

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

Board of Trustees of Tarawera High School

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:

Chair of Board of Trustees, Tarawera High School

On behalf of:

Board of Trustees of Tarawera High School

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

Board of Trustees of Tarawera High School

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

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

Secondary School Education

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)

Chair of Board of Trustees of Tarawera High School

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

Board of Trustees of Tarawera High School

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

School

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

Comments:

Helen Tuhoro

Physical address:

120 River Road
Kawerau 3127

Postal address: (if different from physical address)

PO Box 12
Kawerau

Work phone: 07 323 6553

Mobile phone: 027 231 7443

Email: principal@tarawera.school.nz

Industry: Education

Workers (enter numbers):

Full-time: 58 Part time: 14 Casual: 1

1.2 Detail of the contravention

Tarawera High School (the School) is alleged to have breached sections 36(2), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015 in relation to an education outside the classroom (EOTC) snorkelling trip to Lake Rotoma on 19 March 2020.

It is alleged that a student's death on that trip is due to the School's failure to:

- a) undertake effective emergency planning; and
- b) ensure effective supervision of the students undertaking the snorkelling activity.

1.3 Detail the events surrounding the contravention

The student was a 16 year old student at the school in March 2020.

The student was on an NCEA course in Open Water Snorkelling. The New Zealand Qualifications Authority (NZQA) NCEA standards to be covered in this course included standard 28391 snorkel dive in open water. The School engaged Dive Zone Tauranga (DZT) to instruct on and assess the course, which it did at Lake Rotoma on 17 and 18 February 2020.

The School planned a further snorkelling activity at Lake Rotoma, during which the skills previously assessed by DZT in February 2020 would be reassessed by the School as this standard (28391) required students to show the skill consistently. The location selected was Matahi Scenic Reserve, at the southern end of Lake Rotoma, where there is a toilet block, boat ramp and barbecue area.

There were two teachers undertaking supervision, a trip leader and a teacher assisting, who both had relevant qualifications and experience, and were familiar with Lake Rotoma, having taken students for the same activities in previous years.

The student had previously been assessed as a competent swimmer, and had previously completed EOTC activities and the DZT snorkelling assessments at Lake Rotoma.

The trip leader was in the water with the students. Another teacher was assisting and remained on the beach to supervise and assess the students' snorkelling skills from there. The teacher assisting was also to prepare food for the students.

The trip leader gave a safety briefing to the students before they left the school. Once at Lake Rotoma, after the students had changed into wetsuits, fins, masks and snorkels, the trip leader gave them a second briefing outlining safety factors, swimming boundaries and buddy expectations.

The students each swam with a buddy and were practicing duck diving, swimming downwards. The trip leader assessed each of the students' ability to duck dive as they swam towards him.

Once they were near him, he gathered them into a semi circle to assess their ability to clear their masks. The student was to the trip leader's right, within arms' reach.

The student's swim buddy had turned away from him. When the buddy turned back towards the student he noticed the student had rolled onto his side and was thrashing around. The student's foot hit the back of the trip leader's head. The trip leader turned, grabbed the student's ankle and pulled him towards him. He asked the student why he had kicked him in the head, then noticed the student's eyes were wide open and staring and that his arms were swinging in an uncontrolled manner.

The trip leader immediately turned the student onto his back, face up, and loosened his wet suit from around his neck in case it was restricting his breathing or putting pressure on his carotid artery. The trip leader then shouted to the rest of the students to get out of the water and began towing the student back to shore. The trip leader then shouted for some of the other students to come back and help him.

Once on shore the trip leader commenced CPR as the student had a weak pulse but was not breathing. The trip leader shouted to the teacher assisting to call an ambulance. The teacher assisting tried but there was no cell phone reception, even though this had not been an issue on previous trips to Lake Rotoma.

The teacher assisting began driving towards Rotorua. Approximately 400 500m towards Rotorua he was able to call emergency services at 10:48am. The teacher assisting then returned to the beach.

By then two members of the public were assisting. One was an off duty first responder with FENZ, and another was an off duty ambulance medic.

At 11:02 St Johns staff arrived, and later staff from the Rescue helicopter. The student could not be revived.

