

# **Crown Pastoral Land Tenure Review**

**Lease name: Kyeburn**

**Lease number: PO 197**

## **Substantive Proposal - Part 3**

The report attached is released under the Official Information Act 1982.

**October**

**08**

Appendix 5: Form of Recreation Concession to be Created

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Concession number: PAC

DATED \_\_\_\_\_

Between

MINISTER OF CONSERVATION  
("the Grantor")

and

KYEBURN PASTORAL CO LIMITED  
("the Concessionaire")

CONCESSION DOCUMENT  
(LICENCE)



Department of Conservation  
*Te Papa Atawhai*

THIS LICENCE is made this                      day of

**PARTIES:**

1.     **MINISTER OF CONSERVATION**, ("the Grantor")
2.     **KYEBURN PASTORAL CO LIMITED** ("the Concessionaire")

**BACKGROUND**

- A.     The Grantor manages the Conservation Area described in Schedule 1 as the Land;
- B.     Section 17Q(1) of the Conservation Act 1987 authorises the Grantor to grant a Concession in respect of an Activity in a Conservation Area;
- C.     The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.
- D.     The Grantor is satisfied that the requirements of Part III B of the Conservation Act 1987 have been met

## OPERATIVE PARTS

### TERMS AND CONDITIONS

#### 1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

“**Activity**” has the same meaning as "Activity" in section 2 of the Conservation Act 1987.

“**Access**” means the right, in common with others, to pass and repass over the Land and any roads of the Grantor for ingress to and egress from the Site as is reasonably necessary for the Concessionaire to exercise its rights under this Licence. Access includes helicopter access to the Site if specified in Schedule 2

“**Background**” means the matters referred to under the heading ‘Background’ on p2 of this Document.

“**Concession**” means a concession as defined in section 2 of the Conservation Act 1987.

“**Concession Activity**” means the use of the Land for purposes of the Activity carried out by the Concessionaire and specified in Item 2 of Schedule 1.

“**Concession Fee**” means the amount specified in Item 5 of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Site. It includes any variation in that amount following a Concession Fee Review.

“**Concession Fee Payment Date**” means the date specified in Item 7 of Schedule 1 on which each instalment of the Concession Fee falls due for payment.

“**Concession Fee Review**” means a review of the Concession Fee determined in accordance with clause 7 of this Document.

“**Concession Fee Review Date**” means the date specified in Item 9 of Schedule 1 on which the Concession Fee Review occurs being at 3 year intervals calculated from the date of commencement of this Document.

“**Conservation**” has the same meaning as "Conservation" in section 2 of the Conservation Act 1987.

“**Conservation Area**” has the same meaning as “Conservation area in section 2 of the Conservation Act 1987.

“**Co-Site**” means the use of the Site or the Concessionaire’s facilities on the Site by a third party for an Activity and “**Co-Sitee**” and “**Co-Siting**” have corresponding meanings.

“**Department**” means the Department of Conservation established by section 5 of the Conservation Act 1987.

“**Director-General**” means the Director-General of Conservation.

“**Document**” means this Licence and any subsequent amendments and all schedules, annexures, and plans attached to it.

“**Final Expiry Date**” means the date specified in Item 4 of Schedule 1.

“**Guarantor**”, where relevant, means the person guaranteeing this Document under clause 35.

“**Land**” means a Conservation Area, a Park, or a Reserve, whichever is relevant in the context of this Document, being the area more particularly described in Item 1 of Schedule 1; and includes, where relevant, the Site.

“**Park**” means a national park constituted under the National Parks Act 1980.

“**Penalty Interest Rate**” means the rate specified in Item 8 of Schedule 1.

“**Licence**” has the same meaning as “Licence” in section 2 of the Conservation Act 1987 and for purposes of this Document is the Licence granted under this Document by the Grantor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977 or section 49 of the National Parks Act 1980.

“**Reserve**” means a reserve vested in the Grantor under the Reserves Act 1977.

