

Application for an enforceable undertaking

June 2019

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Name of entity or, partnership or individual applying for this undertaking

Hiway Stabilizers New Zealand Limited

Application for an enforceable undertaking

Part 4, Health and Safety at Work Act 2015

The commitments in this application are offered to WorkSafe New Zealand by

Name of the person or persons who will be signing this undertaking in section 4:

Peter Metcalfe

On behalf of:

Hiway Stabilizers New Zealand Limited

Name of the entity giving this undertaking (if an individual or sole trader, leave blank complete in all other cases)

Hiway Stabilizers New Zealand Limited

This enforceable undertaking is given on the day and date that it is accepted and signed by WorkSafe. The undertaking and its enforceable terms will operate as a legally binding commitment on the part of the person from the date it is given.

Do not refer to the victim by name in this document. Please refer to the victim/worker/employee/volunteer/or other term as appropriate.

WorkSafe respects your privacy and is committed to protecting personal information. The information provided in this document is for the purpose of an undertaking given to WorkSafe under Part 4 of the *Health and Safety at Work Act 2015*. This information will be managed within the requirements of both the *Privacy Act 1993* and the *Official Information Act 1982*.

There is an expectation that WorkSafe will generally publish the undertaking in full on its website.

TERM	DEFINITION
Contravention	An action which offends against the <i>Health and Safety at Work Act 2015</i> and/or any Regulations made under it. It includes both health and safety contraventions. A contravention also includes an alleged contravention.
HSMS	A Health and Safety Management System.
Person	An individual who or a legal entity which has a duty under the <i>Health and Safety at Work Act 2015</i> and can give a written undertaking. The term includes individuals, each partner in a partnership, corporations, trustees of trusts, and crown organisations.
Health and Safety legislation	<i>Health and Safety at Work Act 2015</i> and associated regulations.
Enforceable undertaking	An enforcement pathway that allows a duty holder to voluntarily enter into a binding agreement with WorkSafe. The agreement outlines actions the duty holder will undertake to address the contravention. It is expected to deliver activities which benefit workers, the wider industry or sector and/or the community as well as acceptable amends to any victim(s).

1. General information

1.1 Details of the person/persons/entity giving the undertaking

Name of person(s) making this undertaking: (in all cases complete with the name(s) of those who are signing this undertaking under Section 4)

Peter Metcalfe

Name of entity: (if applicable, leave blank if an individual)

Hiway Stabilizers New Zealand Limited (HSNZ)

Type of legal entity: (complete in all cases, for example individual, sole trader, partnership, trust, company, etc)

Registered company (NZBN 9429036670505)

Nominated contact person: (the same person listed above/one of those listed above)

Peter Metcalfe

Physical address:

10 Ingot Place, Silverdale, Auckland

Postal address: (if different from physical address)

PO Box 225, Silverdale 0932, Auckland

Work phone: 09 426 3419

Mobile phone: 027 673 2234

Email: peterm@hiways.co.nz

Industry: Infrastructure

Workers (enter numbers):

Full-time: 71 Part time: 2 Casual: 1

Description of the products and services provided by the business or undertaking:

HSNZ is a civil engineering and transport infrastructure pavement recycling business, and is New Zealand's largest provider of specialist stabilising technologies. It operates under the umbrella of Hiway Group Limited (Hiway Group).

Comments:

1.2 Detail of the contravention

WorkSafe New Zealand (WorkSafe) alleges that HSNZ, as a Person Conducting a Business or Undertaking (PCBU), failed to ensure, so far as reasonably practicable, the health and safety of workers who worked for HSNZ, including the Injured Person, while the workers were at work for HSNZ, namely operating and cleaning a Komatsu GS360 Stabiliser (Komatsu Stabiliser), and that this failure exposed workers, including the Injured Person, to a risk of death or serious injury arising from contact with the moving parts of the Komatsu Stabiliser.

WorkSafe alleges that there were three reasonably practicable steps that HSNZ could and should have taken to have ensured the health and safety of its workers:

- a) Developed, implemented, monitored and ensured compliance with a safe system of work for inspection and cleaning of the Komatsu Stabiliser.
- b) Ensured the Komatsu Stabiliser was adequately guarded.
- c) Fitted an isolation system to the Komatsu Stabiliser which allowed the rotor to be manually rotated.

1.3 Detail the events surrounding the contravention

In December 2019, HSNZ was engaged to stabilize the ground at 2421 Kaipara Coast Highway, State Highway 16, Makarau. This work was required as part of the process of building a road for Gibbs Farm Limited. HSNZ had deployed the Komatsu Stabiliser for this work to be operated by the Injured Person.

The Injured Person was an employee of HSNZ. On 3 December 2019, the Injured Person started work at approximately 8 am. He completed a job start procedure prior to starting work.

The Injured Person completed his work at the site at approximately 9:30 am. He then parked the Komatsu Stabiliser approximately 50m from the road and commenced work procedures to close the Komatsu Stabiliser down, ready for transport to the next job. This involved inspecting and cleaning various parts of the Komatsu Stabiliser. Part of the closing down procedure for the Komatsu Stabiliser involved inspecting the ground engaging tools (GETs). The GETs are a series of tips on a rotating axle (otherwise described as the rotor) which dig into the ground. The Injured Person inspected the GETs by raising the axle to the up position and throttling the rotating axle to turn at the slowest rate. A hatch near the front of the Komatsu Stabiliser, next to the cab, was then raised to enable a visual inspection of the tips as they slowly rotated.

The next step in the procedure was to clear debris from the lower edge of the guarding hood (referred to as skids) that would, if dislodged during transport, cause a hazard. The Injured Person attempted to kick debris free near an open void allowing access to the rotor and the GETs, but his foot missed the debris and went inside the void. His foot became entangled in the still rotating axle, and his leg was drawn into the void and amputated above the knee.