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
/ /	None			
/ /				
/ /				

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)

Education Outside of the Classroom (EOTC) plans have been reviewed and hazard and emergency planning updated. This has been shared with POET - Perry Outdoor Education Trust and EONZ Education Outdoors New Zealand, who provide advice, assistance and template documentation for schools on their EOTC programmes. This was also shared at EONZ event (the importance of risk assessments and what the school has learned about conducting risk assessments).

The School's communication plan has been updated. The Delorme (satellite phone) is now taken on all EOTC trips to ensure contact can be made.

Teachers undertaking EOTC activities such as Camps and Outdoor Education curriculum tasks have undergone further training with POET, particularly on First Aid and the importance of pre site visits. All staff have been offered training from the EOTC Coordinator on thorough completing of planning and other relevant EOTC documents.

Training attended by relevant staff run by Peak Safety Ltd which includes risk assessment and First Aid.

The School has purchased a defibrillator and transportation pack, which is taken to Outdoor Education activities and camp events. Cost: \$4,043.83

Professional Learning and Development (PLD) undertaken:

- 10-11 August 2020 - On-site Peak Safety course; 9 teaching staff attended. Cost: \$2,156.25
- 17-18 September 2020 - Off-site POET first aid course; 2 teaching staff attended. Cost: \$506.00
- 31 October 2020 - On-site St Johns first aid course; 6 teaching staff and 7 teacher aides attended. Cost: \$1,782.50
- 23 February 2021 EOTC workshop; various staff attended. No cost.
- 24-25 February 2021 - On-site Peak Safety course; 2 teaching staff attended. Cost: \$287.50
- 13 April 2021 - Online EONZ Standard Operating Procedures webinar; 1 teaching staff member attended (the trip leader). No cost due to EONZ subscription.
- 8 June 2021 - Online EONZ EOTC Guidelines Review Update and Discussion webinar 1 teaching staff member attended. No cost due to EONZ subscription.

PLD Total: \$4,732.25

POET training and Support	\$110
Specific training and support on Year 13 camp	\$1,144.10
Specific training and support on Year 10 camp	\$1,759.25
Specific training and support on Year 9 camp	\$1,763.22

External counselling for staff involved, whnau staff member and principal: \$5,000
 External counselling will continue to be provided as required.

1.6 Total amount of money spent on rectifications

\$18,552.65

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

Fatality due to drowning

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 student's mother. The student's father passed away several years ago.
One of the student's cousins is a teacher at the school, and has also been given counselling support.
Students who have been affected have also had counselling available to them.

Detail offer of amends or payments:

[REDACTED]

[REDACTED]

[REDACTED]

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

The Principal has consulted with the student's mother, who advised that she had informed WorkSafe that she did not hold the school responsible, and did not want WorkSafe to take any enforcement action. She verbally confirmed that she supported an Enforceable Undertaking as an alternative to prosecution.

A letter from the student's mother is attached.

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

Confirmation has been provided from the Perry Outdoor Education Trust (POET) and Education Outdoors New Zealand (EONZ) that indicates the benefits which would accrue to the education sector through the provision of the proposed professional development and training.

The Perry Outdoor Education Trust and Education Outdoors New Zealand have provided letters of support, which are attached to this application.

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

DATE	DESCRIPTION OF SUPPORT	COMMENTS
29 / 06 / 2021	Reparation payment to the student's mother of \$100,000	
14 / 10 / 2020	Payment for the student's headstone \$1,800	
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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 set out in 1.5 above, Education Outside of the Classroom (EOTC) plans have been reviewed and hazard and emergency planning updated.

This has been shared with POET - Perry Outdoor Education Trust and EONZ Education Outdoors New Zealand, who provide advice, assistance and template documentation for schools on their EOTC programmes. This was also shared at EONZ event (the importance of risk assessments and what the school has learned about conducting risk assessments).

The School's communication plan has been updated. The Delorme (satellite phone) is now taken on all EOTC trips to ensure contact can be made.

Teachers undertaking EOTC activities such as Camps and Outdoor Education curriculum tasks have undergone further training with POET, particularly on First Aid and the importance of pre-site visits. All staff have been offered training from the EOTC Coordinator on thorough completing of planning and other relevant EOTC documents.

Training attended by some staff run by Peak Safety Ltd which includes risk assessment and First Aid.

The School has purchased a defibrillator, which is taken to Outdoor Education activities and camp events.