“**Site**” means, where relevant, part of the Land the details of which are more particularly shown on the plan attached to Schedule 2.

“**Term**” means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

“**Working Days**” means days on which the registered banks are open for general banking business in Wellington.

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;

- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;
- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (i) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 Words used in the Background to this Document have the same meaning given to them in clause 1.1.

## 2.0 GRANT OF LICENCE

2.1 In exercise of the Grantor's powers under section 17Q of the Conservation Act 1987 the Grantor **GRANTS** to the Concessionaire a **LICENCE** to carry out the Concession Activity on the Site subject to the terms and conditions contained in this Document.

2.2 In exercise of the Grantor's powers under section 59A of the Reserves Act 1977 the Grantor **GRANTS** to the Concessionaire a **LICENCE** to carry out the Concession Activity on the Site subject to the terms and conditions contained in this Document.

## 3.0 TERM

3.1 The Licence is for the Term specified in Item 3 of Schedule 1.

3.2 The Term and all renewals, if any, end on the Final Expiry Date specified in Item 4 of Schedule 1.

## 4.0 SURRENDER OF DOCUMENT

4.1 If the Concessionaire wishes to terminate this Document before the expiry of the Term the Concessionaire must give the Grantor 3 months' notice in writing.

4.2 The Grantor must accept the Concessionaire's notice of termination but in doing so may impose whatever terms and conditions the Grantor considers appropriate, including the matters referred to in clause 6.2.

## 5.0 CONCESSION FEE

- 5.1 The Concessionaire must pay to the Grantor in advance and in the manner directed by the Grantor the Concession Fee plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 5, 6 and 7 of Schedule 1.
- 5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 8 of Schedule 1.

## 6.0 OTHER CHARGES

- 6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:
- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Concessionaire's use of the Site or the carrying on of the Concession Activity;
  - (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor;
  - (c) all costs incurred by the Grantor in providing an annual building warrant of fitness to any territorial authority, including any costs paid to an independent qualified person for any report establishing or re-establishing compliance with a compliance schedule. If any work is required to any structure or facility of the Grantor's on the Site in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of that work subject to the Concessionaire's obligations under clause 10.
- 6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its use of the Site and its conduct of the Concession Activity all Other Charges which may be due for the current payment period even though that this period may not expire until after the date of surrender.
- 6.3 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Site. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

## 7.0 CONCESSION FEE REVIEW



7.1 The Grantor will review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) the Grantor will commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving written notice to the Concessionaire.
- (b) subject to clause 7.1(e), the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) if, within 28 days of receipt of the Grantor's notice, the Concessionaire gives written notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee the new Concession Fee is to be determined in accordance with clause 7.2 (a) or (b).
- (d) if the Concessionaire does not give notice to the Grantor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) notwithstanding clause 7.1(b), the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and will be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

7.2 Immediately the Concessionaire gives notice to the Grantor under clause 7.1(c) the parties will endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) by one party giving written notice to the other requiring the new Concession Fee to be determined by arbitration; or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
  - (i) each party will appoint a valuer and give written notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
  - (ii) if the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination will be binding on both parties.

- (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
  - (iv) the valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
  - (v) in determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide Access to the Land.
  - (vi) each party is to be given the opportunity to make written or verbal representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vii) the valuers or the umpire must have regard to any such representations but will not be bound by them.
- (c) the valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to provide how the costs of the determination are to be borne and be binding on the parties.
- (d) (i) if a Concession Fee Review date is postponed because of a moratorium imposed by law the Concession Fee Review Date is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (ii) the Concession Fee Review will establish the market value for the Concession Activity as at that date instead of the date fixed under clause 7.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
- (iii) each subsequent Concession Fee Review date will take place in accordance with the date fixed in clause 7.1.

## 8.0 CONCESSION ACTIVITY

8.1 The Concessionaire is not to use the Site for any purpose other than the Concession Activity.

8.2 The Concessionaire must, as a condition of this Document:

- (a) take out and maintain and pay all fees for all permits, licences, authorisations, consents (including resource consents under the provisions of the Resource Management Act 1991), and renewals ("the Permissions") as may be necessary for the proper conduct of the Concession Activity;

- (b) not do or suffer to be done any act whereby these Permissions may be forfeited or suspended or refused.

