

Easement instrument to grant Easement or *Profit à prendre*
Section 109 Land Transfer Act 2017

Grantor			
Click or tap here to enter text.			
Grantee			
Powerco Limited			
Grant of Easement or <i>Profit à prendre</i>			
The Grantor , being the registered owner of the Burdened Land(s) set out in Schedule A, grants to the Grantee (and, if so stated, in gross) the easement(s) or <i>profit(s) à prendre</i> set out in Schedule A with the rights and powers or provisions set out in the Annexure Schedule(s).			
Schedule A <i>Continue in additional Annexure Schedule if required.</i>			
Purpose of Easement or <i>profit</i>	Shown (plan reference)	Burdened Land (Record of Title)	Benefited Land (Record of Title)
Right to convey gas	Click or tap here to enter text.	Click or tap here to enter text.	Powerco Limited (in gross)
Easements or <i>profits à prendre</i> rights and powers (including terms, covenants, and conditions) <i>Delete phrases in [] and insert memorandum number as required.</i> <i>Continue in additional Annexure Schedule if required.</i>			
Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2018 and/or Schedule 5 of the Property Law Act 2007.			
The implied rights and powers are varied/negated/added to or substituted by:			
Memorandum number _____, registered under section 209 of the Land Transfer Act 2017.			
The provisions set out in the Annexure Schedule.			

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Continuation of "Easement rights and powers":

1 This easement is in addition to and not in substitution or limitation for any statutory rights and authorities which the Grantee may have at any time in respect of the Burdened Land. The rights and powers in this easement are in addition to those rights and powers contained in Schedule 5 to the Land Transfer Regulations 2018 ("Schedule 5") and where the terms of this easement are in conflict with Schedule 5 the terms of this easement shall prevail.

2 Grant of Easement

2.1 In addition to the above rights and powers the Grantor grants to the Grantee as an easement in gross the following rights and powers at all times and in any quantity:

- (a) to lay, install (including construct), locate, operate, upgrade, add to, inspect, maintain, replace, repair, renew, enlarge, alter, retain, remove, and use Pipes and Works on, in, over and under the soil of the Easement Area (and for the avoidance of doubt, the Grantor's consent shall be deemed for the purposes of clause 10(1)(b) of Schedule 5 by virtue of this easement);
- (b) to enter with all necessary Equipment and remain upon the Burdened Land for the purposes of laying, installing (including constructing), locating, inspecting, maintaining, replacing, repairing, renewing, enlarging, altering, retaining or removing Pipes or Works and opening up the soil of the Easement Area and make any accessways, cuttings, fillings, grades, batters and/or trenches and to re-open the same and generally to do and perform such acts or things upon the Burdened Land as may be necessary or desirable (or incidental thereto) to enable the Grantee to receive, enjoy and give effect to the full free use and enjoyment of the rights and powers granted under this easement; and
- (c) to use and operate Pipes and Works for the purpose of conveying Gas and/or Liquid, in each case without interruption or impediment;

provided however that nothing shall compel the Grantee to exercise the above rights at any time or in a particular way.

3 Grantee's Covenants

3.1 The Grantee shall be responsible for:

- (a) the installation of and maintenance of the Pipes and Works located on the Easement Area;
- (b) using its best endeavors to prevent the Pipes and Works located on the Easement Area becoming a danger to any user or occupier of the Burdened Land;
- (c) using its commercially reasonable efforts to prevent the Pipes and Works located on the Easement Area becoming a nuisance to any user or occupier of the Burdened Land and, if such nuisance arises, using its commercially reasonable efforts to remove or mitigate that nuisance; and
- (d) compliance with its obligations under the Health and Safety at Work Act 2015 and at common law generally.

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- 3.2 The Grantee will at the Grantee's own cost repair any damage to the Burdened Land (including any damage to any fence or other improvement) caused by the Grantee in exercising the Grantee's rights and powers under this easement as reasonably close as possible to the original condition of the Burdened Land prior to such damage.