Professional Learning and Development (PLD) undertaken:

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- 8 June 2021 Online EONZ EOTC Guidelines Review Update and Discussion webinar 1 teaching staff member attended. No cost due to EONZ subscription.

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

All EOTC documentation was completed with the support and guidance of POET and EONZ. School policies are revisited triennially by the BOT.

Any legislation changes with regard to ratios etc. are notified to the school by Ministry of Education (MoE) through the Principal.

Other recommendations made by professional bodies such as POET and EONZ are received by the school through attendance at conferences and via digital communication to the school. These are then acted upon by the EOTC Coordinator by alteration to documentation and communication to staff directly impacted by them.

The school will now engage an external party to audit and review all existing EOTC documentation of policies and procedures in relation to Outdoor Education activities to identify any errors or omissions and to ensure all regulations and MoE guidelines are met, reporting their findings to the BOT.

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

Tarawera High School has consulted with the student's mother, POET and EONZ about this undertaking and they are supportive of the measures proposed. See the letters of support attached with this application from POET and EONZ.

The school has also consulted with its local iwi, Ngati Tuwharetoa, and with the Mayor of Kawerau District Council. Both support this application, and letters of support from each are attached.

Tarawera High School has also consulted with Melville High School regarding their application for an enforceable undertaking. While the two schools did not want their undertakings to duplicate the benefits to industry, in preparing the applications they have considered how their applications could complement each other and how the schools could work together to deliver benefits to the education sector. Tarawera understands Melville have suggested making themselves available to peer review other schools' EOTC policies, and is willing to work with them in doing this. Likewise, Tarawera are proposing to conduct "spotters training" to improve water safety, and Melville has indicated that it would be willing to work with Tarawera on that also.

The Schools have both, following feedback from WorkSafe, consulted with the Ministry of Education. We attach a letter from Jocelyn Mikaere, the Hautū / Deputy Secretary of Education at the Ministry of Education in support of the two schools' proposals.

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

The School acknowledges the contraventions alleged by WorkSafe. It understands and accepts that it is responsible for the safety of students in its care, and it takes that duty very seriously.

We are also responsible for the health and well-being of staff directly impacted by this tragic accident, including the teachers involved and the student's cousin (teacher on the staff).

The steps taken to make amends following the contravention included:

* Waiting with the whanau at the student's home for his body to be returned from the undertaker supplying food, furniture, awhina and aroha to all.

* Organising for the student's funeral to take place at the school while Under COVID level 3. This included liaising with Ministers and undertakers and gaining consents from Ministry of Health and MoE. Working with the Police and others to ensure all whanau could attend the service held at school.

* Immediately upon the completion of the burial at the local cemetery, NZ went into COVID level 4 lockdown. As a school we were seriously concerned for the students, staff and whanau hauora during this time of isolation immediately following the student's passing. As a result we not only supported them through counselling, (which could only be done via phone) but also in welfare checks at the gates of homes leaving food parcels, via video and phone calls including the family, especially Mum.

* Hikoi back to Lake Rotoma once schools were open again in May 2020 when staff and students were ready. Lifting of the tapu from the lake with Kaumatua, Kuia, students, staff, parents, BOT, counsellors, community members. A teacher swam into the lake to collect the buoy left on the day, while students performed a haka and sang waiata. Finally leaving the lake at dusk when flowers were placed at the water's edge and in the lake itself.

2.2 Statement of regret that the contravention occurred

The School was deeply shocked and saddened by the student's passing. It strives to care for every student and is extremely sorry and distraught that he died while on a school activity.

Since his passing, all staff involved have reflected on what they could have done differently. If they could go back in time and change things, they would.

The student's death has affected the whole school community, as he was well liked. His family have a long association with the school and in the community of Kawerau. The Principal, Helen Tuhoro, taught both his mother and father, his grandmother used to work at the old school (Kawerau College) and his cousin currently works as a teacher in the school. One of the teachers at the lake had been the Head Boy at the old school and has lived his life within the community of Kawerau and at Lake Rotoma.

On the anniversary of the student's death 19 March, 2021 a memorial service was held at the school at dawn starting with the Defence Academy, which the student was part of, lowering the flag to 1/2 mast. His mum was invited, but was too upset due to his cemetery unveiling the following day. The school's Kaumatua led the service, which was attended by Police who were there on the day and who work closely with the school, along with BOT, staff and past students from 2020 who had now left.