1.4 Detail any enforcement notices issued that relate to the contravention as detailed in term 1.2

DATE	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE
12 / 12 / 2019	Prohibition Notice			SEE APPENDIX A
15 / 01 / 2020	Improvement Notice			SEE APPENDIX A

DD / MM / YEAR

1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)

As a result of the contravention, and the enforcement notices issued to it, HSNZ has taken the following remedial steps to address the equipment and work practices which WorkSafe has alleged were deficient:

Safety improvements made to plant:

- HSNZ engaged independent expert Nick Frame to investigate the potential for a compliant guarding solution to be installed and maintained on the Komatsu Stabiliser.
- Labelling and signage of the rotor assembly has been revisited and improved, which draws an operator's attention to the hazards posed by the rotor.
- An improvement has been made to the skids on the rotor assembly housing to reduce the amount of soil that accumulates on the skids. This does not entirely remove the need to clean the skids as soil still builds up on the skids, however it has improved the ability to clean the skids safely.
- The process of inspecting the GETs has been revisited and refreshed with improvements made to the rotor hydraulic drive to aid in the un-energized turning of the rotor by an operator. A hydraulic bypass valve has been installed that redirects the flow of hydraulic oil used to power the rotor drive pumps. By redirecting the hydraulic oil away from the rotor's hydraulic drive pumps, operators are able to turn the rotor using a crank or by hand. This completely eliminates the need to use the engine to partially turn the rotor.

Changes to work processes and practices:

- HSNZ has developed an individual Plant Risk Assessment (PRA) for use with all of our different items of plant. Each PRA is designed to deal with a particular class of equipment (e.g. stabilisers) and deals with, among other risks, entanglement in parts of the machine, including the rotor, crushing and other risks when operating, cleaning or maintaining the plant. The content of the PRA has been developed in consultation with our operators, who reviewed and provided feedback on the format and content of the PRA. Each PRA is signed by the operators confirming that they understand the hazards and control measures when operating the plant.
- HSNZ has developed a full suite of Safe Work Method Statements (SWMS) for each item of plant, detailing the safety considerations to be applied to each activity step. The SWMS were prepared in consultation with our operators to ensure that the process or steps to be followed when carrying out stabilising work are documented, and represent processes that employees actually implemented and understood.

CONTINUED IN APPENDIX A.

1.6 Total amount of money spent on rectifications

The estimated cost of rectification undertaken by HSNZ following the incident (i.e. those costs capable of quantification) is \$98,383.83. See breakdown at APPENDIX A.

Direct and indirect costs associated with the development of HSNZ's new work procedures and training packages are not able to be quantified.

1.7 Detail the injury sustained or illness suffered by victim(s) or other(s) as a consequence of the contravention or, (as applicable) the *potential* for fatal injury or future fatal illness

The Injured Person lost his right leg above the knee as a result of the incident and has been fitted with a prosthetic.

1.8 Detail any offer of amends or payments made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)

Describe the victim(s) relationship to you/the entity in question: (eg employee(s)/shareholder/director/family member/contractor, etc. If the relationship has more than one dimension, for example a family member who is also an employee and a director and/or shareholder of the business, or an employee who is a shareholder (etc) then please describe this)

The Injured Person is a full-time employee of HSNZ. He was originally employed as a Machine Operator/Labourer (Supervisor) based in the Silverdale Office. Following the incident, the Injured Person has returned to work in the role of Plant Operator/Supervisor.

Detail offer of amends or payments:

HSNZ has engaged with the Injured Person to apologise for the incident and express the company's regret that it occurred. HSNZ has also taken a number of steps to support the Injured Person both financially and emotionally. HSNZ has sought to ensure that the Injured Person has not been financially disadvantaged by the circumstances of the incident, and to ensure that he can continue to work and participate in activities he enjoys to the maximum extent possible.

CONTINUED IN APPENDIX A.

1.9 Detail any consultation with the victim(s) as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution

HSNZ has consulted with the Injured Person to discuss the proposed enforceable undertaking and his level of involvement in the process. At a meeting on 12 February 2021, the Injured Person confirmed his support for HSNZ's proposed enforceable undertaking and his view that it would be an acceptable alternative to prosecution.

HSNZ has consulted with the Injured Person again in September and October 2021, including sharing a draft of this application with him. The Injured Person remains supportive of this enforceable undertaking.

The Injured Person has also expressed a willingness to be involved in some of the commitments and initiatives that will be carried out as part of the enforceable undertaking.

1.10 Detail any consultation with unions/sector/industry as to their views on whether an enforceable undertaking would be an acceptable alternative to prosecution

HSNZ's employees do not belong to a union and there is no union involvement in the company.

On 28 May 2021 HSNZ met with members of the New Zealand stabilising industry that operate GS360 Komatsu stabilisers (Hibiscus Contractors Limited and Gideon Contractors Limited) to discuss HSNZ's proposed enforceable undertaking and get their views on the activities to be undertaken. Both contractors were supportive of HSNZ's proposed undertaking and expressed a willingness to be involved in the initiatives to be undertaken.

1.11 Detail the support provided or proposed by the person to the victim(s), other(s)

DATE	DESCRIPTION OF SUPPORT	COMMENTS
DD / MM / YEAR	SEE APPENDIX A	
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		
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DD / MM / YEAR		
DD / MM / YEAR		
DD / MM / YEAR		

1.12 Detail any current HSMS implemented and maintained by the person

Describe how health and safety risks are managed, including types of procedures or policies or standards:

As part of the Hiway Group, HSNZ operates under a comprehensive Integrated Management System (IMS) that is certified to international standards in quality, environment, and health and safety ISO 45001. This enables HSNZ to identify, manage, and control hazards and risks that arise in its operation. The system is made up of a number of different management documents and is best understood by reference to the diagram at APPENDIX A.

Management documents include the following:

- Company Health and Safety Charter and Policy
- Internal Management System Standards
- Risk and Hazard Management Registers
- Plant Risk Assessments
- Hiway's Behaviour Guidance
- Critical Risk Guidance
- Safe Work Procedures and Safe Work Method Statements
- Forms such as Isolation / Lockout Registers, PreSTART Inspections and JobSTART risk management procedures

The IMS and supporting management documents provide the structure for all business operations. The IMS provides an overview of the business structure and management system, while the management documents provide the detail of the requirements of the management system and how they apply to delivering projects.

The IMS also includes a number of standards that cover areas such as:

- Policy, Responsibility and Planning
- Risk, Hazard and Incident Management
- Training
- Communication, Participation and Consultation
- Emergency Procedures
- Human Resources, Recruitment and Contractor Management
- Occupational Health and Surveillance
- Procurement and Change
- Contract Administration
- Reviews, Audits and Corrective Action.