4 Access

- 4.1 The Grantee may, at any time enter upon the Burdened Land using such routes as prescribed by the Grantor (acting reasonably) from time to time, and whether with or without Vehicles, machinery, and implements of any kind for purposes associated with the creation and exercise of the Grantee's rights and powers under this easement. The Grantee shall use reasonable efforts to give the Grantor prior notice that the Grantee intend to enter upon the Burdened Land (except in the case of an Emergency, when notice will not be required) and for the avoidance of doubt, clause 12(2) of Schedule 5 does not apply. Without limitation to the preceding provisions, the Grantor shall not at any time restrict or impede access to the Easement Area (including by way of subdivision of the Land) by the Grantee and, upon request by Grantee, will provide the Grantee with all necessary keys and / or access cards required from time to time to gain access to the Burdened Land and the Easement Area.
- 4.2 The Grantee may, from time to time, enter upon the Burdened Land using Aircraft (including drones) to inspect the Lines and Works on the Easement Area to the extent necessary to carry out such inspection. For the avoidance of doubt, the Grantor consents to such inspection.
- 4.3 The Grantee will, in having access to the Burdened Land under clause 4.1 and 4.2, comply with all reasonable requirements or conditions previously notified to the Grantee by the Grantor.

5 Grantor's Covenants

- 5.1 If the Grantor is a 'person conducting a business or undertaking' as defined under the Health and Safety at Work Act 2015, the Grantor shall:
- (a) comply with its obligations under that act and at common law generally at all times; and
 - (b) use all reasonable endeavours to ensure that any tenant, licensee, invitee or agent of the Grantor complies with all health and safety signs, notices, policies and instructions issued or displayed by the Grantee on the Burdened Land
- 5.2 The Grantor will not without the written permission of the Grantee:
- (a) grow or permit to be grown any natural or cultivated vegetation (excluding pasture) on the Easement Area or in the near vicinity of the Easement Area or otherwise encroaching upon the Easement Area; or
 - (b) erect or permit to be erected any improvement (including but not limited to buildings, sheds, fences, roads, walls or driveways) on the Easement Area; or
 - (c) disturb or permit to be disturbed the soil below a depth of 300 millimetres from the surface of the Easement Area; or
 - (d) do anything on the Burdened Land that may damage or endanger the Pipes or Works including anything that would in any way reduce the clearance of the Pipes or Works to less

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than the minimum clearance required from time to time by any applicable statutory regulation, code of practice or other authority; or

- (e) do any act which will interfere with the rights granted by this easement and will not at any time do, permit or suffer any act whereby the full and free use and enjoyment by the Grantee of the rights and privileges granted by this easement are interfered with. The Grantee may at all times at the Grantor's cost remove any natural or cultivated vegetation or improvement on the Burdened Land which may interfere with the rights granted by this easement.

6 Damage To Pipes Or Works

- 6.1 Notwithstanding the provisions of Schedule 5 that deal with maintenance and payment of maintenance costs, if any maintenance, repair or replacement of the Pipes or the Works or part of the Pipes or the Works, is necessary because of any act or omission, neglect or fault of the Grantor (including any tenant, licensee, employee, invitee or agent of the Grantor) then the Grantor shall be responsible for the whole cost of any such maintenance, repair or replacement in the proportion to which the Grantor's default, act, omission, neglect or fault caused the damage.
- 6.2 For the avoidance of any doubt, the Grantor will not at any time claim (and waives entitlement to (if any)) compensation from the Grantee under Section 51 of the Gas Act 1992 or under any other provisions of any statute or regulation whatsoever, in relation to the exercise by the Grantee of its rights under this easement.

7 Removal

- 7.1 The Pipes and Works are and shall remain the sole property of the Grantee and the Grantee shall not be required to remove the Pipes and/or Works at any time. No person shall have any interest in such Pipes and Works by reason only of having an interest or estate in the Burdened Land.
- 7.2 No power is implied for the Grantor to determine this easement for any breach of covenant or for any other cause whatsoever. The parties intend this easement to subsist forever or until it is duly surrendered or extinguished at the election of the Grantee.

8 Disputes

- 8.1 If there is any dispute between the parties in connection with this easement (including any dispute as to the validity, breach or termination of this easement or as to any claim in tort, in equity or pursuant to any statute), either party may by written notice to the other party (*Mediation Notice*) request that the dispute be submitted for mediation. The party receiving the Mediation Notice must respond within 5 Working Days to the Mediation Notice either confirming or refusing to undergo mediation.
- 8.2 If the parties agree to undergo mediation under clause 8.1, the mediation is to be conducted as follows:
- (a) The mediator will be agreed by the parties. The mediator will be appropriately qualified in mediating disputes (and shall be at least an associate member of the Arbitrators & Mediators Institute of New Zealand (AMINZ) or equivalent organisation). If the parties cannot so agree within 3 Working Days of the agreement to the referral to mediation, then either party may request the President for the time being of AMINZ (or his or her nominee) to appoint a mediator.

