - (i) arrange to meet with the Grantor and the Grantee, either together or individually, to discuss the dispute;
 - (ii) require the Grantor and the Grantee to provide such evidence as the Expert considers reasonably necessary to determine the dispute; and
 - (iii) establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this Instrument;
- (e) the Grantor and the Grantee must give the Expert all reasonable co-operation and assistance in relation to the dispute requiring determination; and
- (f) the dispute determination is to be entirely confidential. There will be no disclosure outside the dispute determination of any information or documentation disclosed for the purposes of the dispute determination by any party or the Expert, except for the purpose of obtaining legal or other professional advice, unless that party or the Expert is required to do so by order of a court or by law or under the rules of any stock exchange or securities market.

9.4 Arbitration not to apply

A reference to a dispute under this Instrument to the Expert will not be a submission to arbitration for the purposes of the arbitration statutes and, without limiting the foregoing, the provisions of the Arbitration Act 1996 will not apply to the dispute.

9.5 Default in payment

If any party to this instrument defaults for any reason in payment of any amount to the due date (time being strictly of the essence), the party in default must pay on demand interest at the rate of 12% per annum calculated on a daily basis on the amount so unpaid from the due date for payment until payment in full is made. The parties acknowledge that the demand for the payment of interest is without prejudice to any of the other rights or remedies available to a party either under this Instrument or otherwise in respect of such default.

10. GENERAL

10.1 Grantee's employees and agents

The Grantee will be entitled to allow its employees, agents, invitees and contractors to utilise its rights of access under this instrument for the purposes of operations on the Grantee's land or operations of the Grantee under any interest held by the Grantee as grantee, licensee, or lessee under a forestry right, licence, or lease, provided that the Grantee will be responsible for ensuring all such persons comply with the Grantee's obligations under this instrument in relation to such access.

10.2 Non-exclusive rights

The rights of access granted to the Grantee herein are nonexclusive and, for clarity, do not restrict:

- (a) use of the Road by the Grantor and its Related Companies and their agents, contractors, invitees, lessees, licensees and employees; and
- (b) the Grantor from granting further access rights to any other third party over the Road.

10.3 No liability

Under no circumstances will a Grantor be liable in contract, tort or otherwise to a Grantee for any expense, loss, injury or damage whether consequential or otherwise, arising directly or indirectly from:

- (a) any activity undertaken by the Grantor on its land, including a Road; or
- (b) any activity undertaken by the Grantee on the Grantee's land; or
- (c) the state of the Road or the Grantor's land,

whether the expense, loss, injury or damage is the direct or indirect result of negligence or otherwise provided that this clause 10.3 will not excuse the Grantor from liability for a breach of a term of this Instrument.

10.4 Severability

Any provision of this Instrument which is prohibited or unenforceable in any jurisdiction will be ineffective as to such jurisdiction to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this instrument or affecting the validity or enforceability of that provision in any other jurisdiction.

10.5 Form of notice

- (a) Each notice or other communication under this instrument is to be in writing, is to be made by facsimile, personal delivery, email or by post to the addresses at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties;
- (b) No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
 - (i) in the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day after the date of despatch;
 - (ii) in the case of personal delivery, when delivered;
 - (iii) in the case of email, by the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 8); and
 - (iv) in the case of a letter, on the third Business Day after posting by airmail.

10.6 Waiver

No waiver by any party of any term or right under this Instrument will be of any legal effect unless in writing and signed by all the parties. No waiver of any default or potential default on any one occasion will constitute a waiver of any subsequent or other default or potential default, and no single or partial exercise of any such right, power or privilege will preclude the further or full exercise thereof.

10.7 No economic or consequential loss

Except as expressly set out in this Instrument, no party will be liable for any economic or financial loss including, but not limited to, loss of use, loss of revenue, loss of profit, cost for replacement production, business interruption (in each case whether direct or indirect) or for any indirect or consequential loss or damage. This clause 10.7 will extend beyond termination of this Instrument.

10.8 Governing law

This Instrument is to be governed by and construed in accordance with the laws of New Zealand.