To ensure HSNZ's workers fully understand and are engaged with the key aspects of HSNZ's IMS, we have also developed the following internal behaviour standards:

- **Team Hiways:** This is a comprehensive zero harm culture training programme for all employees focused on health and safety principles, behaviours and culture. The programme is delivered by external providers whose "Learning Wave" has earned a number of awards for contribution to the development of organisational safety culture. Hiways has built on this Programme by engaging Impac Services to deliver a Zero Harm 2 training programme that focuses on situational awareness and variability.
- **Standards of Conduct:** The standards of conduct are presented to all employees at induction and contain copies of HSNZ's key policies and expectations regarding behaviour with respect to financial, operational, and health and safety matters.
- **Team Hiway Behaviours:** Following a detailed risk and hazard review process, HSNZ has developed 10 key behaviours that all employees are required to adhere to in order to ensure health and safety in the workplace. One example is the requirement that all plant and equipment must be verified as isolated, locked out and tagged before any work is undertaken, in order to prevent it being unintentionally started.
- **Critical Risk Icons:** The icons were developed to convey in pictorial form our 16 critical risks and hazards, to help employees identify and associate them with the tasks they perform. The icons are included in literature, notice boards, safety signs and information disseminated to employees.

1.13 Detail the level of auditing undertaken on the HSMS, including compliance audits and audit frequency

HSNZ has a comprehensive and regular internal and external audit programme.

Internal audits:

To support and deliver on the internal audit programme objectives, HSNZ has appointed 15 internal auditors who have all received training by an external provider to ensure they have the requisite skills to carry out audits against the relevant internal standards. Audits are completed monthly according to a predetermined schedule and reviewed for accuracy and completeness. All corrective actions are entered into a tracked database and followed up to ensure that they are completed within the required time frames. The audit results are discussed at senior management meetings attended by all business General Managers, our CEO, and Managing Director.

In addition, HSNZ has an internal inspection programme where our supervisors and Health and Safety Representatives take the lead each month to focus on specific workplace inspections to address critical risk areas.

External audits:

HSNZ is audited every year and awarded certification by GCL International and a British based international certification company. Certification is awarded against the following ISO and AS/NZS Standards:

- ISO 9001:2015 – Quality Management System
- ISO 45001: 2018 – Occupational Health and Safety Management System
- AS/NZS 14001:2015 – Environmental Management System

HSNZ has held the above accreditations since 2010. More recently, in August 2020, HSNZ achieved ISO 45001:2018 accreditation and has discontinued accreditation against AS/NZS 4801 and 18001 as they have been superseded by ISO 45001:2018.

HSNZ has separately had an independent review of its health and safety management system and practices (including risk management) undertaken by health and safety consultant Hans Buwalda, and an independent review of its risk and hazard controls undertaken by leading health and safety consultancy Impac.

1.14 Detail the consultation undertaken or proposed to be undertaken, in relation to this undertaking

As discussed in sections 1.9 and 1.10 above, HSNZ has consulted with the Injured Person and members of the New Zealand stabilising industry on this enforceable undertaking and the various activities proposed to be completed by HSNZ as part of it.

In addition, HSNZ has undertaken the following consultation in relation to the proposed enforceable undertaking:

- HSNZ senior leaders consulted with an external guarding and machinery expert, Nick Frame, to identify the ideas best suited to the needs of the workers and their work environments.
- A leadership team consisting of highly experienced operational and workshop management has been convened to discuss and support the facilitation of an industry initiative to investigate and develop a guarding solution for existing and older stabilisers that have an exposed void in the rotor hood.
- At our supervisors' meeting we have discussed the proposed enforceable undertaking, the reasons for wanting to pursue the enforceable undertaking initiative, and the benefits that will be realised as a result of this process that will improve the health and safety system and outcomes for operators at HSNZ.

Additional consultation with workers as HSNZ performs this enforceable undertaking are explained in sections 3.1 and 3.2 below.

2. General terms

The person acknowledges and commits to the general terms set forth in the sub-terms below.

2.1 Acknowledgement that WorkSafe alleges a contravention occurred as detailed in term 1.2

HSNZ acknowledges that WorkSafe alleges that HSNZ has contravened sections 36(1)(a), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015.

2.2 Statement of regret that the contravention occurred

HSNZ has taken this incident and WorkSafe's allegations very seriously and continues to extend its heartfelt sympathies to the Injured Person and his whanau.

HSNZ sincerely regrets that the incident on 3 December 2019 occurred and that the Injured Person suffered physical and emotional harm as a result.

2.3 Statement of the reasons why, on balance, the person considers this undertaking is the most appropriate response to the contravention

HSNZ considers that an enforceable undertaking is a more appropriate response to the contravention than a court-imposed penalty. This is because significantly more value can be obtained for all relevant stakeholders by focusing energy and resources on proactive activities.

HSNZ recognises that there are a number of companies operating similar plant to the Komatsu Stabiliser that will also be confronted with the issues surrounding effective guarding of this equipment. Many of those companies will not have access to the same resources as HSNZ to engage expert assistance to ensure an appropriate solution is found. Accordingly, these other operators can benefit from the "groundwork" to be undertaken by HSNZ in this undertaking, which will ensure improved safety standards for those operators and everyone they work with.

The initiatives that are proposed to be undertaken by HSNZ in this enforceable undertaking will also have tangible benefits for the Injured Person, workers at HSNZ, and the communities in which HSNZ operates in these areas.

In particular:

- As discussed in sections 1.8 and 1.11 above the Injured Person and his whanau have been, and will continue to be, supported by HSNZ, both financially and in other ways. The non-financial initiatives focus on providing the Injured Person with ongoing opportunities to further his career by strengthening his leadership skills and renewing his confidence, and by continuing to ensure the Injured Person and his whanau are able to participate in HSNZ events with other workers and their families.
- This enforceable undertaking will result in targeted additional investment in health and safety within HSNZ's business, including the introduction of new technology that will improve operator training and competency. It will directly benefit HSNZ's workers through the development of 'by design' solutions, and increased training and awareness around the risks associated with stabilising work and the operation of a stabiliser.
- Safety for the community will be improved through the provision of assistance funding for the ocean life-saving community. The ability for people to obtain prosthetics and associated support will be enhanced through the provision of assistance funding to the Artificial Limb Service.