A memorial plaque was unveiled by the student's cousin and her 2 children, while a tree was planted by his swim buddy and the two teachers involved on the day. A memorial garden and seat are planned to finish the area that has been dedicated to his life and memory.

Mrs Tuhoro and the two teachers involved are all devastated by his loss. They hope that this undertaking will help both his family and the school community come to terms with that, and that it will improve EOTC practices in New Zealand to prevent another incident occurring.

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

The School understands the need to punish those who do not adhere to safety standards. However, in this instance it asks that this is balanced against the following considerations:

1. The School must operate within the constraints of its Ministry of Education funding to deliver education. Any fine imposed (which would be paid to the crown account) would therefore no longer be available to deliver education to students.

2. This is exacerbated by the fact that the School is a decile one school, located in an area of economic hardship and deprivation, which means it cannot rely on its local community to fund raise money. This situation has worsened as Norske Skog, which owns the Tasman Mill in Kawerau, announced on 9 June that the paper mill would be closed and its assets sold, with production wrapping up by 30 June 2021. 160 people have lost jobs with that closure, creating a further impact on the school's local community.

3. The personal toll this has already taken on the two teachers involved would be exacerbated by a prosecution. They are both highly skilled and well respected teachers who have already struggled since the student's passing, experiencing a loss of confidence in their teaching, impact on their own families' lives and as fathers of sons themselves, and the immense grief at the loss of a student who they both cared for deeply.

A prosecution may make them decide to leave the teaching profession, which the School understands the teachers involved in the student fatality at Melville High School have done. The School struggles to attract staff due to its location and low decile status. Losing either of the teachers would have a huge impact on the school, their families and the community.

4. The enforceable undertaking will allow the school to take meaningful actions both in response to the incident and in the student's memory (such as the scholarship). If this application for an enforceable undertaking is not accepted, that money will have to be put aside for a possible fine, rather than used for the benefit of the community and for the improvement of safety in delivering EOTC in New Zealand schools.

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

Tarawera High School is absolutely committed to ensuring that a similar incident will not reoccur.

This is evidenced by the measures it has taken internally (for example in reviewing its internal documentation, use of the Delorme satellite communication and purchase of a defibrillator) and externally by sharing what it has learned with national bodies such as EONZ and POET and with other schools both formally at conferences and informally through shared networks.

The School hopes that by sharing this information it can prevent a similar event occurring at any school in New Zealand.

Further information in respect of the School's commitment to preventing a recurrence is detailed in section 3.2 below.

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)

Board of Trustees of Tarawera High School

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)

Board of Trustees of Tarawera High School

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)

Board of Trustees of Tarawera High School

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

(type of evidence provided)

Bank statement confirming the payment of reparation, and receipts for items purchased, and training delivered to date.
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)

Helen Tuhoro

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

None.

2.9 Statement regarding Intellectual Property

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

Board of Trustees of Tarawera High School, in respect of information and documentation developed by or specifically for the School 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)

Chair of Board of Trustees of Tarawera High School

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)

Board of Trustees of Tarawera High School

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:

Tarawera High School commits to performing the actions set out in section 3.3 of this application to ensure the ongoing effective management of risks to health and safety while students are engaging in EOTC.

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:

Running training for other schools on scanning skills for land-based teachers when supervising swimmers and students undertaking water based activities. The school has obtained Surf Life Saving NZ's permission to use the relevant information from SLSNZ's training manual for the Surf Lifeguard Award for this purpose.

Continuing to upskill staff in existing and new methods of health and safety management through increasing their qualifications and experience

Liaising with EONZ and POET so that lessons learned as a result of this incident are shared with schools across New Zealand. This is already underway, for example on 8 June 2021, a teacher took part in the EONZ online EOTC review and update.

Sharing at relevant conferences for example by offering to speak at the Secondary Principals Association of New Zealand (SPANZ) annual conference, 2022.

Tarawera High School is aware that Melville High School is also making an Enforceable Undertaking application, and the schools intend to liaise in order to share information about the undertakings and the benefit of what they have learned with others in the education sector.

Dissemination will occur by: 31 / 12 / 2022

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.

3.7 Minimum spend

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

- 3.7.1 Board of Trustees of Tarawera High School
commits to a minimum spend of \$ 205,329.73 for this undertaking.