10.9 Jurisdiction

- (a) The parties irrevocably and unconditionally agree that the Courts of New Zealand will have jurisdiction to hear and determine each action or proceeding (Proceedings), or dispute, which may arise out of or in connection with this Instrument and for those purposes each of the parties irrevocably submits to the non-exclusive jurisdiction of those Courts;
- (b) The submission to jurisdiction in clause 10.9(a) does not (and is not to be construed to) limit the rights of any party to take Proceedings against any other party in another Court of competent jurisdiction nor is the taking of Proceedings in one or more jurisdictions to preclude the taking of Proceedings in another jurisdiction, whether concurrently or not.

11. THE ROAD MAY VEST AS PUBLIC ROAD

If the Grantee determines that the Road may vest as public road in the local authority;

- 11.1 The Grantor shall consent to the road vesting as public road in the local authority; and
- 11.2 All costs of such vesting of the Road, including the formation of the Road to local authority standards and legal costs shall be shared by the Grantor and the Grantee as shall be agreed, bearing in mind the benefits that will be enjoyed by each party if the Road vests as public road; and
- 11.3 The Grantor shall sign all necessary documentation and do all things to effect such vesting; and
- 11.4 No compensation shall be paid to the Grantor for the vesting as public road; and
- 11.5 Upon the vesting neither the Grantor nor the Grantee shall be responsible for the maintenance of the Road; and
- 11.6 Any dispute shall be determined in accordance with clause 9 herein.

12. FURTHER CONDITIONS RELATING TO THE GRANTEE'S USE OF THE ROAD

- 12.1 The Grantor shall not move any stock onfoot on or over the Road.
- 12.2 The Grantor shall use the Road as if it were a public road and comply with all rules and regulations that apply to a public road and in particular observe any traffic signs erected by the Grantee including but not limited to speed signs.
- 12.3 The Grantor shall operate vehides with lights on at all times when using the Road.
- 12.4 The Grantor shall erect and observe compulsory signs at the junction of where each lot enters upon the Road.

13. RIGHT OF WAY MAY BE SURRENDERED IN WHOLE OR IN PART

- 13.1 At the option of the Grantee these conditions in this right of way easement may be surrendered in whole or in part by the Grantee at any time without payment and the Grantor shall accept such surrender and shall execute all documents to implement such surrender.



View Instrument Details⁹⁸

Instrument No. 8092524.4
Status Registered
Date & Time Lodged 07 Jul 2009 14:21
Lodged By Simons, Jonathan Allan
Instrument Type Easement Instrument

Toitu te
Land whenua
Information
New Zealand



Affected Computer Registers	Land District
NA127C/901	North Auckland
NA220/255	North Auckland
NA573/264	North Auckland

Annexure Schedule: Contains 12 Pages.

Grantor Certifications

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

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

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

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

Signature

Signed by Peter John Reid Sargent as Grantor Representative on 07/07/2009 12:49 PM

Grantee Certifications

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

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

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

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

Signature

Signed by Jonathan Allan Simons as Grantee Representative on 07/07/2009 09:38 AM

*** End of Report ***

Form B**Easement instrument to grant easement or *profit à prendre*, or create land covenant**

(Sections 90A and 90F Land Transfer Act 1952)

Grantor**CARTER HOLT HARVEY RURAL PROPERTY LIMITED****Grantee****AHI GROUP LIMITED****Grant of Easement or *Profit à prendre* or Creation of Covenant**

The Grantor being the registered proprietor of the servient tenement(s) 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, or creates the covenant(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s)

Schedule A*Continue in additional Annexure Schedule, if required*

Purpose (Nature and extent) of easement; <i>profit</i> or covenant	Shown (plan reference)	Servient Tenement (Computer Register)	Dominant Tenement (Computer Register) or in gross
Right of Way	Marked "A" on Plan 407001	Lot 4 on DP 201610 (CFR NA127C/901)	In gross – AHI Group Limited
	Marked "B" on Plan 407001	Allotment 265, Parish of Waipu (CFR NA220/255)	
	Marked "C" and "D" on Plan 407001	Allotment 117, Parish of Waipu (CFR NA573/264)	