## 9.0 SUPPLY OF INFORMATION

- 9.1 At the Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.
- 9.2 Any information supplied to the Grantor under clause 9.1 is subject to an obligation of confidence; but the parties acknowledge that such information may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

## 10.0 COMPLIANCE

- 10.1 The Concessionaire will comply where relevant:
  - (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 or Part IIA of the Reserves Act 1977 or any general policy statement or management plan under section 44 or 45 of the National Parks Act 1980, which ever is appropriate to the Site, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Site, or affecting or relating to the Concession Activity, including any bylaws made under the Reserves Act 1977 or the National Parks Act 1980.
- 10.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.
- 10.3
  - (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or general policy statement will be deemed to be a breach of this Document.
  - (b) A breach or contravention by the Concessionaire of the Legislation affecting or relating to the Site or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.
- 10.4 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or alterations on the Site, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.
- 10.5 If the Legislation requires the Grantor to spend any money on structures, facilities or alterations on the Site which the Grantor considers unreasonable, the Grantor may determine

this Document and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 27.

## **11.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**

- 11.1 The Concessionaire must not erect or bring on to the Site any structure, install any facility or alter the Site in any way without the prior written consent of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Site;
  - (b) bringing any structure on to the Site;
  - (c) installing any facilities on the Site; or
  - (d) altering the Site in any way.
- 11.5 The Concessionaire must not commence any work on the Site until the Grantor has given written approval.
- 11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.
- 11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Site in good repair.

## **12.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS**

- 12.1 The Concessionaire must at the Concessionaire's expense:
- (a) if required by the Grantor take all steps necessary to control any pest, insect or rodent infestation occurring in or emanating from the Site or any structure or facility on the Site, and if considered necessary by the Grantor, engage a pest exterminator approved by the Grantor;
  - (b) comply strictly with the provisions of the Biosecurity Act 1993;

- (c) comply with all requirements of any competent authority regarding sanitation and with all relevant bylaws and fire safety requirements;
- (d) at all times display a copy of the relevant current building warrant of fitness under the Building Act 1991 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Site to which users of the building have ready access;
- (e) keep and maintain all building systems and any structure on the Site in accordance with the requirements of any compliance schedule;
- (f) retain and make available to any territorial authority and any other person with a right to inspect any structures on the Site under the Building Act 1991 a copy of the compliance schedule together with the written reports relating to compliance with the compliance schedule over the previous two year period.

### 13.0 PROTECTION OF THE ENVIRONMENT

13.1 Except as approved in writing by the Grantor the Concessionaire will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Site; or
- (b) bring any plants, animals, or firearms on to the Site; or
- (c) deposit on the Site debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Site; or
- (d) pile or store materials in any place on the Site where it may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Site;

13.2 The Concessionaire will keep the Site in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.

13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Site if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.

13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.

13.5 If, during the Term, the Concessionaire removes a structure or facility from the Site the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good

at its own expense all damage which may have been done by the removal and will leave the Site in a clean and tidy condition.

13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.

13.7 The Concessionaire must:

- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
- (b) not light or permit to be lit any fire on the Site without the written permission of the Grantor in which event the following provisions are to apply:
  - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
  - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort, or warmth;
  - (iii) an approved camp fire may not be lit:
    - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
    - (bb) within 3 metres of a log or dry vegetation;
    - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
    - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
    - (ee) during a prohibited fire season
  - (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977
- (c) not store or permit to be stored fuels or other combustible materials on the Site without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
- (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Site at all times.

- 13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 13.
- 13.9 The Concessionaire must immediately report to the Grantor any act in contravention of clause 13 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.

