

Crown Pastoral Land Tenure Review

**Lease name: EREWHON PARK
(Mt Potts Special Lease)**

Lease number: SC 156

Substantive Proposal - Part 5

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

November

08

Appendix 5: Form of Licence Concession to be Created

Concession number: _____

DATED _____ 200

Between

THE MINISTER OF CONSERVATION
("the Grantor")

and

MT POTTS STATION LIMITED
("the Concessionaire")

LICENCE CONCESSION DOCUMENT
UNDER THE CROWN PASTORAL LAND ACT 1998
(LICENCE)



Department of Conservation
Te Papa Atawhai

THIS LICENCE is made this day of

200

PARTIES:

1. THE MINISTER OF CONSERVATION, ("the Grantor")
2. MT POTTS STATION LIMITED, ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Land described in Schedule 1 as a Conservation Area.
- B. Section 66 of the Crown Pastoral Land Act 1998 authorises the Grantor to grant a Concession for a Concession Activity in a Conservation Area under section 17Q(1) of the Conservation Act 1987.
- C. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.

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 Land 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 3.

"Administration Fee" means the amount specified in Item 6(b) of Schedule 1 and is the annual fee for administering the Concession imposed by the Grantor under section 60D of the Conservation Act 1987.

"Background" means the matters referred to under the heading "Background" on p 1 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 6(a) of Schedule 1 and charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

"Concession Fee Payment Date" means the date specified in Item 8 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 10 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 Land or the Concessionaire's facilities on the Land 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 5 of Schedule 1.

"Guarantor", where relevant, means the person guaranteeing this Document under clause 34.

"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.

"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.

"Penalty Interest Rate" means the rate specified in Item 9 of Schedule 1.

"Reserve" means a reserve vested in the Grantor under the Reserves Act 1977.

"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 the period between any one midnight and the next excluding Saturdays, Sundays and Statutory holidays in the place where the Concession Activity is being carried out.

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 66 of the Crown Pastoral Land Act 1998 the Grantor GRANTS to the Concessionaire a LICENCE under section 17Q(1) of the Conservation Act 1987 to carry out the Concession Activity on the Land 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.

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 the manner directed by the Grantor on or before the Concession Fee Payment Date specified in Item 8 of Schedule 1:

- (a) the Concession Fee plus GST specified in Item 6 of Schedule 1; and
- (b) the Administration Fee specified in Item 6 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee and Administration Fee for 14 days after a Concession Fee Payment Date the Concessionaire is to pay interest on the unpaid Concession Fee and Administration Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

5.3 For purposes of clause 7.0 a reference to Concession Fee includes a reference to the Administration Fee.

6.0 OTHER CHARGES

6.1 In addition to the Concession Fee the Concessionaire must pay all rates, levies, taxes, duties, assessments, charges, and other outgoings which may be charged, levied, or reasonably assessed, or which become payable in relation to the Land or the Concessionaire's use of or activity on the Land.

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 cases 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 licences, permits, 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 1997 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 Land, 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.

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 any 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.

11.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

11.1 The Concessionaire must not erect or bring on to the Land any structure, install any facility or alter the Land 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 Land;
- (b) bringing any structure on to the Land;
- (c) installing any facilities on the Land; or
- (d) altering the Land in any way.

11.5 The Concessionaire must not commence any work on the Land 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 Land 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 Land or any structure or facility on the Land, 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 Land to which users of the building have ready access;
- (e) keep and maintain all building systems and any structure on the Land 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 Land 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 and except as specified in Schedule 1, 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 Land; or
- (b) bring any plants, animals, or firearms on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or

- (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
 - (e) conduct any noxious, noisome, dangerous or offensive activity on the Land;
- 13.2 The Concessionaire will keep the Land 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 Land 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 Land 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 Land 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 Land;
 - (c) not store or permit to be stored fuels or other combustible materials on the Land 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 Land 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 Land 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 Grantor 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 Land 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 Land 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 Land 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 Land 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 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 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 Land.
- 17.5 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, sublicence, 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 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 18.4 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 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 Grantor 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 Land or the conduct of any person on the Land 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 Land.
- 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 Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 11 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 12 of Schedule 1; and
 - (b) statutory liability for the amount specified in Item 13 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Lessor specifies in Item 14 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 Land 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 shall, 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 Land and conduct of the Concession Activity on the Land.

24.2 If the Grantor does not make a request under clause 24.1 the Concessionaire must, during the Term, pay to the Grantor the annual environmental monitoring contribution specified in Item 15 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 Land.

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 Land to its condition at the commencement of the Term and replant the Land 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 Land.

25.3 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Land 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 Land 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 16 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 Working Day on which it is dispatched or, if dispatched after 5.00pm on a Working Day, or if dispatched on a non-working day, on the next Working Day after the date of dispatch
- 29.0 COSTS
- 29.1 The Concessionaire must also pay the costs of the Grantor in enforcing or attempting to enforce the Grantor's rights and powers under this Document if the Concessionaire is in default.
- 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 Land;
 - (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 to and enjoyment of or across 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 GUARANTEE

- 34.1 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.

- 34.2 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.

- 34.3 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.

35.0 VARIATIONS

- 35.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire.

- 35.2 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.

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

36.0 CO-SITING.

36.1 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Land 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 Land.