Form B - continued

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 2002 and/or Schedule Five of the Property Law Act 2007

The implied rights and powers are hereby substituted by:

[the provisions set out in Annexure Schedule]

Form L

Annexure Schedule

Page 1 of 10 Pages

Insert instrument type

Continue in additional Annexure Schedule, if required

Rights, powers, terms and conditions in relation to easement creating right of way over easement areas marked "A", "B", "C" and "D" on Plan 407001 and defined herein as "Road"

1. INTERPRETATION

1.1 Definitions

In this Instrument, unless the context otherwise requires:

Business Day means any day (other than a Saturday or Sunday) on which registered banks in New Zealand are open for business;

Dispute Process means the dispute resolution process set down in clause 9;

Environment has the same meaning as the definition contained in the Resource Management Act 1991;

Expert means the independent expert appointed in accordance with clause 9.2;

Forestry Use means the reasonable use of the Road for all forestry activities associated with the operation of a normal commercial forest of a comparable size and nature to any forestry estate owned by the party using that Road for those activities;

Grantor means the owner of the Servient Tenement, and includes its successors and assigns;

Grantee means the owner of the Dominant Tenement, and includes its successors and assigns;

Land Loss means the permanent loss by the Grantee of the use of an area of land for forestry purposes in order to allow the construction or upgrade of the Road in accordance with clause 3.1 which shall be deemed to include the permanent loss of the use of an area of land for boundary planting set backs that are reasonable for the Road;

Primary User means, in relation to a Road and a year, the user of that Road which plans to have the greatest proportionate usage of the Road (which may include the Grantor) that year, based on tonnage and frequency of use; determined in accordance with clause 5;

Related Company has the meaning set out in section 2(3) of the Companies Act 1993;

Relevant Trees means all the *Pinus radiata*, eucalyptus and Douglas fir trees and timber and any other exotic and fast growing species of trees and timber grown for commercial forestry purposes, whether standing or otherwise, on the relevant land from time to time;

Road means the road(s) on the easement area, marked "A", "B", "C" and "D" on Plan 407001;

Timber Loss means the permanent loss of Relevant Trees on the relevant freehold land owned by the Grantee in order to allow the construction or upgrade of the Road in accordance with clause 3.1.

1.2 General references

In this instrument, unless the context otherwise requires:

- (a) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this instrument);
- (b) the provisions of this Instrument apply to the exclusion of the Fifth Schedule to the Property Law Act 2007, and the Fourth Schedule to the Land Transfer Regulations 2002;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state, in each case, whether or not having a separate legal personality;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) unless otherwise specified, a reference to \$ or dollars is a reference to New Zealand dollars and, unless otherwise specified, all amounts payable by a party under this instrument are to be paid in that currency; and
- (h) words importing one gender including the other genders.

1.3 Headings

Ignore headings in construing this Instrument.

2. GRANT OF RIGHT OF WAY

The Grantee, together with its servants, tenants, agents, workmen, licensees, and invitees (in common with the Grantor, the Grantor's tenants and any other person lawfully entitled) shall have the right at all times by day and by night to go, pass, and repass, with or without vehicles, machinery, and implements of any kind, over and along the Road.

3. CONSTRUCTION AND UPGRADE OF ROADS

3.1 Grantor may construct or upgrade Road

The Grantor has the right to construct the Road or upgrade the Road at its discretion provided that:

- (a) the costs of the construction or upgrading are the responsibility of the Grantor and no contribution to those costs can be required from any other user or the Grantee;
- (b) the Road must be constructed or upgraded to a reasonable standard and condition for the Grantor's proposed uses or where the Road was of a standard and condition suitable for Forestry Use, then the construction or upgrade shall be not less than to that standard;
- (c) Clause (c) is deleted.
- (d) the Grantor gives reasonable written notice to the Grantee of the date(s) on which it proposes to carry out the construction or upgrade works;
- (e) the Grantor complies with all statutory and regulatory requirements in respect of the construction or upgrade works; and
- (f) the Grantor complies with the Grantee's reasonable directions regarding health and safety, security, and fire safety and prevention in respect of the construction or upgrade.