#### **14.0 ADVERTISING**

- 14.1 The Concessionaire must not erect or display any signs or advertising on the Site without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 14.2 Where required by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 14.3 If required by the Lessor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Site and the surrounding area.
- 14.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

#### **15.0 EMPLOYMENT OF STAFF**

- 15.1 The Concessionaire must ensure that the Concession Activity is conducted at all times by a person or persons suitably trained and qualified to carry out the Concession Activity.
- 15.2 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees if the Grantor so requests.
- 15.3 The Concessionaire must comply with all statutes relating to employment of staff.

#### **16.0 HEALTH AND SAFETY**

- 16.1 The Concessionaire is to carry out the Concession Activity on the Site in a safe and reliable manner and must comply with:
- (a) the Health and Safety in Employment Act 1992 and its regulations; and
  - (b) all other statutes, regulations and bylaws and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.

- 16.2 The Concessionaire must notify the Grantor of any natural events or activities on the Site or the surrounding area which may endanger the public or the environment.
- 16.3 The Concessionaire must:
- (a) take all reasonable steps to protect the safety of all persons present on the Site and must, where necessary, erect protective signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
  - (b) take all reasonable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware.
- 16.4 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor, prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
- 16.5 The Concessionaire must not commence the Concession Activity until:
- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
  - (b) the Concessionaire supplies the Grantor with a copy of the safety plan certified under clause 16.5(a).
- 16.6 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 16 and is not to be construed as implying any responsibility or liability on the part of the Grantor.

## 17.0 TEMPORARY SUSPENSION

- 17.1 The Grantor may temporarily suspend this Document if, in the opinion of the Grantor, there is a temporary risk to public safety or the safety of the Department's staff or the safety of other Concessionaires whether arising from natural events such as earthquake, land slip, volcanic activity, or flood or whether arising in any other way including the activities of the Concessionaire, its employees, clients or invitees.
- 17.2 If in the opinion of the Grantor the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 17.3 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Grantor has become aware.



- 17.4 The word "investigates" in clause 17.3 includes the laying of charges and awaiting the decision of the Court.
- 17.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Site.
- 17.6 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 17 including loss of profits.

## 18.0 ASSIGNMENT

- 18.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it without the prior written consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.
- 18.2 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 18.3 If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 18.4 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

## 19.0 TERMINATION

- 19.1 The Grantor may terminate this Concession by 14 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
  - (b)
    - (i) the Concessionaire breaches any terms of this Document; and
    - (ii) the Grantor has notified the Concessionaire in writing of the breach; and

- (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or
  - (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
  - (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
  - (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
  - (f) ~~there is, in the opinion of the Grantor, a permanent risk to public safety or the environment~~ whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.
- 19.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.
- 19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

## **20.0 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT**

- 20.1 The Grantor may elect to remedy at any time without notice any default by the Concessionaire under this Concession.
- 20.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default.

## 21.0 GRANTOR'S DIRECTIONS

21.1 The Concessionaire must comply with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Site or the conduct of any person on the Site under the authority of this Document.

## 22.0 POWERS, RIGHTS AND AUTHORITIES

22.1 All powers, rights and authorities of the Grantor under this Document and any notice required to be given by the Grantor may be exercised and given by the Director-General or any officer, employee, or agent of the Director-General.

## 23.0 INDEMNITIES AND INSURANCE

23.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, or clients or otherwise caused as a result of its carrying out the Concession Activity on the Site.

23.2 ~~This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.~~

23.3 Without prejudice to or in any way limiting its liability under clause 23.1 the Concessionaire must take out and keep in force during the Term:

(a) a policy of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of its conduct of the Concession Activity on the Site and covering:

(i) general indemnity for a sum not less than the amount specified in Item 10 of Schedule 1; and

(ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 11 of Schedule 1; and

(b) statutory liability for the amount specified in Item 12 of Schedule 1; and

(c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 13 of Schedule 1.

23.4 With respect to clause 23.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

23.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;

- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Site or the property of the Grantor resulting from such act or omission.
- 23.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Site or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to the clause 23.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures and facilities.
- 23.7 Notwithstanding anything else in clause 23 the Grantor is not liable for any indirect or consequential loss howsoever caused.