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

- 3.7.2 Board of Trustees of Tarawera High School
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 Board of Trustees of Tarawera High School
Acknowledges the minimum spend comprises of the:

TOTAL COST	MINIMUM SPEND
Financial amends paid to victims (if applicable)	101,800
Benefits to workers/others	39,529.73
Benefits to industry	20,000
Benefits to community	44,000
Estimated cost of the undertaking Plus GST (if any)	\$ 205,329.73

4. Execution

Authorised representative of an organisation

Undertaking given by (name of authorised representative)

Pari Maxwell

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

Chairperson

of (eg organisation name) Board of Trustees Tarawera High School

On the (day) 26 day of (month) November, 2021 (year).

Signature of the person giving the undertaking:

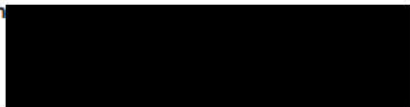


Undertaking given before me:

Witness name: Shima Guice

Witness address: Sharp Tudhope Lawyers
132 Devonport Rd
Tauranga 3110

Witness sign



5. Acceptance

This undertaking is accepted by WorkSafe. On

the (day) 01 day of (month) 12, 20 21 (year).

Signature of person accepting the undertaking:



Name of WorkSafe representative: (General Manager, WorkSafe (or delegate))
Acting Head of Specialist Interventions, Operations

Undertaking given before me:

Witness name: Dayleen Troke

Witness address: 86 Customhouse Quay, Wellington 6041

Witness signature:



28/06/2021 Barbara Kinley (Ethan's Mother), [REDACTED]

ATTENTION: [REDACTED]

I am writing this with regards to the effects that the death of my son, Ethan David Fitzpatrick, has had on me. Please note, that in this statement I speak only for myself, not for the rest of my family.

I have heard many people's thoughts, views, feelings, opinions, judgments and assessments with regards to this matter. Investigations have taken place, interviews have occurred, information has been collected, actions have been taken, and decisions have and are being made.

Now I speak. John 8:32 And ye shall know the truth, and the truth shall make you free.

JOHN 3:16 For God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life.

JOHN 5:24 Verily, verily, I say unto you, He that heareth my word, and believeth on him that sent me, hath everlasting life, and shall not come into condemnation; but is passed from death unto life.

MATTHEW 22: 37-39 Jesus said unto him, Thou shalt love the Lord thy God with all thy heart, and with all thy soul, and with all thy mind. This is the first and great commandment. And the second is like unto it, Thou shalt love thy neighbour as thyself.

Every one of us is a sinner in the eyes of God. We turned our backs on him and decided that we could do a better job than Him. We denied his love and his help, and the world has grown increasingly worse because of this. We need only watch the news, read the paper, or sit in judgment in a courtroom to hear of violence, anger, hatred, abuse, destruction, theft, murders, riots, abortions, euthanasia, and the list goes on. Things that kill the very life that God blessed us with.

God sacrificed his own Son, our Lord Jesus Christ, who was sent to earth as a man, lived without ever sinning, was persecuted, mocked, spat on, lashed, pierced with thorns and nails, and died on a cross for OUR sins. So that WE could be forgiven. He was buried and rose again three days later. Resurrected.

It is only by asking Jesus to come into our hearts and change our lives that we are able to accept the grace, mercy and forgiveness of God for ALL of our sins. It is only by reading the Word of the Gospel that we truly understand just how much God loves us, and wants us to be saved for all of eternity. It is only then that we realize that it is not about religion – that it is about having a personal relationship with our Heavenly Father who created us, **through** His Son Jesus who was sent to save us. His Holy Spirit begins to work inside of us – helping to turn us away from the things of the world, and turn us towards the things of the Spirit – such as faith, love, truth, compassion, forgiveness – and the list goes on.

So – now that you have a small glimpse into the way that I live my life and view things that happen in this world – let me come back to the subject at hand.

I do not agree with the course of action that is taking place right now. It is my opinion that there has been more than enough grief, pain, heartache and trauma as a result of what has taken place. Do I seek to blame anyone for what has happened? NO – I do not. Do I feel that it is appropriate for the government (who know absolutely NOTHING about Ethan and have in no way been affected by his death) to profit from the death of my son by means of a fine being imposed? NO – I do not. In fact, I find that to be an utterly disgusting, insensitive and cold hearted option that I personally believe should be eradicated from all future matters such as these.