3.2 Grantee responsible for its own upgrades

If the Grantee elects to construct, upgrade or restore the Road, then the Grantee will be responsible for costs of that construction, upgrading or restoration and no contribution to those costs can be required from the Grantor except in accordance with clause 5.1 to the extent that clause applies. In carrying out such works the Grantee must:

- (a) give reasonable written notice to the Grantor of the date(s) on which it proposes to carry out the construction, upgrade, or restoration;
- (b) comply with all statutory and regulatory requirements in respect of the construction, upgrade, or restoration; and
- (c) in relation to any construction or upgrade, such construction or upgrade shall be to a reasonable standard and condition for the Grantee's proposed use.

3.3 Party to minimise disturbance

Any party that is upgrading or constructing the Road must ensure that there is as little disturbance, damage, inconvenience or interruption caused to the use of the Road and the Grantee's use of its land as is reasonably practicable.

4. ANNUAL MEETINGS

The Grantee and the Grantor shall meet together not less frequently than annually and in any event no later than 1 October in each year and, in respect of the Road:

- (a) each of the Grantee and the Grantor shall provide to the other with its best estimate of its projected use of the Road for the following calendar year;

- (b) based on the estimates provided in accordance with clause 4(a); the Grantee and the Grantor shall determine who shall be the Primary User for the following calendar year; and
- (c) the Grantee and the Grantor will determine the basis for the allocation of charge for the following calendar year for the purposes of clause 5.1 and the mechanism for collecting such charges.

5. FEES AND CHARGES

5.1 Usage fees

- (a) Each Primary User of the Road which is responsible for maintaining that Road under clause 6.1 is entitled to charge the Grantor and each other user of that Road their proportionate share of the maintenance costs incurred by the Primary User in relation to that Road based on the relative proportionate usage by the Primary User, the Grantor and other users of that Road based on tonnage carried and frequency of use;
- (b) For the purposes of this clause 5.1 only, the use of the Road by the agents, contractors, invitees, lessees, licensees and employees of a party, or any third party granted access rights over the Road by that party, will be deemed to be use of the Road by that party;
- (c) The occasional light vehicle usage of the Road will not constitute usage of the Road for the purposes of charging for the use of the Road.

5.2 Rates

For the avoidance of doubt, the parties acknowledge that the Grantor will be responsible for all rates and other statutory levies charged with respect to the Road on the Servient Tenement.

5.3 Dispute as to charges

If the Grantor, the Grantee, or any other user disputes the charges proposed by a Primary User under clause 5.1, they may refer the dispute to be resolved in accordance with the Dispute Process, with all necessary modifications.

6. MAINTENANCE

6.1 Primary User generally responsible

Each Primary User of the Road is responsible for the maintenance of the Road to a reasonable standard and condition for the type of use of the Primary User, provided that, where the Road was of a standard and condition suitable for Forestry Use, the construction or upgrade must not be less than that standard, except as set out in clause 6.2.

6.2 User to repair damage

Subject to clause 6.3 where the Grantee has caused damage to the Road, or the Grantor has caused damage to a Road that is maintained by a Primary User in accordance with clause 6.1, (such party being the Damaging Party) in each case in excess of fair wear and tear:

- (a) the Damaging Party is responsible for the repair and reinstatement of the Road

to the same standard and condition that the Road was in before that damage was caused, to the satisfaction of the Primary User, acting reasonably;

- (b) the Damaging Party is responsible for meeting all costs of reinstating the Road in accordance with clause 6.2(a); and
- (c) the Damaging Party must procure that the Road is repaired as soon as is reasonably practicable following the damage occurring to avoid danger, delay or inconvenience to users of the Road.