#### **24.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION**

- 24.1 The Concessionaire must, during the Term, if the Grantor so requests in writing, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Site and conduct of the Concession Activity on the Site.
- 24.2 If the Grantor does not make a request under clause 24.1 the Concessionaire must, during the Term if the Grantor so requests in writing, pay to the Grantor the annual environmental monitoring contribution specified in Item 14 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's conduct of the Concession Activity on the Site.
- 24.3 Subject to any conditions imposed by the Grantor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Site to its condition at the commencement of the Term and replant the Site with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

#### **25.0 EXPIRY OF LICENCE**

- 25.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 25.2 Upon the expiry or earlier termination of the Term the Grantor will not be liable to pay compensation for any structure, facility or land alteration of the Concessionaire, all of which, subject to clause 25.4 are to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Site.

- 25.3 Subject to any conditions set out on Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Site unless the Grantor approves otherwise in writing.
- 25.4 If the Concessionaire does not remove the structures and facilities as required by clause 25.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Site will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.
- 25.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

## 26.0 FORCE MAJEURE

- 26.1 Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.
- 26.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

## 27.0 DISPUTE RESOLUTION AND ARBITRATION

- 27.1 If a dispute arises between the parties in connection with this Document including without limitation the interpretation, validity, breach or termination of any of its provisions, the parties will, without prejudice to any other rights or entitlements they may have under this Document or otherwise, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 27.2 If the dispute is not capable of resolution by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 27.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 27.4 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 27.5 The arbitrator must include in the arbitration award reasons for the determination.

## 28.0 NOTICES

- 28.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 15 of Schedule 1.
- 28.2 A notice given in accordance with clause 28.1 will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of a letter, on the third working day after posting;
  - (c) in the case of facsimile, on the date of dispatch.

## 29.0 COSTS

- 29.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and executing this Document or any extension or variation of this Document.
- 29.2 The Concessionaire must pay in full immediately on demand all costs and fees (including but not limited to solicitors' costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor:
- (a) to enforce or attempt to enforce the Grantor's rights and powers under this Document if the Concessionaire is in breach or default;
  - (b) to recover outstanding money owed to the Grantor.

## 30.0 RELATIONSHIP OF PARTIES

- 30.1 Nothing expressed or implied in this Document shall be construed as:
- (a) constituting the parties as partners or joint venturers;
  - (b) conferring on the Concessionaire any right of exclusive occupation or use of the Site;
  - (c) granting any estate or interest in the Site to the Concessionaire;
  - (d) preventing the Grantor from granting other concessions, whether similar or not, to other persons;
  - (e) derogating from the rights of the Grantor and the public to have access across the Site or the Land.

## 31.0 OFFENCES

31.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Document.

### 32.0 SEVERABILITY

32.1 Any illegality, or invalidity or unenforceability of any provision in this Document is not to affect the legality, validity or enforceability of any other provisions.

### 33.0 ENTIRE UNDERSTANDING

33.1 Except as provided by legislation, this Document and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Document and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Document.

### 34.0 VARIATIONS

34.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.

34.2 The Grantor may vary any conditions of this Document if the variation is necessary:

- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this Licence was granted; or
- (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Licence and the effects of the Activity permitted by this Document require more appropriate conditions.

34.3 The Concessionaire is to be bound by every such variation.

### 35.0 GUARANTEE

35.1 If the Grantor notifies the Concessionaire in writing that the Grantor requires this Document to be guaranteed by a third party the following clauses are to apply.

35.2 Subject to clause 35.1 and in consideration of the Grantor entering into this Document at the Guarantor's request the Guarantor:

- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Document; and
- (b) indemnifies the Grantor against any loss the Grantor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.