I seek peace, forgiveness, grace, mercy, love, healing and acceptance. I pray that for all who have been affected in any way by Ethan's death, that they will be grateful to God for bringing him into their lives, and for being able to share much love and joy with him while he was with us. I pray that they would accept the offer of salvation that is being presented to them right now by asking Jesus to come into their lives and hearts, so that they too may receive His grace, mercy, forgiveness, and ultimate gift of eternal life.

Above all else I pray, Heavenly Father, not mine, but your will be done here today, in earth as it is in Heaven. In Jesus name, Amen.

Before I finish I would like to share this treasured memory with you.

The night before Ethan died, I had been in my lounge reading my bible. Ethan walked past me into the kitchen, and then came back and stood in front of me with his hands held open. When I curiously asked him what he wanted, he replied "My turn to read to you."

I felt such love and joy in my heart as he sat down beside me and began to read aloud to me. The following are the three verses that Ethan spoke the last night we were together.

PSALM 91

1. He that dwelleth in the secret place of the most High shall abide under the shadow of the Almighty.
2. I will say of the LORD, *He is my refuge and my fortress: my God; in him will I trust.*
3. Surely he shall deliver thee from the snare of the fowler, *and* from the noisome pestilence.
4. He shall cover thee with his feathers, and under his wings shalt thou trust: his truth *shall be thy* shield and buckler.
5. Thou shalt not be afraid for the terror by night; *nor* for the arrow *that* flieth by day;
6. *Nor* for the pestilence *that* walketh in darkness; *nor* for the destruction *that* wasteth at noonday.
7. A thousand shall fall at thy side, and ten thousand at thy right hand; *but* it shall not come nigh thee.
8. Only with thine eyes shalt thou behold and see the reward of the wicked.
9. Because thou hast made the LORD, *which* is my refuge, *even* the most High, thy habitation;
10. There shall no evil befall thee, neither shall any plague come nigh thy dwelling.
11. For he shall give his angels charge over thee, to keep thee in all thy ways.
12. They shall bear thee up in *their* hands, lest thou dash thy foot against a stone.
13. Thou shalt tread upon the lion and adder; the young lion and the dragon shalt thou trample under feet.
14. Because he hath set his love upon me, therefore will I deliver him: I will set him on high, because he hath known my name.
15. He shall call upon me, and I will answer him: I *will be* with him in trouble; I will deliver him, and honour him.
16. With long life will I satisfy him, and shew him my salvation.

PSALM 97

1. The LORD reigneth; let the earth rejoice; let the multitude of isles be glad *thereof*.
2. Clouds and darkness *are* round about him: righteousness and judgment *are* the habitation of his throne.
3. A fire goeth before him, and burneth up his enemies round about.
4. His lightnings enlightened the world: the earth saw, and trembled.
5. The hills melted like wax at the presence of the LORD, at the presence of the Lord of the whole earth.
6. The heavens declare his righteousness, and all the people see his glory.

7. Confounded be all they that serve graven images, that boast themselves of idols: worship him all ye gods.
8. Zion heard, and was glad: and the daughters of Judah rejoiced because of thy judgments, O LORD.
9. For thou, LORD, *art* high above all the earth: thou art exalted far above all gods.
10. Ye that love the LORD, hate evil: he preserveth the souls of his saints; he delivereth them out of the hand of the wicked.
11. Light is sown for the righteous, and gladness for the upright in heart.
12. Rejoice in the LORD, ye righteous; and give thanks at the remembrance of his holiness.