If the Damaging Party fails to repair and reinstate the damaged Road in accordance with this clause 6.2, including within the time period described in paragraph (c) above, the Primary User responsible for maintaining the Road may itself procure that the Road is repaired to the standards set out in paragraph (a) above and the Damaging Party must indemnify the Primary User against all costs reasonably incurred by the Primary User in relation to that repair.

6.3 Exception for Forestry Use

Where the Grantee or Grantor has constructed or upgraded a Road under clause 3.1 to a standard or condition not suitable for Forestry Use, a Damaging Party's liability for damage caused to the Road by Forestry Use by that Damaging Party under clauses 6.2(a) and (b) shall be to repair and reinstate the damaged Road to a reasonable standard and condition suitable for Forestry Use.

7. Clause 7 is deleted

8. GENERAL PROVISIONS REGARDING ACCESS

8.1 Safety

The Grantor:

- (a) Is at all times responsible for ensuring compliance with the provisions of the Health and Safety in Employment Act 1992; and
- (b) must comply with all the Grantee's reasonable road user rules, including all reasonable health and safety, security and fire safety and prevention requirements and directions,

in relation to its use of the Road.

8.2 Compliance with laws

Without limiting clause 8.1, the Grantor must comply with all statutes, codes, regulations, standards and other laws, including the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996, relating to forestry, agricultural uses, the Environment, fire prevention and safety in relation to its use of the Road.

8.3 Grantor to minimise disturbance

In using the Road, the Grantor must use its reasonable endeavours to ensure that there is as little disturbance, inconvenience or interruption as is reasonably practicable which shall be determined, where the Road is used for forestry purposes, by reference to what is reasonable in the context of Forestry Use caused to:

- (a) the Road; or

- (b) the Grantee's use of the Road; or
- (c) the use of the Road by any other licensee or invitee of the Grantee; or
- (d) the activities of the Grantee on the Servient Tenement.

8.4 Restrictions on use

The Grantor must not:

- (a) bring or allow to be brought upon the Road any machinery, goods or other things of an offensive, noxious, illegal or dangerous nature, or of such weight, size or shape as is likely to cause damage to the Road in excess of fair wear and tear; or
- (b) use the Road for any noxious, illegal or offensive business; or
- (c) allow any act or thing to be done on the Road which may be or grow to be a nuisance, disturbance or annoyance to the Grantee or any other person; or
- (d) trespass upon, damage or disturb, any of the Grantee's land adjacent to the Road or otherwise;

provided that this clause 8.4 will not prevent any party from utilising its access rights to have logging trucks or carriers of agricultural goods (in each case complying with general industry standards) pass over the Road.

8.5 Insurance

The Grantor agrees to take out and maintain a public liability insurance policy with a reputable insurer to an appropriate level of cover having regard to all of its activities on the Dominant Tenement and prudent commercial practice. The Grantor will provide to the Grantee, on request, a copy of the certificate of insurance and policy for that insurance.

9. DISPUTE PROCESS

9.1 Dispute

Any dispute under this Instrument to be resolved in accordance with the Dispute Process will be determined in accordance with this clause 9.

9.2 Appointment of expert

If the Grantor and the Grantee agree on the independent person to be appointed as the Expert within 20 Business Days of first attempting to do so, that person will be appointed as the Expert. If the Grantee and Grantor are unable to agree upon the Expert to be appointed within 20 Business Days of first attempting to do so, either party may request the President of the New Zealand Law Society to appoint the Expert.

9.3 Other provisions applying the Expert determination

The following provisions will apply to a determination by the Expert under this instrument:

- (a) the Expert will be required to complete his or her determination as soon as possible;

- (b) any determination by the Expert will be final and binding on the parties except in the case of manifest error and the parties will comply with the Expert's directions as to how that determination is to be implemented;
- (c) except as set out elsewhere in this Instrument, the Expert's costs will be borne equally by the Grantor and the Grantee;
- (d) the Expert may:
 - (i) arrange to meet with the Grantor and the Grantee, either together or individually, to discuss the dispute;
 - (ii) require the Grantor and the Grantee to provide such evidence as the Expert considers reasonably necessary to determine the dispute; and
 - (iii) establish procedures and a timetable for the conduct of the determination to the extent that those matters are not already laid down in this Instrument;
- (e) the Grantor and the Grantee must give the Expert all reasonable co-operation and assistance in relation to the dispute requiring determination; and
- (f) the dispute determination is to be entirely confidential. There will be no disclosure outside the dispute determination of any information or documentation disclosed for the purposes of the dispute determination by any party or the Expert, except for the purpose of obtaining legal or other professional advice, unless that party or the Expert is required to do so by order of a court or by law or under the rules of any stock exchange or securities market.