35.3 Subject to clause 35.1 the Guarantor covenants with the Grantor that:

- (a) no release, delay, or other indulgence given by the Grantor to the Concessionaire to the Concessionaire's successors or assigns or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
- (b) as between the Guarantor and Grantor the Guarantor may, for all purposes, be treated as the Concessionaire and the Grantor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
- (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
- (d) any assignment of this Document and any Concession Fee Review in accordance with this Document are not to release the Guarantor from liability;
- (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

## 36.0 CO-SITING

36.1 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Site or the Land immediately adjoining the Site except when a Concessionaire demonstrates to the reasonable satisfaction of the Grantor that the Co-Siting by a third party:

- (a) would impact on the ability of the Concessionaire to conduct its Concession Activity;  
or
- (b) would result in a substantial change to the Concession Activity carried out by the Concessionaire on the Site.

36.2 The Grantor will be entitled to require the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Grantor confirming the matter specified in clause 36.1.



36.3 For the avoidance of doubt, a Co-Sitee permitted on the Site must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Site. This separate agreement will not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Site.

Signed by \_\_\_\_\_ :

\_\_\_\_\_  
for and on behalf of  
the Minister of Conservation  
pursuant to a written delegation  
in the presence of :

Witness (signature) \_\_\_\_\_

Witness (print name) \_\_\_\_\_

Occupation \_\_\_\_\_

Address \_\_\_\_\_

Signed for and on behalf of **KYEBURN PASTORAL CO LIMITED**  
as Concessionaire:

\_\_\_\_\_ Director

\_\_\_\_\_ Director

in the presence of :

Witness (signature) \_\_\_\_\_

Witness (print name) :

Occupation :

Address :

## SCHEDULE 1

1. **Land:** Land shown on the tenure review designations plan as "CA1"  
(see definition of Land in clause 1.1)
2. **Concession Activity:** Guided horse trekking trips including day use only of Stone Hut (Pig Shit Inn) and Provans Huts.  
(see definition of Concession Activity in clause 1.1)
3. **Term:** 10 years commencing on the first day of the month following surrender of the pastoral lease P197.  
(see clause 3.1)
4. **Final Expiry Date:**  
(see clause 3.2)
5. **Concession Fee:**
  - (1) Concession Management Fee of \$200 plus GST per annum

**AND**

  - (2) Concession Activity Fee:  
\$8.00 plus GST per adult client guided per full day (defined as a period of more than 4 hours but less than 24 hours on the Land) and \$4.00 plus GST per adult client guided per half day or part thereof (a half day being defined as less than 4 hours on the Land).

The Concession Activity Fee for a child is half the adult client Concession Activity Fee, if children are charged less than adults for the Concession Activity. For the purposes of this provision, a child is a person who has not left school.  
(see clause 5.1)
6. **Concession Fee Instalments:**
  - (1) Concession Management Fee: due annually in advance, with the first payment being due on the commencement date specified in clause 3 of this schedule and annually thereafter.
  - (2) Concession Activity Fee:  
See special condition 8  
(see clause 5.1)
7. **Concession Fee Payment Date:**  
See special condition 8 in schedule 3  
(see clause 5.1)
8. **Penalty Interest Rate:**  
Double the Grantor's bank's current highest 90 day bank bill buy rate  
(see clause 5.2)
9. **Concession Fee Review Date:** 3 years after commencement of this concession.  
clause 7.1) (see
10. **Public Liability General Indemnity Cover:**  
(see clause 23.3)

for \$1,000,000

11. **Public Liability Forest & Rural Fire Extension:** (see clause 23.3)  
for \$500,000

12. **Statutory Liability:** (see clause 23.3)  
Amount \$250,000

13(a) **Other Types of Insurance:** not applicable (see clause 23.3)

13(b) **Amounts Insured for Other Types of Insurances:** not applicable (see clause 23.3)

14. **Environmental Monitoring Contribution:** not applicable (see clause 24.2)

15. **Address for Notices:** (see clause 28)