2.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the contravention has ceased and will not reoccur

HSNZ commits that the behaviour, activities, and other factors which caused the alleged contravention have ceased. HSNZ commits to undertaking the activities described in this undertaking so that, so far as is reasonably practicable, those circumstances will not reoccur.

2.5 Acknowledgment of the policy published by WorkSafe for the acceptance of an undertaking

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

has read and understood the Enforcement Undertaking Operational Policy.

2.6 Acknowledgement that this undertaking will be published and publicised in full

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

acknowledges that the undertaking will, if accepted, be published on WorkSafe's website in full and referenced in WorkSafe material.

2.7 Statement of the person's ability to comply with the terms of this undertaking and meet the projected costs of the activities

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

has the financial ability to comply with the terms of this undertaking and have provided evidence by way of

(type of evidence provided)

Hiway Stabilizers New Zealand Limited can provide copies of the most recent consolidated financial statements for **Hiway Group** on request with this undertaking to support this declaration.

In the event of impending receivership, liquidation or sale of the entity, (write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

will advise WorkSafe of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

2.8 Statement outlining any relationship between the person and any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this undertaking

HSNZ has current relationships with the following entities or people proposed as beneficiaries in the undertaking:

- Current HSNZ employees
- Civil Contractors New Zealand (CCNZ). HSNZ is a current member of CCNZ

Aside from those relationships listed above HSNZ is not aware of any other current relationships with the proposed beneficiaries outlined in this undertaking.

2.9 Statement regarding Intellectual Property

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

grants WorkSafe a perpetual, non-exclusive, worldwide and royalty-free licence to use, for any purpose, all Intellectual Property Rights in relation to any material developed as a result of this undertaking. This licence includes the right to use, copy, modify and distribute the materials.

2.10 Acknowledgement that the person may be required to provide a statutory declaration

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

acknowledges that it may be necessary for WorkSafe to obtain a statutory declaration outlining details of any prior convictions (safety related) outside of New Zealand and that it will provide such declaration if required by WorkSafe

2.11 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking

1. It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.
2. Evidence to demonstrate compliance with the terms will be provided to WorkSafe by the due date for each term.
3. The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by WorkSafe, that this undertaking has been completely discharged.
4. It is acknowledged that any failure to meet the due date for an enforceable term will result in the matter being escalated and may lead to enforcement action.
5. It is acknowledged that WorkSafe may undertake other compliance monitoring activities to verify the evidence and compliance with an enforceable term, and cooperation will be provided to WorkSafe.
6. It is acknowledged that WorkSafe may initiate additional compliance monitoring activities, such as inspections, as considered necessary at WorkSafe's expense.
7. It is acknowledged that details of all seminars, workshops and training conducted by a non-registered training provider must be notified to WorkSafe, by email, at least one week prior. Notification should include time, date, location and the trainer/facilitator.

(write the name of the person(s) or entity giving the undertaking)

Hiway Stabilizers New Zealand Limited

3. Enforceable terms

The person acknowledges all activities set forth in the enforceable terms below must be auditable and include a date for completion and an estimated cost for each activity.

The person commits to performing the activities below diligently, competently and by the respective completion date.

3.1 A commitment by the person to perform activities that will ensure the ongoing effective management of risks to health and safety in the future conduct of its business or undertaking

Detail the management strategies to be employed that will satisfy and demonstrate to officer/s of the person that this commitment is being met:

HSNZ is committed to ensuring, so far as reasonably practicable, the ongoing effective management of risks to health and safety in all its future work activities. Specific actions intended to be taken by HSNZ include:

- Providing ongoing training and support to workers to ensure they can identify and manage hazards and risks in our work activities;
- Ongoing training in situational awareness and managing variability, to improve employee's decision making and response to at risk scenarios as they occur and improving our dynamic risk management processes;
- Ensuring ongoing and regular engagement with workers about health and safety issues and learnings using dedicated engagement processes including Safe Behaviour Conversations, Safety Committee meetings, Safe Working Procedure (SWP) training sessions, toolbox meetings, news updates, safety alerts, roadshows, First Day Back safety sessions, and engagement/culture surveys;
- Ensuring that employees and Health and Safety Representatives are involved in the review of SWPs and risk registers;
- The development of a verification process and system to ensure that once employees have been trained in our SWPs there is conformation that the SWP's are being applied and complied with at all times;
- Training of all supervisors to improve their skills to deliver toolbox meetings and engage with crew members so that the message is delivered well, employees are engaged, and motivated to apply the Safe Working Procedures that have been trained to apply;
- Ensuring that learnings from events, near misses and identified hazards/risks are discussed at safety meetings, senior management meetings, and Board meetings. Improvements that are identified will be actioned and implemented.

3.2 A commitment by the person to disseminate information about this undertaking to workers, and other relevant parties

(this may include to work health and safety representatives and in the organisation's annual report, if applicable)

Dissemination will be achieved by doing the following:

HSNZ is committed to sharing information about the incident and this enforceable undertaking with its workers and other relevant parties. Dissemination will be achieved by doing the following:

- Each year a First Day Back meeting is held where HSNZ arranges for all employees to attend a First Day Back induction and reorientation programme before they start work. As part of this meeting in 2022 the Injured Person will be offered an opportunity to speak to staff about the incident, learnings arising from it, and improvements that are to be made through implementation of this enforceable undertaking.
- HSNZ will prepare a safety alert to provide a brief explanation of what happened, the learnings arising from the incident, and HSNZ's decision to offer an enforceable undertaking to WorkSafe. The safety alert will summarise the activities proposed in the undertaking and the expected improvements to flow from these. The alert will be distributed to all employees, civil contractors HSNZ is aware are using the same or similar stabilisers, and CCNZ for distribution to its civil contractor members.
- HSNZ's Health and Safety Representatives will be briefed on the content of the safety alert and this enforceable undertaking so that they can be a point of contact for any workers who may have questions about the incident or the undertaking.
- A copy of this enforceable undertaking will be posted on the Hiway Group intranet page with an overview of the incident, the circumstances that gave rise to it, and the lessons learned.
- Copies of the enforceable undertaking will be made available to CCNZ for distribution to other civil contractors as required.