9.4 **Arbitration not to apply**

A reference to a dispute under this Instrument to the Expert will not be a submission to arbitration for the purposes of the arbitration statutes and, without limiting the foregoing, the provisions of the Arbitration Act 1996 will not apply to the dispute.

9.5 **Default in payment**

If any party to this instrument defaults for any reason in payment of any amount to the due date (time being strictly of the essence), the party in default must pay on demand interest at the rate of 12% per annum calculated on a daily basis on the amount so unpaid from the due date for payment until payment in full is made. The parties acknowledge that the demand for the payment of interest is without prejudice to any of the other rights or remedies available to a party either under this Instrument or otherwise in respect of such default.

10. **GENERAL**

10.1 **Grantee's employees and agents**

The Grantee will be entitled to allow its employees, agents, invitees and contractors to utilise its rights of access under this Instrument for the purposes of operations on the Grantee's land or operations of the Grantee under any interest held by the Grantee as grantee, licensee, or lessee under a forestry right, licence, or lease, provided that the Grantee will be responsible for ensuring all such persons comply with the Grantee's obligations under this instrument in relation to such access.

10.2 Non-exclusive rights

The rights of access granted to the Grantee herein are nonexclusive and, for clarity, do not restrict:

- (a) use of the Road by the Grantor and its Related Companies and their agents, contractors, invitees, lessees, licensees and employees; and
- (b) the Grantor from granting further access rights to any other third party over the Road.

10.3 No liability

Under no circumstances will a Grantor be liable in contract, tort or otherwise to a Grantee for any expense, loss, injury or damage whether consequential or otherwise, arising directly or indirectly from:

- (a) any activity undertaken by the Grantor on its land, including a Road; or
- (b) any activity undertaken by the Grantee on the Grantee's land; or
- (c) the state of the Road or the Grantor's land,

whether the expense, loss, injury or damage is the direct or indirect result of negligence or otherwise provided that this clause 10.3 will not excuse the Grantor from liability for a breach of a term of this Instrument.

10.4 Severability

Any provision of this Instrument which is prohibited or unenforceable in any jurisdiction will be ineffective as to such jurisdiction to the extent of the prohibition or unenforceability without invalidating the remaining provisions of this Instrument or affecting the validity or enforceability of that provision in any other jurisdiction.

10.5 Form of notice

- (a) Each notice or other communication under this instrument is to be in writing, is to be made by facsimile, personal delivery, email or by post to the addresses at the facsimile number or address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other parties;
- (b) No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:
 - (i) In the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5pm (in the place of receipt) on a Business Day or, if despatched on a non-Business Day, on the next Business Day after the date of despatch;
 - (ii) in the case of personal delivery, when delivered;
 - (iii) in the case of email, by the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 8); and
 - (iv) In the case of a letter, on the third Business Day after posting by airmail.

10.6 Waiver

No waiver by any party of any term or right under this Instrument will be of any legal effect unless in writing and signed by all the parties. No waiver of any default or potential default on any one occasion will constitute a waiver of any subsequent or other default or potential default, and no single or partial exercise of any such right, power or privilege will preclude the further or full exercise thereof.

10.7 No economic or consequential loss

Except as expressly set out in this Instrument, no party will be liable for any economic or financial loss including, but not limited to, loss of use, loss of revenue, loss of profit, cost for replacement production, business interruption (in each case whether direct or indirect) or for any indirect or consequential loss or damage. This clause 10.7 will extend beyond termination of this Instrument

10.8 Governing law

This Instrument is to be governed by and construed in accordance with the laws of New Zealand.