(a) Grantor Box 5244 fax (03) 477 8626  
DUNEDIN

(b) Concessionaire C/- N.S. Mackenzie, 3RD, Ranfurly.  
fax (03) 444 9055

## SCHEDULE 2

### *Community Service Contribution*

## SCHEDULE 3

### *Special Conditions*

1. The Concessionaire will ensure that the New Zealand Environmental Care Code (attached as Schedule 4) is explained to clients and guides before all trips.
2. The Grantor reserves the right to apply restrictions on the operation of the concession activity (including but not limited to restricting the frequency of trips or reducing the maximum party size) or withdraw all or any part or parts of the Land from the concession if in the Grantor's opinion the activity concerned is having, or may have, an adverse effect on the physical or social environment and the effect cannot be avoided remedied or mitigated to an extent satisfactory to the Grantor. The Concessionaire shall not be entitled to compensation in the event of such action being taken.
3. The Grantor may send, free of charge, any officer of the Department of Conservation on the activity authorised for the purpose of assessing the impact of the activity, and whether the terms and conditions of the licence are being observed. The Concessionaire shall pay to the Grantor the costs of such assessment on or before the date specified on the invoice for same.
4. The maximum group size permitted on any trip is 8 (including no more than 6 clients and 2 guides) and no more than 1 trip per day will be conducted.
5. The Concessionaire shall ensure that horses are fed on weed free fodder and pastures wherever practicable. The Concessionaire will clear the horse dung off the trails used by the public for walking at regular intervals.
6. Cigarette butts, used matches and other smoking-related material are rubbish and should be disposed of in a way that minimizes any potential fire risk, preferably by carrying them out of the land.
7. The Concessionaire shall prepare a safety plan and have it audited by a suitably qualified person approved by the Grantor.
8. No later than 13 months after commencement and annually thereafter, the Concessionaire shall forward to the Conservator, Department of Conservation, Dunedin an annual return showing the number of clients guided on a monthly basis during the last year (with a split between adults and children) and shall at the same time forward the Concession fee and the completed client activity return form and declaration attached as schedule 4.
9. The Concessionaire shall indemnify the Grantor, the Director-General of Conservation, and Her Majesty the Queen against all and any action, claim, injury, damage or loss which may arise as a result of the granting of this licence.
10. The Concessionaire shall ensure that horses do not travel outside specified routes on the Buster Diggings and shall at all times ensure that there is no damage done to historic huts, artifacts, sluicings or sluice faces.

11. The huts that are situated on the land described in this Concession will be available for day use only on a non exclusive basis.







**SUMMARY (PER CLIENT FEE) - Using standard fees for guiding concessions**

\*[Insert actual fee in brackets if different from amount shown]

<b>Total no. of adults per hour or less</b>	<b>Fee/adult per hour or less</b>	
	x \$1.00 *(or \$ _____)	\$
<b>Total no. of adults per 1/2 day</b>	<b>Fee/adult per 1/2 day</b>	
	x \$4.00 *(or \$ _____)	\$
<b>Total no. of adults per full day</b>	<b>Fee/adult per full day</b>	
	x \$8.00 *(or \$ _____)	\$
<b>Total no. of children per hour or less</b>	<b>Fee/child per hour or less</b>	
	x \$0.50 *(or \$ _____)	\$
<b>Total no. of children per 1/2 day</b>	<b>Fee/child per 1/2 day</b>	
	x \$2.00 *(or \$ _____)	\$
<b>Total no. of children per full day</b>	<b>Fee/child per full day</b>	
	x \$4.00 *(or \$ _____)	\$
<b>SUB TOTAL</b>		\$
<b>Plus GST</b>		\$
<b>TOTAL FEE PAYABLE</b>		\$

**SUMMARY (PERCENTAGE FEE) - For concession fees based on gross revenue**

<b>Gross revenue received from activities authorised by the concession (GST exclusive - i.e. before GST is added)</b>	\$	X	%	=	\$
		(insert fee %)			
<b>Plus GST</b>					\$
<b>TOTAL FEE PAYABLE</b>					\$

I certify that the above figures are a true and accurate copy of records held by the company/partnership/trust/society/business.

Signed by: \_\_\_\_\_

Date: / /