Dissemination will occur by: DD / MM / Q2 2022

3.3 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for workers and/or work and/or the workplace

ACTIVITIES	COST (\$)	TIMEFRAME
Outline the activity and the expected outcomes		
Training and competency virtual reality	\$110,000	Within 12 months
Independent plant risk assessments against AS4024	\$19,320	Within 12 months
Workplace literacy support	\$3,378.40	Within 12 months

See APPENDIX A for further details.

Total estimated cost of benefits for workers/others

\$ 132,698.40

3.4 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for the wider industry or sector

ACTIVITIES	COST (\$)	TIMEFRAME
Outline the activity and the expected outcomes		
Stabilising industry improvement initiative	\$90,000	Within 12 months
Presentations to industry participants	\$10,000	Within 12 months

See APPENDIX A for further details.

Total estimated cost of benefits for industry

\$ 100,000

3.5 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for community

ACTIVITIES	COST (\$)	TIMEFRAME
Donation to Red Beach Surf Life Saving Club	\$10,000	Within 3 months
Donation to the Artificial Limb Service	\$10,000	Within 3 months
Donation to the Westpac Rescue Helicopter Service	\$10,000	Within 3 months

See APPENDIX A for further details.

Total estimated cost of benefits for the community

\$ 30,000

3.6 Where WorkSafe considers appropriate in the circumstances, undertaking a SafePlus Onsite Assessment

Further information about SafePlus can be found here: worksafe.govt.nz/about-us/who-we-are/our-priorities/safeplus/about-safeplus

- 3.6.1 The suitability of a SafePlus assessment will be determined by the Enforceable Undertakings Panel when your application is considered.
- 3.6.2 In addition to the total cost below (3.7) all costs of a SafePlus Onsite Assessment will be met by the person making this undertaking. The fee charged for an Onsite Assessment is a commercial matter between your business and the SafePlus Accredited Assessors that you commission.
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3.7 Minimum spend

(write the name of the person(s) or entity giving the undertaking)

3.7.1 Hiway Stabilizers New Zealand Limited

commits to a minimum spend of \$369,820.40 for this undertaking.

(write the name of the person(s) or entity giving the undertaking)

3.7.2

agrees to spend any residual amount arising from an original term not being completed or being less costly than estimated in this undertaking. Agreement on how to spend this residual amount will be sought from WorkSafe

(write the name of the person(s) or entity giving the undertaking)

3.7.3 Hiway Stabilizers New Zealand Limited

Acknowledges the minimum spend comprises of the:

TOTAL COST	MINIMUM SPEND
Financial amends paid to victims (if applicable)	\$107,122.00
Benefits to workers/others	\$132,698.40
Benefits to industry	\$100,000.00
Benefits to community	\$30,000.00
Estimated cost of the undertaking Plus GST (if any)	\$369,820.40

4. Execution

Authorised representative of an organisation

Undertaking given by (name of authorised representative)

Peter Metcalfe

In my own right and in my capacity as (eg President, Chairperson, etc)

Chief Executive

of (eg organisation name) **Hiway Group Limited**

On the (day) **25** day of (month) **NOVEMBER**, 20**21** (year).



Under the name of
Witness name: **MARIE DEXTER**

Witness address:
**12 Crescent Mills CRT
NorthPark, Auckland, 2013**



5. Acceptance

This undertaking is accepted by WorkSafe.

On the (day) **29** day of (month) **November**, **20 21** (year).

 the undertaking:


Name of WorkSafe representative: (General Manager, WorkSafe (or delegate))

**Catherine Gardner, Acting Head of Specialist Interventions,
Operations**

Undertaking given before me:

Witness name: **Dayleen Troke**

Witness address:
86 Customhouse Quay, Wellington

Witness signature:



APPENDIX A – ADDITIONAL INFORMATION FOR ENFORCEABLE UNDERTAKING APPLICATION

Additional information in respect of relevant sections of HSNZ's enforceable undertaking application is set out below.

1.4 Detail any enforcement notices issued that relate to the contravention as detailed in term 1.2				
DATE	NOTICE TYPE	NOTICE NUMBER	CONTRAVENTION OR PROHIBITED ACTIVITY	ACTION TAKEN IN RESPONSE TO NOTICE
12/12/2019	Prohibition		Concluded from enquires, following a notifiable incident, that the Komatsu Stabilizer has an unguarded entanglement hazard. Workers are exposed to the hazard while undertaking cleaning and maintenance.	HSNZ has ensured isolation procedures are employed by all employees and has also considered the advice provided by WorkSafe's guarding expert. Work is currently underway to test the proposed guarding solution suggested by WorkSafe's expert, in conjunction with exploring alternative solutions as part of the initiatives included in this application.
15/01/2020	Improvement		Concluded after enquires that the risks associated with inspecting and maintaining the Komatsu Stabiliser were not being effectively managed. In particular, controls were not appropriate to manage the trapping and/or entanglement risk to workers exposed to the rotating cutting drum when carrying out inspection and maintenance of the Komatsu Stabiliser.	See submission sent to WorkSafe.
1.5 Detail the rectifications to the workplace or work practices made as a result of the contravention (1.2), events (1.3) and the enforcement notices issued (1.4)				
<p>Training for workers</p> <ul style="list-style-type: none"> • HSNZ has developed and implemented an extensive internal plant training and competency assessment programme. All of our plant operators have attended the training, been assessed against the competency programme, and graded according to their level of competency. The training programme includes the following elements, all of which touch on safe inspection and maintenance procedures: <ul style="list-style-type: none"> ○ Induction to the Hiway Group 				

- A Recognition of Prior Learning and Current Competency
 - Appointment of Internal Trainer Assessors
 - HSNZ Employee Training Matrix and Needs Analysis
 - Training and Development Grading
 - Certificate Training
 - Plant Competency Training
 - Plant Isolation and Lockout Training
 - Winter Training (various topics)
 - Situational Awareness Training.
- All stabiliser operators were required to participate in refresher training that focused on the GETs, safe operation, isolation procedures, and cleaning activities on stabilizers.
 - In July and August 2020, all HSNZ employees were required to attend a winter training programme where all of our PRAs and Safe Working Procedures for all items of plant (including stabilizers) were reviewed and presented to employees.