10.9 Jurisdiction

- (a) The parties irrevocably and unconditionally agree that the Courts of New Zealand will have jurisdiction to hear and determine each action or proceeding (Proceedings), or dispute, which may arise out of or in connection with this Instrument and for those purposes each of the parties irrevocably submits to the non-exclusive jurisdiction of those Courts;
- (b) The submission to jurisdiction in clause 10.9(a) does not (and is not to be construed to) limit the rights of any party to take Proceedings against any other party in another Court of competent jurisdiction nor is the taking of Proceedings in one or more jurisdictions to preclude the taking of Proceedings in another jurisdiction, whether concurrently or not.

11. THE ROAD MAY VEST AS PUBLIC ROAD

If the Grantee determines that the Road may vest as public road in the local authority;

11.1 The Grantor shall consent to the road vesting as public road in the local authority; and**11.2 All costs of such vesting of the Road, including the formation of the Road to local authority standards and legal costs shall be shared by the Grantor and the Grantee as shall be agreed, bearing in mind the benefits that will be enjoyed by each party if the Road vests as public road; and****11.3 The Grantor shall sign all necessary documentation and do all things to effect such vesting; and****11.4 No compensation shall be paid to the Grantor for the vesting as public road; and****11.5 Upon the vesting neither the Grantor nor the Grantee shall be responsible for the maintenance of the Road; and****11.6 Any dispute shall be determined in accordance with clause 9 herein.**

12 FURTHER CONDITIONS RELATING TO THE GRANTEE'S USE OF THE ROAD

- 12.1 The Grantor shall not move any stock onfoot on or over the Road.
- 12.2 The Grantor shall use the Road as if it were a public road and comply with all rules and regulations that apply to a public road and in particular observe any traffic signs erected by the Grantee including but not limited to speed signs.
- 12.3 The Grantor shall operate vehicles with lights on at all times when using the Road.
- 12.4 The Grantor shall erect and observe compulsory signs at the junction of where each lot enters upon the Road.

13. RIGHT OF WAY MAY BE SURRENDERED IN WHOLE OR IN PART

- 13.1 At the option of the Grantee these conditions in this right of way easement may be surrendered in whole or in part by the Grantee at any time without payment and the Grantor shall accept such surrender and shall execute all documents to implement such surrender.

Whangarei District Council Request

Request Number: AC066467
Date Received: 12/04/2018 01:05.03 pm
Source: Phone
Status: Past
Group: Animals
Category: Dog Complaint
Sub Categories:

Priority:
Resp Workgroup: WDC.RM.EN
Raised By:
User ID: Armourguard Armourguard

Related AR:

Property Number: 165711
Property Address: 436 Glenmohr Road Waipu 0582
Property Description:
Caller Name:
Caller Address: - Waipu 0582
Email:

Land Number:
Home Phone:
Work Phone:
Mobile:
Fax:

Request Details:

Dog from 436 Glenmohr Road has rushed at caller three times. Yesterday it rushed at caller's dog and nipped him. Frightening experience.

Comments:

Date	Type	Feedback \ Comments
13/04/2018 09:08.18 am	CRMComment	12/04/18 14:16 Shaun/142. Spoke to complainant pending a statement.
23/05/2018 10:56.12 am	CRMComment	13/04/18 Received statement. 18/04/18 Arrived at 436 Glenmohr Road, spoke to daughter took details of dogs on property and advised that "Horse" had a complaint in regards to rushing. She advised her mum "Carla" would be home after 5pm. Will revisit. Owners have 7 pups from "Horse" & "Sam". 19/04/18 17:20 Arrived at 436 Glenmohr Road. Spoke to the owner. She explained that the rushing occurred on her farm and the complainant keeps walking his dog on the road which is on private property. She was sorry the rushing event took place and said she would buy a electronic collar to keep Horse close to the house. I believe that the owner is aware of the situation and is a good owner. Horse is microchipped and registered. No reason to infringe. 20/04/18 12:00 Spoke to and explained that "Horse" owner has offered to buy a electronic collar. was happy with the outcome. Require follow up to ensure collar is obtained. 27/04/18 Rang Carla ("Horse" owner) but no answer. Have left a message previously.

