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

Transfer instrument

Section 90, Land Transfer Act 1952

Registrar-General of Land Approval 02/1026EF A.D.L.S.

E 5694379.7 Grant of Ea:
Cpy – 01/01, Pgs – 006, 14/08/03, 10:07
DocID: 410788564

Land registration district

WELLINGTON

Unique identifier(s) or C/T(s)	All/part	Area/description of part or stratum
		See annexure schedule

Transferor *Surname(s) must be underlined or in CAPITALS.*

Erika Jane BELLIS and John Gerard O'REGAN

Transferee *Surname(s) must be underlined or in CAPITALS.*

TELSTRACLEAR LIMITED ("the transferee")

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

Telecommunications easement in gross (as set out in the annexure schedule)

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 1 day of July **2003**

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

Signature [common seal] of Transferor	**Signed in my presence by the Transferor** *Signature of witness* *Witness to complete in BLOCK letters (unless legibly printed)* **Witness name** ..... **Occupation** KATHY DOYLE LEGAL EXECUTIVE BRANDONS Barristers & Solicitors WELLINGTON **Address**

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

[Solicitor for] the Transferee

REF: 7002 – AUCKLAND DISTRICT LAW SOCIETY

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

Annexure Schedule

Registrar-General of Land Approval 02/5032EF A.D.L.S.

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

Transfer	Dated	1 July 2003	Page	1	of	5	Pages

(Continue in additional Annexure Schedule, if required.)

Continuation of "Estate or Interest or Easement to be created"

BACKGROUND

A. The transferor is the registered proprietor of the land more particularly described in the first schedule ("the land").

B. The transferee has constructed a cable over part of the land and the transferor has agreed to grant to the transferee an easement in gross for the right to convey telecommunications through the cable over that part of the land more particularly described in the second schedule ("the easement land").

C. The parties have agreed to the terms of the grant as set out below.

TERMS AND CONDITIONS OF GRANT

1. The telecommunications easement granted pursuant to this memorandum of transfer is defined as the perpetual right to convey telecommunication signals over, under and through the easement land together with and subject to the following terms and conditions:

   1.1 The right to construct, maintain and operate the cable above, under and through the easement land and to repair, replace and renew such equipment and cables from time to time.

   1.2 The right to transmit and convey telecommunications signals through the cable.

   1.3 The full free uninterrupted and unrestricted rights of ingress and egress along with the transferees tenants, servants, agents and workmen and along with any vehicles, machinery or equipment over and through the land and the right to remain on the easement land for any purposes necessary or expedient for the exercise by the transferee of the rights and interests granted in this transfer including laying, inspecting, cleansing, repairing, maintaining and renewing the cable line or any part thereof.

   1.4 Where spare conduit capacity exists, to lay, place and maintain, or have laid, placed and maintained a line of cables of a sufficient internal diameter and suitable material for the purpose under the land over which the easement is granted or created and along the line defined for the purpose where such a line has been so defined under this transfer being the easement land.

2. Except in an emergency, the transferee will give to the transferor prior notice of the transferee's intention to enter the land.

   2.1 Before exercising these rights of ingress and egress the transferee will:

      2.1.1. consult with the transferor with a view to agreeing an approved route of access over the land for these purposes and be accompanies by staff of the transferor at all times unless otherwise arranged.

      2.1.2 comply with any reasonable requirements of the transferor in connection with this ingress and egress.

3. The transferor will have the right to use the easement land for any purpose whatsoever provided this does not interfere with the rights of the transferee granted in this memorandum of transfer.

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.

4. The transferee will maintain the cable in good repair.

5. The transferee will carry out all works permitted by this memorandum of transfer as expeditiously and with as little disturbance to the surface of the easement land as possible. Upon the completion of any work the transferee will reinstate the surface of the land to a condition equivalent to that exiting before the commencement of the works if such damage was caused by ay act or omission of the transferee.

6. The cable will remain the property of the transferee at all times.

7. The transferor will not do anything whereby the rights, powers, licenses and liberties granted to the transferee may be interfered with or affected in any way and in particular the transferor will not without the consent in writing of the transferee:

   7.1 erect or permit the erection of any structures on the easement land;

   7.2 make any alterations or additions to any structure on the easement land which affect its overall dimensions;

   7.3 deposit any soil or other materials or construct any road, or earthworks on the easement land which would in any way reduce the clearance above the ground level of the cable below the minimum clearance height that may be required from time to time by any statute, regulations, code of practice or otherwise;

   7.4 disturb the soil below a depth of 0.3 metres with a distance of 3.5 metres from any pole as referred to in clause 1. above;

   7.5 cause or consent to or acquiesce in, the inundation of the easement land but nothing in this clause shall require the transferor to take any steps or do or construct anything to prevent an inundation caused by events beyond the reasonable control of the transferor;

   7.6 light any fires or burn off vegetation within the easement land, without obtaining the prior consent of the transferee, such consent to be requested at least 5 working days prior to removal of vegetation being carried out;

   7.7 operate any machinery or equipment in close proximity to the cable or any fixture;

   7.8 do anything on the easement land which would or could damage or endanger the cable or any fixture;

   7.9 carry out any cultivation or permit any structures on the land (including frames and support) which is or is likely to be a danger or hazard to the safety or operation of the cable.

