



## Concession Document (Lease and Licence)

Concession Number: 108668-ACC

**THIS CONCESSION** is made this 26 day of January 2024

### **PARTIES:**

**Minister of Conservation** (the Grantor)

**Loch Katrine Association Inc** (the Concessionaire)

### **BACKGROUND**

- A. The Department of Conservation ("Department") *Te Papa Atawhai* is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The Department is under the control of the Grantor.
- C. The carrying out of these functions may result in the Grantor granting concessions to carry out activities on public conservation land.
- D. The Grantor administers public conservation lands described in Schedule 1 as the Land.
- E. The Conservation legislation applying to the Land authorises the Grantor to grant a concession over the Land.
- F. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- G. The Concessionaire acknowledges that the land may be the subject of Treaty of Waitangi claims.
- H. The parties wish to record the terms and conditions of this Concession and its Schedules.

### **OPERATIVE PARTS**

- I. In exercise of the Grantor's powers under the Conservation legislation the Grantor **GRANTS** to the Concessionaire a **LEASE AND LICENCE** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Concession and its Schedules.

*Leeann Ellis*

SIGNED on behalf of Loch Katrine Association Incorporated by authorised signatories:

Sec 9(2)(a)

NAME:  
Sec 9(2)(a)

*VICE PRESIDENT*

AND

Sec 9(2)(a)

NAME:  
Sec 9(2)(a)

*SECRETARY.*



SIGNED on behalf of the Minister of Conservation by Leeann Ellis acting under delegated authority

in the presence of:

Witness Signature:

*Kaya Thorn*

Witness Name: Kaya Thorn

Witness Occupation: Permissions Advisor

A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.

Released under the Official Information Act

**SCHEDULE 1**

1.	<b>Land</b> (clause 1)	<p><u>Lease Land</u></p> <p>As marked on the attached plan or map in Schedule 4 being:</p> <p>Physical Description/Common Name: Three (3) Loch Katrine Huts and surrounding curtilage area in Loch Katrine Recreation Reserve</p> <p>Land Status: Held under s.17(1)(a) – Recreation Reserve in Reserves Act 1977</p> <p>Legal Description: Survey Map R.S. 41017 Reserve</p> <p>Map Reference: NaPALIS ID: 1675246</p> <p><u>Licence Land</u></p> <p>As marked on the attached plan or map in Schedule 4 being:</p> <p>Physical Description/Common Name: The adjacent woodshed located at each of the three (3) Loch Katrine Huts and a two (2) cubicle toilet block in Loch Katrine Recreation Reserve</p> <p>Land Status: Held under s.17(1)(a) – Recreation Reserve in Reserves Act 1977</p> <p>Legal Description: Survey Map R.S. 41017 Reserve</p> <p>Map Reference: NaPALIS ID: 1675246</p>
2.	<b>Concession Activity</b> (clause 2)	<p>Lease: To own, occupy, and maintain the following buildings and surrounding curtilage area for the purposes of publicly available overnight accommodation to enable public recreation within the Land - and as more specifically set out in Schedule 3</p> <p>a) Three (3) Loch Katrine Huts</p> <p>Licence: To occupy and maintain the following structures for the purposes of publicly available overnight accommodation and to enable public recreation within the Land - and as more specifically set out in Schedule 3</p> <p>a) Three (3) woodsheds</p> <p>b) A two (2) cubicle toilet block</p>
3.	<b>Term</b> (clause 4)	30 years 0 months commencing on 1 February 2024
4.	<b>Renewal(s)</b> (clause 4)	Nil
5.	<b>Final Expiry Date</b> (clause 4)	31 January 2054
6.	<b>Concession Fee</b> (clause 5)	<b>Annual Activity Fee:</b> 7.5% of gross annual revenue with a minimum fee of \$2,000 plus GST per annum, whichever is greater (waived until the

		first concession fee review or the concession is assigned). and <b>Annual Management Fee:</b> \$400 per annum plus GST <b>Monitoring Fee:</b> Standard Departmental charge-out rates for staff time and mileage required to monitor the effects of the concession activity and compliance with concession conditions.
7.	<b>Environmental Monitoring Contribution</b> (clause 10)	Not required
8.	<b>Community Services Contribution</b> (clause 7)	Not required
9.	<b>Total payments to be made per annum</b> (clause 5)	a) 7.5% of gross annual revenue with a minimum fee of \$2,000 plus GST per annum b) \$400 per annum plus GST (comprising Concession Management Fee (Item 6), Environment Monitoring Contribution (Item 7) and Community Services Contribution (Item 8))
10.	<b>Total payment instalment(s)</b> (clause 5)	Amount to be paid for each instalment in Item 6
11.	<b>Concession Fee Payment Date(s)</b> (clause 5)	As specified on invoice
12.	<b>Penalty Interest Rate</b> (clause 5)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
13.	<b>Concession Fee Review Date(s)</b> (clause 6)	1 February 2027, 1 February 2030, 1 February 2033 and three yearly thereafter
14.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 13)	Types and amounts: Public Liability Insurance for: a) General indemnity for an amount no less than \$1,000,000.00 Subject to review on each Concession Fee Review Date
15.	<b>Health and Safety</b> (clause 14)	Audited Safety Plan: Not required
16.	<b>Concessionaire Identification</b> (clause 32)	Not required