Event History:

Description	Status	Decision	Commenced Finalised	Target Date	Role Name User
Refer to (email)	Past	Referred	12/04/2018 11:05.04 am 12/04/2018 11:05.06 am		

Whangarei District Council Request

Request Number: AC065359	Priority: Urgent
Date Received: 05/02/2018 02:14.51 pm	Resp Workgroup: WDC.RM.EN
Source: Phone	Raised By:
Status: Past	User ID: Post Event Post Event Armourguard
Group: Animals	
Category: Dog Complaint	
Sub Categories: Attack	

Related AR:

Property Number: 165711	Land Number:
Property Address: 436 Glenmohr Road Waipu 0582	
Property Description:	Home Phone:
Caller Name:	Work Phone:
Caller Address: Invalid Address	Mobile:
Email:	Fax:

Request Details:

 Attack. Dog Vs Chickens IMPOUNDED PEN # 26

Comments:

<u>Date</u>	<u>Type</u>	<u>Feedback \ Comments</u>
05/02/2018 02:14.53 pm	CRMComment	02/02/18 07:32 Brendon/93. 0618hrs. Rang complainant , she is very distressed. Complainant wants the dog collected ASAP. Complainant has trapped the dog in her loading race. Dog won't stop barking. Complainant has been advised that a Animal Control Officer will be dispatched ASAP. Description of dog unknown as the complainant is very distressed. Arrived at complainants, statement, photos taken, dog secured and taken to Pound. 10:00 Tried calling dog owner it went straight to voice mail, found her husbands number in Tech One, contacted him and explained what's happened, he will contact his wife to come to the office and do statement.
08/02/2018 04:08.08 pm	CRMClosure	08/02/18 15:24 Jade/122 - Dog released to owner and all fees paid.
12/02/2018 09:36.57 am	CRMComment	12/02/18 Infringements sent.

Event History:

<u>Description</u>	<u>Status</u>	<u>Decision</u>	<u>Commenced</u> <u>Finalised</u>	<u>Target Date</u>	<u>Role Name</u> <u>User</u>
Notes					
Refer to (email)	Past	Referred	05/02/2018 02:14.54 pm 05/02/2018 02:14.55 pm		
Accept/Reassign	Past	Accept	05/02/2018 02:14.00 pm 05/02/2018 12:15.28 pm	08/02/2018 02:14.00 pm	

RESOLUTION TO EXCLUDE THE PUBLIC

That the public be excluded from the following parts of proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

1.	The making available of information would be likely to unreasonably prejudice the commercial position of persons who are the subject of the information. {Section 7(2)(c)}
2.	To enable the council (the committee) to carry on without prejudice or disadvantage commercial negotiations. {(Section 7(2)(i))}.
3.	To protect the privacy of natural persons. {Section 7(2)(a)}.
4.	Publicity prior to successful prosecution of the individuals named would be contrary to the laws of natural justice and may constitute contempt of court. {Section 48(1)(b)}.
5.	To protect information which is the subject to an obligation of confidence, the publication of such information would be likely to prejudice the supply of information from the same source and it is in the public interest that such information should continue to be supplied. {Section 7(2)(c)(i)}.
6.	In order to maintain legal professional privilege. {Section 2(g)}.
7.	To enable the council to carry on without prejudice or disadvantage, negotiations {Section 7(2)(i)}.

Resolution to allow members of the public to remain

If the council/committee wishes members of the public to remain during discussion of confidential items the following additional recommendation will need to be passed:

Move/Second

"That _____ be permitted to remain at this meeting, after the public has been excluded, because of his/her/their knowledge of Item _____.

This knowledge, which will be of assistance in relation to the matter to be discussed, is relevant to that matter because _____.

Note:

Every resolution to exclude the public shall be put at a time when the meeting is open to the public.