PSALM 103

1. Bless the LORD, O my soul: and all that is within me, *bless* his holy name.
2. Bless the LORD, O my soul, and forget not all his benefits:
3. Who forgiveth all thine iniquities; who healeth all thy diseases;
4. Who redeemeth thy life from destruction; who crowneth thee with lovingkindness
5. Who satisfieth thy mouth with good *things*; so *that* thy youth is renewed like the eagle's.
6. The LORD executeth righteousness and judgment for all that are oppressed.
7. He made known his ways unto Moses, his acts unto the children of Israel.
8. The LORD *is* merciful and gracious, slow to anger, and plenteous in mercy.
9. He will not always chide: neither will he keep *his anger* for ever.
10. He hath not dealt with us after our sins; nor rewarded us according to our iniquities.
11. For as the heaven is high above the earth, so great is his mercy toward them that fear him.
12. As far as the east is from the west, so far hath he removed our transgressions from us.
13. Like as a father pitieth *his* children, so the LORD pitieth them that fear him.
14. For he knoweth our frame; he remembereth that we *are* dust.
15. As *for* man, his days *are* as grass: as a flower of the field, so he flourisheth.
16. For the wind passeth over it, and it is gone; and the place thereof shall know it no more.
17. But the mercy of the LORD *is* from everlasting to everlasting upon them that fear him, and his righteousness unto children's children;
18. To such as keep his covenant, and to those that remember his commandments to do them.
19. The LORD hath prepared his throne in the heavens; and his kingdom ruleth over all.
20. Bless the LORD, ye his angels, that excel in strength, that do his commandments, hearkening unto the voice of his word.
21. Bless ye the LORD, all ye his hosts; ye ministers of his, that do his pleasure.
22. Bless the LORD, all his works in all places of his dominion: bless the LORD, O my soul.

In the final words of Jesus himself: "It is finished."

24th June 2021

The Chairperson
Board of Trustees
Tarawera High School
PO Box 12
Kawerau 3127

Tènà koe e te rangatira,

I am writing on behalf of the local kaumàtua and iwi of Ngāti Tūwharetoa to support Tarawera High School's application for an Enforceable Undertaking as a result of Work Safe's recent investigation. At the time of the incident and during the incident, I worked alongside the school management, students and whānau to guide them through local cultural practices such as

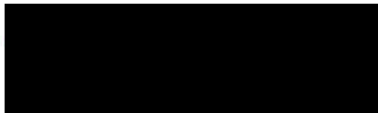
- Karakia & Himene (Ki te kura, ki te wāhi i aitua)
- Whakataua i ngā tauria, kaimahi, whānau ki te kura
- Whakawātea i te whenua, i te wāhi i aitua te tamaiti
- Hiki i te tapu o te wāhi i aitua, taki karakia mō ngā tamariki, me te taiao
- Whakawātea i te whare

It is my belief that an Enforceable Undertaking would allow meaningful actions to be put in place to support schools, in the region and nationally, to improve their tikanga (protocols) practice and learn valuable cultural lessons from this incredibly sad incident.

By providing additional Professional Learning and Development (PLD) opportunities around how to apply and adhere to local tikanga for schools through an Enforceable Undertaking, an increased number of schools would be able to review and improve their cultural practices. Engaging with PLD increases the competence and confidence of teachers to understand, adhere to and implement cultural beliefs and cultural practices for their students wellbeing.

I am willing and able to support Tarawera High School in the implementation of any Enforceable Undertaking that may be granted.

Nāku noa nā,



Hori Raerino

Office of the Mayor

5 July 2021

Ranfurly Court
Private Bag 1004
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Telephone No: (07) 306 9009
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File Reference: 101410

To Whom It May Concern

Dear Sir or Madam

Tarawera High School

This letter serves to support Tarawera High School's application for an enforceable undertaking under Part 4, Health and Safety at Work Act 2015.

I was disappointed to hear that WorkSafe had charged Tarawera High School's Board for breaching sections 36(2), 48(1) and 48(2)(c) of the Health and Safety at Work Act 2015.

Our school community suffered a great loss when this young, vibrant student died in 2020. What was even more difficult was that the nation was at COVID-19 Alert Level 2, which restricted the amount of people that could attend the funeral and pay their respects. Then immediately after the burial, the nation went into lockdown, which meant that family and friends had to mourn and grieve in isolation. Because of that, the school community are still dealing with the loss of this young student a year later. My deepest condolences to the family, the school and the students.

I want to commend the school on the way in which they honoured their student and the family:

- By making the service as memorable as possible; given the restrictions at the time
- By paying tribute at the 2020 Prizegiving with an award and haka performance
- By establishing a memorial plaque and tree at the school grounds
- By providing continued support to the family, staff and students impacted

I implore WorkSafe to reconsider their decision and approve the school's application for an enforceable undertaking. The majority of families that make up our school communities are either low-income or one income families, and most students come from one parent or grandparent families. Charging the Board will take away from the school community that already faces great challenges. However, an enforceable undertaking will enable the school to give back to its community, its region and nation in a more meaningful way.