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- (b) Unless the parties agree otherwise, the mediation will be conducted in terms of the Standard Mediation Agreement promulgated by the Resolution Institute at the time the dispute is referred to mediation. If no Standard Mediation Agreement is promulgated by that organisation at the time of the dispute, the mediation will be conducted in a manner determined by the mediator except that:
- i. the mediation will be conducted on a without prejudice basis;
 - ii. any party may terminate its involvement in the mediation at any time but only after consultation with the mediator;
 - iii. any information disclosed during the mediation process will not be disclosed to any person not present at the mediation unless required for the purposes of obtaining professional advice or otherwise by law; and
 - iv. the costs of the mediation will be borne equally by the parties.

8.3 For the avoidance of any doubt, nothing in this clause 8 precludes a party at any time from:

- (a) commencing proceedings before any New Zealand Court in respect of any dispute which is the subject of this clause, including for the purpose of seeking interim relief against any other party or person;
- (b) agreeing with the other party to submit to binding arbitration.

9 Further Assurances

Each party shall make all applications, including execute and deliver any documents, and do all acts and things, as may reasonably be required by the other party to obtain the full benefit of this easement according to its true intent.

10 Indemnity

To the extent permitted by law, the Grantee agrees to indemnify the Grantor for all liabilities and direct damage or losses which the Grantor may incur as a result of:

- (a) negligence by the Grantee in respect of the existence or operation of any Pipes or Works installed (including constructed) or used by the Grantee on the Easement Area; or
- (b) or any breach of this easement by the Grantee,

except to the extent that any such liabilities and direct damage or losses result from the negligence of, or breach of this easement by, the Grantor and/or any occupier of the Easement Area.

11 Gas Act 1992

Without limitation to the generality of the provisions contained in clause 1 above, the terms contained in this easement shall be without prejudice to and do not derogate from the rights and powers of the Grantee under any contract for the supply of Gas or the Gas Act 1992.

12 Definitions

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12.1 In this easement:

- (a) **"Aircraft"** has the meaning set out in the Civil Aviation Rules, published by the Civil Aviation Authority of New Zealand as amended from time to time, and includes manned and unmanned aircraft.
- (b) **"Burdened Land"** means all of the land described as the Burdened Land identified in Schedule A of this easement
- (c) **"Easement Area"** means that part of the Burdened Land identified in Schedule A in this easement as Easement Area.
- (d) **"Emergency"** means a situation in which there is a probable danger to life or property or immediate risk to the continuity or safety of supply or distribution of Gas.
- (e) **"Equipment"** includes tools, machinery, cables, Pipes, wires, plant, excavators, mole ploughs, vehicles and all materials and items required for the purposes of exercising any of the rights under this easement.
- (f) **"Gas"** means anything that may be conveyed through Pipes and is a gas at a temperature of 15°C and an absolute pressure of 101.325 kilopascals; and includes (not by way of limitation):
 - i. biogas, coal gas, liquefied petroleum gas, natural gas, oil gas, producer gas, refinery gas, reformed natural gas, and tempered liquefied petroleum gas; and
 - ii. any gaseous substance that the Governor-General declares by Order in Council to be a gas for the purposes of the Gas Act 1992; and
 - iii. any mixture of gases.
- (g) **"Grantee"** means Powerco Limited and includes all its subsidiaries (within the meaning of Sections 5 and 6 of the Companies Act 1993) and its successors, assigns, personal representatives, employees, contractors, agents, invitees and licensees.
- (h) **"Grantor"** includes the successors in title, assigns, transferees and personal representatives of the Grantor.
- (i) **"Liquid"** means anything that may be conveyed through Pipes and is normally a liquid at atmospheric pressure and 20°C and includes (not by way of limitation) solids which may be conveyed in a liquid through Pipes.
- (j) **"Pipes"** includes tubes, hoses, conduits, valves and associated works and pipes, which are of a sufficient internal diameter and of a suitable material for the Grantee's use.
- (k) **"Vehicles"** includes (without limitation) Aircraft.
- (l) **"Working Day"** means any day other than Saturday, Sunday and statutory holidays.
- (m) **"Works"** means every work or thing used or designed or intended for use in or in connection with conveying Gas or Liquid.

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- 12.2 A reference to any Statute or section of any Statute includes any enactment in amendment or substitution for such Statute or section.
- 12.3 Terms which are defined in the Land Transfer Regulations 2018 have the same definitions where those terms are used in this easement.
- 12.4 The Headings in this easement are for convenience only and shall not affect the construction of the easement.
- 12.5 Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New Zealand for the purpose of hearing and determining any disputes or proceedings arising out of or in connection with this easement.