8. If the transferor causes or allows any breach of the obligations set out in clause 7, the transferee will be entitled to take all reasonable steps to abate or remedy the particular breach. In the absence of negligence or recklessness, the transferee will not be liable to the transferor, whether in contract, tort or otherwise, for any loss, compensation, damage or remedying the breach.

9. The transferee will use the cable so that it will not interfere with the ordinary use of the land to the maximum extent practicable.

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10. This transfer will be binding on and enure for the benefit of the executors, administrators, successors and assigns of both parties. The transferor and the transferee acknowledge and agree that this transfer is an easement in gross.

11. If any dispute arises between the transferor and the transferee concerning the rights created by this transfer, the parties will:

    11.1 Enter into negotiations in good faith to resolve the dispute.

    11.2 If the dispute is not resolved within 1 month of the date on which the parties begin their negotiations, submit the dispute to the arbitration of an independent arbitrator appointed jointly by the parties.

    11.3 Such arbitration will be determined is accordance with the Arbitration Act 1996.

    11.4 The execution of this transfer is a submission to arbitration.

Indemnity

12. The transferee shall indemnify the transferor against all actions, suits, proceedings, claims and demand which may be brought or made against the transferor as a direct result of the exercise by the transferee of any of the rights granted by this memorandum of transfer and grant of easement.

Definitions and Interpretation

13. In this transfer unless the context requires otherwise:

    13.1 "cable" means fibre optic, coaxial, copper or other cable and all electronic and other fittings including pole(s) used by the transferee to transmit telecommunications and other associated services to its subscribers.

    13.2 "construct" includes lay, install, string across, inspect, use, maintain, repair, renew, upgrade, replace, change the size of and remove and "construction" has a similar meaning.

    13.3 "convey" includes send, pass, receive, conduct, transmit and transport.

    13.4 "easement land" means the land described in the second schedule.

    13.5 "equipment" includes the equipment, tools, machinery, cables, lines, wires, and all materials and items required for the purposes of exercising any of the rights given by this transfer/grant of easement.

    13.6 "transferee" includes the transferee's engineers, surveyors, workmen, agents, employees, servants, contractors, lessees, licensees or invitees with or without any vehicles machinery or equipment.

    13.7 "land" means all the land described in the first schedule being the land of which the easement land forms a part.

    13.8 "machinery" includes cranes, plant and other tools and machinery required to construct, maintain and operate the cable.

    13.9 "maintain" includes maintain, repair, renew, alter, upgrade, inspect and improve and "maintenance" has a similar meaning.

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13.10 "operate" includes to send, pass, receive, conduct, transmit and transport telecommunications and all associated signals, waves or impulses and "operation" has a similar meaning.

13.11 "road' includes road, track and accessway.

13.12 "signals" include signals, waves and impulses and light waves.

13.13 "soil" includes soil, gravel or other similar substances.

13.14 "telecommunications" includes voice, video, data and other associated communications services.

13.15 "transfer" means this memorandum of transfer/grant of easement.

13.16 "vegetation" includes all vegetation both cultivated and natural and includes grass, crops, trees and shrubs and includes any vegetation encroaching into the airspace of the easement land.

13.17 "vehicles" includes trucks, tractors, cars, aircraft, trailers, graders, excavation and earthmoving equipment, whether wheeled or tracked.

13.18 In this transfer unless inconsistent with the context the singular includes the plural and the masculine gender includes the other genders and vice versa and words importing persons include companies and vice versa.

FIRST SCHEDULE

Lot 1 DP 319476		Certificate of title 76754
Lot 2	"	" 76755
Lot 3	"	" 76756
Lot 4	"	" 76757
Lot 5	"	" 76758
Lot 6	"	" 76759

SECOND SCHEDULE

That part of the land marked 'A', 'B', 'C', 'D', 'E' and 'F' on deposited plan 319476.

SIGNED by
TELSTRACLEAR LIMITED
as grantee by its attorney SAUL CANNON in the presence of:

W.A.C. Rhodes
Solicitor
Auckland

.....
Authorised signatory

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.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

I, **Saul Cannon**, of Auckland in New Zealand, General Counsel, hereby certify:

1. **THAT** by deed dated 30 January 2001, TelstraClear Limited (formerly known as TelstraSaturn Limited, as evidenced by the copy of TelstraClear Limited's certificate of incorporation annexed)) appointed me attorney on the terms and subject to the conditions set out in the said deed, a copy of which has been deposited with Land Information New Zealand under no. 5028552.1.

2. I am executing the annexed document under the powers conferred on me by such deed.

3. **THAT** as at this date I have not received any notice or information of the revocation of this appointment.

DATED this 1 July 2003

Saul Cannon