Yours faithfully



Malcolm J Campbell, JP
Mayor



18 October 2021

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**Tarawera High School and Melville High School – Enforceable Undertaking
Applications to WorkSafe NZ**

Tēnā Koe Ms Grice

Thank you for your letter dated 1 October requesting confirmation of support from the Ministry of Education for the proposals presented by both Tarawera High School and Melville High School in support of each school's application to WorkSafe for an Enforceable Undertaking, as an alternative to prosecution in relation to the tragic drownings of two students at separate EOTC activities.

As you are aware, New Zealand schools are Crown entities and as such act independently from the Ministry of Education. The Ministry of Education, as the Crown's agent has considered the full applications of both Tarawera High School and Melville High School and supports both applications.

These applications have obviously been given considerable thought and consideration by the two high schools. Both applications are sensible and pragmatic in their approach and take account of a wide variety of factors, including the victims' families, the communities that the schools sit within, and the wider education sector. Of particular note is the desire shown by both schools to improve the standard of knowledge and safety in the education sector. Coupled with this is that both schools have demonstrated a willingness to combine their individual efforts to bolster the impact that they can achieve collectively.

The undertakings offered by the high schools will provide value to the education sector and we are aware that engagements already undertaken by both schools have been well received; found helpful by principals and we are aware of at least two schools that have updated their practices in response to the information and support provided by Melville High School. We expect there are already likely to be other schools impacted positively in this way.

Please be assured that the Ministry will work with both schools to ensure that the learning from these two tragedies is reflected in the guidance for all schools.

I trust that this letter provides evidence to WorkSafe's Enforceable Undertakings Panel that the Ministry of Education will continue to support the schools in their endeavours, act as a conduit when appropriate to support dissemination of lessons learnt from these experiences and that where possible, practicable and appropriate we will take and support opportunities to re-enforce and strengthen practice within the sector.

Ngā Mihi



Jocelyn Mikaere
Hautū
Te Mahau | Te Tai Whenua

Appendix - Letters in support of Enforceable Undertaking

EDUCATION OUTDOORS NEW ZEALAND INCORPORATED



Kei te Rangatira, tēnā koe

Education Outdoors New Zealand is the national professional organisation leading and supporting Education Outside the Classroom (EOTC) and education outdoors in Aotearoa New Zealand. Education Outdoors NZ works on behalf of the Ministry of Education to provide professional learning and development workshops, good practice information, one-on-one advice to teachers and develops resources to support schools across the country deliver quality and safe EOTC.

Education Outdoors NZ supports Tarawera High School in its application for an Enforceable Undertaking. An Enforceable Undertaking would allow meaningful actions to be put in place to support schools, in the region and nationally, to improve their EOTC practice and learn valuable lessons from this incredibly sad incident.

By providing additional Professional Learning and Development (PLD) opportunities and resources for schools through an Enforceable Undertaking an increased number of schools would be able to review and improve their safety management systems. Engaging with PLD increases the competence and confidence of teachers to deliver quality, safe EOTC for their students.

Studies have shown that educationally sound EOTC experiences enrich student wellbeing and learning across the curriculum. The establishment of positive relationships with teachers and peers in outdoor spaces can foster a sense of belonging to communities and environments, which is essential for on-going learning. Education Outdoors NZ is deeply concerned that schools may stop providing these important and influential experiences for students in light of this incident, if there is no increase in PLD opportunities that provide the appropriate guidance and support for schools to review and improve their EOTC practices.

Education Outdoors NZ is willing and able to support Tarawera High School in the implementation of any Enforceable Undertaking that may be granted.

Nā mātou noa, nā

Fiona McDonald

Chief Executive

Sophie Watson

Co Chair

Phil Washbourn

Co Chair



4 June 2021

The Chairperson
Board of Trustees
Tarawera High School
P O Box 12
Kawerau 3127

Dear Chairperson

I am writing on behalf of the Perry Outdoor Education Trust to support Tarawera High School's application for an Enforceable Undertaking as a result of Work Safe's recent investigation.

It is our belief that applying resources to the provision of appropriate professional development and training would result in a much more positive outcome for the school and their community in both the long and short term, and to EOTC New Zealand wide.

Yours sincerely



Marlene Julian
Chairperson

Perry Outdoor Education Trust
Private Bag 3091
Waikato Mail Centre
Hamilton 3240