Communication to workers

- A safety alert was prepared after the incident in December 2019. The safety alert provided details of the incident and a list of immediate actions that should be taken to help prevent similar incidents from occurring.
- The safety alert was communicated to all workers via a toolbox talk, and was placed on all site notice boards.
- A business-wide request was issued as part of the alert, for all stabiliser operators to re-enforce the use of isolation procedures at all times when working on GETs, carrying out cleaning activities, and general maintenance work.

1.6 Total amount of money spent on rectifications

The estimated cost of rectification undertaken by HSNZ following the incident (i.e. those costs capable of quantification) is:

Rectification	Costs
Engaging with guarding expert engineer to evaluate the possibility of developing and guarding the void.	\$9,161.61
The development of signage and labels to warn against entrapment hazards on all stabilizer rotors.	\$1,000.00
Carrying out engineering modifications and installation of a crank facility on the rotor to ensure that it can be rotated without requiring the rotor to be energised.	\$42,546.22
Modification to the rotor skid to install an angled plate that improves the ease of cleaning the skid.	\$38,476.00

Engagement of independent experts to review the risks and hazard management procedures used by HSNZ.	\$7,200.00
Total	\$98,383.83

Direct and indirect costs associated with the development of HSNZ's new work procedures and training packages are not able to be quantified.

1.8 Detail any offer of amends or payment made to the victim(s) who sustained injury or suffered illness (the total monetary amount here is also to be included in the table at 3.12.3)

The particular actions taken by HSNZ include:

- Topping up the Injured Person's Accident Compensation Corporation (**ACC**) entitlement (being 80% of his income) while he was off work so that he continued to receive 100% of his usual pay. The Injured Person also elected to use some of his annual leave to top up his pay for a further period.
- Supported the Injured Person in his efforts to participate in the Paralympics for competitive kayaking. This has involved providing the Injured Person with the time needed to train and compete in competitions while continuing to pay him his full salary.
- Modification of the Injured Person's company vehicle with the necessary devices and means for him to safely drive the vehicle. The vehicle is fully funded by HSNZ, and the Injured Person enjoys full private use of the vehicle.
- Supported the Injured Person to keep closely aligned with his workmates and participate in activities outside of working hours. This has included ensuring he was able to actively participate in a number of fishing competitions and diving trips in the same way as he did prior to the incident.
- Agreeing to provide the Injured Person with a lump sum payment of \$80,000 to spend as he and his whanau chooses, in recognition of the physical and emotional impact the incident has had on them.

The financial value of assistance provided by HSNZ to date is:

Item	Cost
Topping up wages to 100% of the 80% payment that ACC provides to the Injured Person following the workplace injury sustained	\$5,624.67
Support to allow the Injured Person to participate in the World Champion Kayak Race in Hungary (including travel expenses)	\$21,498.00
Compensatory cash payment	\$80,000.00
Total	\$107,122.67

1.11 Detail the support provided or proposed by the person to the victim(s), other(s)

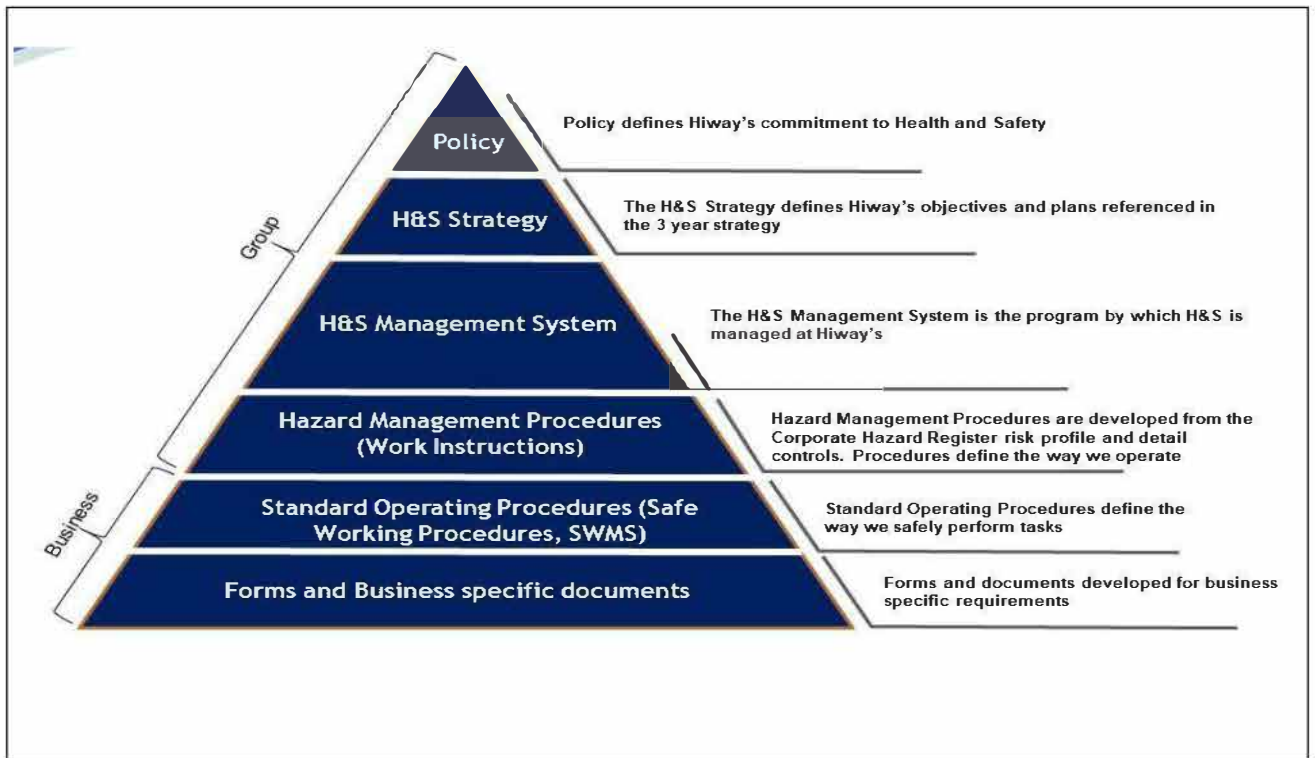
In addition to the support and assistance detailed in section 1.8 above, HSNZ has sought to provide further support to the Injured Person as follows:

Date	Description of support
Ongoing	HSNZ's Operations General Manager has regular weekly contact with the Injured Person and is frequently talking to him to ensure he is coping and is well supported.
Feb 2020	Hokianga Marlin, Kingfish and Hapuku fishing trip with HSNZ's Operations General Manager.
July 2020	Waihou Bay Ranfurly Bank game fishing trip with HSNZ's Operations General Manager and other HSNZ supervisors.
Sept 2020	Coromandel / Great Barrier Island fishing and diving trip with HSNZ's Operations General Manager and other HSNZ supervisors.
Oct 2020	Kawerau Island fishing competition with HSNZ's Operations General Manager.
Dec 2020	The Injured Person and his whanau were invited to attend a number of lunches and dinners arranged by HSNZ for its staff and their families at the end of 2020.
Feb 2021	Hokianga Marlin, Kingfish and Hapuku fishing trip with HSNZ's Operations General Manager.
Leading up to Aug 2021	The Injured Person was training daily for the recent Paralympics and was provided with all the time off he needed in order to pursue this interest. HSNZ continues to allow the Injured Person to have full flexibility with his training roster.

1.12 Detail any current HSMS implemented and maintained by the person

Describe how health and safety risks are managed, including types of procedures or policies or standards:

As part of the Hiway Group, HSNZ operates under a comprehensive Integrated Management System (IMS) that is certified to international standards in quality, environment, and health and safety ISO 45001. This enables HSNZ to identify, manage, and control hazards and risks that arise in its operation. The system is made up of a number of different management documents and is best understood by reference to the diagram below:



3.3 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for workers and/or work and/or the workplace

ACTIVITIES Outline the activity and the expected outcomes	Cost (\$)	Timeframe
Training and competency virtual reality		
<p>Scope: HSNZ will engage a Virtual Reality (VR) developer to develop an internal training programme that uses VR to demonstrate to, and afford workers the opportunity to interact with, the Komatsu Stabiliser operated by HSNZ in a safe learning environment. The VR system is intended to augment competency training, focusing on Safe Working Procedures (SWP) and the consequences of a failure to apply or follow SWPs.</p> <p>Delivery: The delivery of this project will be achieved through three key stages of work:</p> <p><i>Step 1: Engagement with VR developer</i></p> <p>HSNZ will meet with a VR developer and agree on a scope of work to capture the operating environment, plant, and the inspection and maintenance procedures. The initial equipment and operating environment will focus on the interaction of workers with stabilisers during maintenance and cleaning activities.</p> <p><i>Step 2: Product refinement and testing</i></p> <p>HSNZ will work with the VR developer to refine the VR environment and programme. It is intended that a VR module will be developed to address the inspection, maintenance and operational requirements of the Komatsu Stabiliser, with the option to add different models of stabiliser into the programme</p>	<p>Development and production of stabiliser inspection and maintenance module (Komatsu Stabiliser) - \$100,000</p> <p>Purchase of VR equipment by HSNZ - \$10,000</p>	<p>Within 12 months of this undertaking being accepted</p> <p>Within 12 months of this undertaking being accepted</p>

<p>at a later stage.</p> <p>This stage of work will also involve HSNZ undertaking initial engagement with its workers and the Injured Person to ensure that the work environment is accurately captured in the VR programme. The draft VR programme will be presented to workers (including the Injured Person) and feedback will be sought from them as to whether the programme operation and environment meets the training needs of workers and whether any refinements can be made to better align the product with "work as done" by HSNZ's workers.</p> <p>Feedback from HSNZ's workers will be collated and fed back to the VR developer to make the necessary revisions to the VR programme.</p> <p><i>Step 3: Engagement with Injured Person and workers</i></p> <p>Before the launch of the VR programme, HSNZ will provide its workers (including the Injured Person) with the opportunity to test and provide any further feedback on the final product before it is published. HSNZ will again collate the feedback from workers and engage with the VR developer about any final changes necessary prior to launching the product.</p> <p>Outcome: The VR training programme will provide a unique and engaging training experience that will be rolled out to all new and current HSNZ employees. It is intended that the programme will enhance current training and competency practices by providing a risk free environment for workers to engage with plant and equipment. The VR training will also provide a practical means of delivering training to workers who otherwise struggle due to literacy or language barriers to get the full benefit of traditional training offerings.</p>		
<p>Independent plant risk assessments against AS4024</p>		
<p>Scope: HSNZ will engage specialist plant auditing consultancy, Australian Risk Services (ARS), to review each model of stabilising equipment owned by HSNZ and assess it against both the guarding requirements of AS4024, and the standards set in WorkSafe's Safe Use of Machinery guidance material (Machinery Guidelines).</p> <p>Delivery: A qualified plant assessor from ARS will complete an in-person assessment of each of HSNZ's different models of stabilising equipment (being the Komatsu GS360, Komatsu tracked stabiliser, Wirtgen 240, Wirtgen 200, Landex stabiliser and the Bomag stabiliser) to identify risks posed by unguarded nip points and any other general machine safety issues. Once relevant risks have been identified ARS will provide recommendations for engineering and other controls that satisfy the conditions of guarding standard AS4024 and the Machinery Guidelines.</p> <p>As part of this process, HSNZ will arrange workshops between HSNZ's plant operators and the ARS plant assessor, so there is an opportunity for workers to discuss and provide their views on the risks posed by the operation of the stabilising equipment (based on their experience operating it), and any ideas they may</p>	<p>Plant assessments of six items of stabiliser equipment - \$15,000</p> <p>Travel costs for assessor - \$4,320</p>	<p>Within 12 months of this undertaking being accepted</p>