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 Land 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 Land. This separate agreement will not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

Signed by)
for and on behalf of the Minister)
of Conservation pursuant to a)
written delegation in the presence)
of:)

Witness _____

Occupation _____

Address _____

Signed for and on behalf of Mt)
Potts Station Limited as)
Concessionaire by the Directors in)
the presence of:)

Witness _____

Occupation _____

Address _____

SCHEDULE 1

1. Land: THE operational area for this concession activity occurs over approximately 300 hectares of Conservation Land comprising Part of Section 5 SO 18222 and being part of Mt Potts Pastoral Lease and shown outlined in blue on the plan attached to the Substantive Proposal and herein after referred to as the Land.
(see definition of Land in clause 1.1)
- 2 Concession Activity:
 - i) The exercise of full management and control of all activities relevant to the operation and maintenance of an alpine downhill snow ski field. This includes;
 - a) The operation of ski field transportation in a snow cat vehicle
 - b) The provision of ski patrol and snow safety services including avalanche control measures which require the use of explosives
 - c) heli-skiing and heli-boarding and associated heli-landings
 - d) The maintenance and operation of a building necessary to provide shelter and facilities on the snow ski field
 - e) The erection and occupation of a 12m x 7m storage shed clad in dark green colour steel for the secure storage of safety, rescue, emergency, maintenance and general ski field equipment. The existing building will be removed and the new storage shed is to be located at the same position.
(see definition of Concession Activity in clause 1.1)
3. Term: 30 years commencing on the date on which the Surrender of the pastoral lease folio number 34A/711 (Canterbury registry) becomes effective pursuant to the Crown Pastoral Land Act 1998, being the ...day of ... 200
(see clause 3.1)
4. Right of First Refusal: If, at the expiry date of the lease, the Lessor wishes to again lease the land, the Lessor shall offer to the Lessee a right of first refusal to the lease of the land on terms no less favorable than the Lessor proposes in respect of any third party. If the Lessee does not accept those terms and conditions within a period of three (3) months then the Lessor shall be free to offer a lease for the Land to any third party on those terms and conditions.
(see clause 3.2)
5. Final Expiry Date: 1st July 20... *(see clause 3.3)*
6. Concession Fee: (a) Concession management fee of \$500.00 plus G.S.T. per annum; and
(b) Concession activity fee comprising of 2.5% of gross annual revenue (plus G.S.T.) generated from the exercise of this concession and should include all moneys taken for lift fees (including season passes), instruction, on field food and accommodation and supply of goods (canteen) and services (including the provision of rental equipment and storage) on the snow field.
(see clause 5.1)
7. Concession Fee Installments: Annually *(see clause 5.1)*
8. Concession Fee Payment Date: Annually after surrender of Pastoral lease 34A/711, 1st July 200.. and 1st July 200.. each year thereafter. *(see clause 5.1)*
9. Penalty Interest Rate: Current Westpac Banking Corporation Overdraft Rate Plus 2% *(see clause 5.2)*
10. Concession Fee Review Date: Every three years from the commencement date of this document being 1st July 200.., 1st July 200... *(see clause 7.1)*
11. Public Liability General Indemnity Cover: for \$2,000,000 *(see clause 23.3)*
12. Public Liability Forest & Rural Fire Extension: for \$2,000,000 *(see clause 23.3)*
13. Statutory Liability: \$500,000. *(see clause 23.3)*
- 14(a) Other Types of Insurance: Nil *(see clause 23.3)*
- 14(b) Amounts Insured for Other Types of Insurances: Nil *(see clause 23.3)*
15. Environmental Monitoring Contribution: To be negotiated between the Grantor and the Concessionaire if required as per Clause 24 (Environmental Monitoring and Land Rehabilitation) of the concession document. *(see clause 24.2)*

16. Address for Notices:

(see clause 28)

(a) Grantor Canterbury Conservator

Department Of Conservation
133 Victoria Street
Private Bag 4715
CHRISTCHURCH
Ph (03) 379 9758
Fax (03) 365 1388

(b) Concessionaire

Mt Potts Station Ltd
Hakitere Potts Road
P O Box 12
Mt Somers
Ph (03) 303 9738
Fax.

SCHEDULE 2

Special Conditions.

1. THAT all helicopters will keep at least 500 metres from ground parties encountered during flying.
2. THE Licensee shall have no priority use of the Land or landing sites and shall only be permitted to land only if the sites are clear of other users, including recreationalists.
3. The Concessionaire shall positively promote the philosophies of conservation and preservation inherent in the relevant legislation and shall adhere to the Department's Environmental Care Code.
4. The Conservator shall be entitled to send any officer of the Department of Conservation on any of the activities authorized by this permit during the term of this permit for the purpose of assessing the impact thereof on conservation values, and the implications of the service offered to clients on the Department's responsibility to visitors in general.
5. The Concessionaire shall, if, in the opinion of the Conservator Canterbury, excessive impact is occurring to any part of the area to which this permit applies, modify the method of operation to satisfaction of the Conservator Canterbury, to avoid, remedy or mitigate the adverse effects.
6. Any proposal to provide interpretation of matters of cultural significance to Ngai Tahu must be done in consultation with Te Runanga o Ngai Tahu and Papatipu Runanga.
7. The Concessionaire must submit statutory declarations, as specified by the Grantor on an annual basis which must contain the following information:
 - The number of landings undertaken and sites visited on public conservation lands.
 - The sites at which landings/sites visited occurred.
 - The number of clients landed/sites visited and the reason for the landing or visit.
 - The days on which the landings/sites visited occurred.
8. The Concessionaire may carry out the following maintenance work without specific approval from the Grantor:
 - i) The interior maintenance and modification of the storage shed.
 - ii) The exterior maintenance of the storage shed where such maintenance does not alter that outside appearance of the building.
 - iii) Emergency work where failure to do the work will be prejudicial to the immediate continued safe use and existence of the storage shed.
9. The activity is limited to a maximum of 20 tourist visitors per full day.

Footnote: Any changes to these conditions are governed by section 17zc of the Conservation Act 1987.