<p>have for mitigating these risks.</p> <p>Outcome: This will deliver an independent expert assessment of the potential risks of various items of plant for the purpose of identifying and ensuring appropriate safety controls are in place and meets the requirements of AS4024 and the Machinery Guidelines. By having an assessment conducted on each of the models of stabilising equipment operated by the business, HSNZ can then implement any recommended improvements to its entire fleet of similar plant.</p>		
<p>Workplace literacy support</p>		
<p>Scope: HSNZ recognises that workplace roles increasingly require strong literacy, numeracy, critical thinking, problem solving, and communication skills. Some workers struggle with these core skills, which impacts on their confidence and performance.</p> <p>HSNZ will partner with an external training provider, The Learning Wave, to run a series of workplace literacy training sessions for workers needing and/or expressing interest in attending.</p> <p>Delivery: Trainers from The Learning Wave will run a series of training sessions with HSNZ staff focusing on core literacy skills and giving staff the practical tools to work more effectively as individuals and in their work crews. HSNZ will engage with The Learning Wave to agree the scope of the sessions to ensure they meet the specific needs of the staff who will attend the sessions.</p> <p>Outcome: This programme will lift the workplace skills and capability of HSNZ's staff so they have the foundational skills and confidence to perform better in managing the literacy demands of their roles. It will also allow them to better contribute to improving the health and safety systems and performance of the business.</p>	<p>\$3,378.40 (the balance of the cost associated with this initiative was covered via funding from the Tertiary Education Commission)</p>	<p>Within 12 months of this undertaking being accepted</p>
<p>Total estimated costs of benefits for workers/others:</p>	<p>\$132,698.40</p>	
<p>3.4 Activities to be undertaken to promote the objective of the health and safety legislation that will deliver benefits for the wider industry or sector</p>		
<p>ACTIVITIES Outline the activity and the expected outcomes</p>	<p>Cost (\$)</p>	<p>Timeframe</p>
<p>Stabilising industry improvement initiative</p>		
<p>Scope: HSNZ will meet with the two other New Zealand companies operating Komatsu GS360 stabilising equipment (Hibiscus Contractors Limited and Gideon Contractors Limited)</p>	<p>\$90,000 to cover expert involvement,</p>	<p>Within 12 months of this undertaking being accepted</p>

<p>to identify (and where practicable), design and implement further safety improvements that can be made to this equipment to prevent the operation of the rotor when carrying out maintenance or cleaning activities.</p> <p>HSNZ will also share the new VR training programme for stabilizers developed in accordance with section 3.3 above with them, so they can consider and adopt it if they wish.</p> <p>Delivery: The delivery of this project will be achieved through four key stages of work:</p> <p><i>Step 1: Engagement with relevant parties</i></p> <p>HSNZ will meet with each of the companies that operate Komatsu GS360 stabilising equipment to discuss the factors in relation to the design and function of Komatsu GS360 stabilising equipment that exposes workers to an entrapment risk.</p> <p>The purpose of these meetings will be to discuss current guarding issues with this equipment and to present HSNZ's findings and learnings from the incident and improvements to limit access to the rotor void. The ultimate goal is to identify a guarding solution that can be retrofitted to existing stabilising equipment that exposes workers to a void, and encourage adoption of the guarding solution. HSNZ will offer information about the design, construction, and installation of any identified guarding solution.</p> <p><i>Step 2: Expert advice and design development</i></p> <p>HSNZ's workshop engineering manager and operations manager will work with an external expert (Nick Frame) to consider the recommendations from WorkSafe's guarding expert, and look to develop and install a guarding solution that, as far as is practicably possible, meets the intent of guarding standard AS4024.</p> <p><i>Step 3: Sharing solution with industry</i></p> <p>At a meeting with the companies that operate Komatsu GS360 stabilisers, HSNZ will present a guarding solution and explain the process and benefits of retrofitting this solution to Komatsu GS360 stabilisers.</p> <p>At the same time, HSNZ will present the VR training programme and explain how HSNZ uses it and how it can assist the other companies using stabilizers to enhance their training programmes too.</p> <p><i>Step 4: Retrofitting programme</i></p> <p>HSNZ will use any identified guarding solution as part of a machinery retrofitting programme and will fit the identified solution to its Komatsu GS360 stabilisers.</p> <p>Outcome: This will provide a forum where operators of Komatsu GS360 stabilisers can engage, explore, and look to develop a guarding solution to improve the safety of Komatsu GS360 stabilisers across New Zealand. The sharing of design information and manufacturing services will then support the manufacture and installation by others of the guarding solution identified through this process.</p>	<p>travel, management time, engineering design and review, and materials.</p>	
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Presentations to industry participants		
<p>Scope: HSNZ will prepare and present a session to the Auckland branch of CCNZ to share information and learnings from the incident. HSNZ will separately prepare and deliver a webinar to the wider CCNZ members throughout New Zealand.</p> <p>Delivery: HSNZ representatives will present about the incident, the learnings arising from it, and the actions that will be implemented by HSNZ in accordance with this enforceable undertaking. The presentation will focus on the work done to improve operator competency and situational awareness through the delivery of a VR training programme.</p> <p>Outcome: The presentation will provide an opportunity to engage with the wider construction industry and to share important learnings about the incident and the benefits of VR technology to overcome challenges in delivering meaningful and effective training to a diverse workforce.</p>	\$10,000	Within 12 months of this undertaking being accepted
Total estimated costs of benefits for industry:	\$100,000	
3.5 Activities to be undertaken to promote the objectives of the health and safety legislation that will deliver benefits for the community		
ACTIVITIES Outline the activity and the expected outcomes	Cost (\$)	Timeframe
Donation to Red Beach Surf Life Saving Club		
HSNZ is aware the Injured Person was and is still actively involved with the lifesaving club and values the contribution made to beach safety. HSNZ will make a donation to support the excellent work done by the Red Beach Surf Life Saving Club.	\$10,000	Within 3 months of this undertaking being accepted
Donation to the Artificial Limb Service		
HSNZ will make a donation to support the work of the Artificial Limb Service, which is involved with the manufacture, repair, and provision of prosthetics for amputees. At the request of the Injured Person, HSNZ will liaise with the Artificial Limb Service and seek to ensure the donation is used to fund artificial limbs for two amputee children.	\$10,000	Within 3 months of this undertaking being accepted
Donation to the Westpac Rescue Helicopter Service		
HSNZ will make a donation to support the work of the Westpac Helicopter Service of New Zealand, a not-for-profit organisation dedicated to providing a helicopter rescue service across New Zealand.	\$10,000	Within 3 months of this undertaking being accepted

Total estimated costs of benefits for the community:

\$30,000