17.	<b>Addresses for Notices</b> (clause 25)	<p>The Grantor's address is:</p> <p><u>Physical Address:</u>                  Department of Conservation                  Level 1, John Wickliffe House                  265 Princes Street                  Dunedin 9016                  New Zealand</p> <p><u>Postal Address:</u>                  Department of Conservation                  Att: National Transaction Centre                  PO Box 5244                  Dunedin 9054</p> <p>Phone: (03) 477 0677                  Email: <a href="mailto:transactioncentre@doc.govt.nz">transactioncentre@doc.govt.nz</a></p>
		<p>The Concessionaire's address in New Zealand is:                  Sec 9(2)(a)</p> 
18.	<b>Guarantee</b> (clause 30)	Not required
19.	<b>Special Conditions</b> (clause 35)	See Schedule 3
20.	<b>Processing Fee</b> (clause 5)	<p>\$3,425 plus GST for notified concession base fee. A full fee waiver has been applied to the processing fee with the exception of the public notification costs.</p> <p>\$945.35 plus GST public notification cost, to be paid (not covered by the fee waiver).</p>

Note: the clause references are to the Grantor's Standard Terms and Conditions of Lease and Licence set out in Schedule 2.

## SCHEDULE 2

### STANDARD TERMS AND CONDITIONS OF LEASE AND LICENCE

1. Interpretation
  - 1.1 In this Document, unless the context otherwise requires:

“**Land**” means the Lease Land and Licence Land described in Item 1 of Schedule 1.

“**Lease Land**” means the Land described as Lease Land in Item 1 of Schedule 1.

“**Licence Land**” means the Land described as Licence Land in Item 1 of Schedule 1.
  - 1.2 Where the Grantor's consent or approval is expressly required under a provision of this Concession, 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 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.
  - 1.4 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.
  - 1.5 Where this Concession provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 25 is to apply.
  - 1.6 The covenants and powers contained in Part 2 of Schedule 3 of the Property Law Act 2007 are not to be implied in this Concession and are expressly negated.

What is being authorised?

The Concessionaire is only allowed to use the Land for the Concession Activity.

The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care and diligence normally practised by suitably qualified and experienced people in carrying out such activities.

The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees and contractors if the Grantor so requests.

The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

What about quiet enjoyment?

- 3.1 The Concessionaire, while paying the Concession Fee and performing and observing the terms and conditions of this Concession, is entitled peaceably to hold and enjoy the Lease Land and any structures and facilities of the Grantor without hindrance or interruption by Grantor or by any person or persons claiming under the Grantor until the expiration or earlier termination of this Concession.
- 3.2 Provided reasonable notice has been given to the Concessionaire the Grantor, its employees and contractors may enter the Lease Land and Licence Land to inspect the Land and facilities, to carry out repairs and to monitor compliance with this Concession.

How long is the Concession for - the Term?

- 4.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.
- 4.2 If there is a right of renewal then the Grantor at the Concessionaire's cost must renew the Term for a further period as set out in Item 4 of Schedule 1 provided the Concessionaire:
  - (a) gives the Grantor at least three month's written notice before the end of the Term, which notice is to be irrevocable, of the Concessionaire's intention to renew this Concession; and
  - (b) at the time notice is given in accordance with this clause the Concessionaire is not in breach of this Concession.
- 4.3 The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further renewal terms is to expire on or before the Final Expiry Date.

What are the fees and when are they to be paid?

- 5.1 The Concessionaire must pay the Processing Fee (Item 20 of Schedule 1) to the Grantor in the manner directed by the Grantor. Except where the Grantor's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.
- 5.2 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10, and 11 of Schedule 1.
- 5.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then 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 12 of Schedule 1.

When can the fee be reviewed?

- 6.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) The Grantor must 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 notice to the Concessionaire.
  - (b) Subject to clause 6.1(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 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 6.2(a) or (b).
  - (d) If the Concessionaire does not give notice to the Grantor under clause 6.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
  - (e) Notwithstanding clause 6.1(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 is to 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.
- 6.2 Immediately the Concessionaire gives notice to the Grantor under clause 6.1(c) the parties are to 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 notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 23) or, if the parties agree,
  - (b) by registered valuers acting as experts and not as arbitrators as follows:
    - (i) Each party must appoint a valuer and give 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 is to 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 oral 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 are not 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 be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (i) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 6.1 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
  - (ii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 6.1.

7. Are there any other charges?

- 7.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 7.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 7.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.
- 7.4 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 the amount specified in Item 8 of Schedule 1 as part of the Total Payment specified in Item 9 of Schedule 1 on the Concession Fee Payment Dates specified in Item 11 of Schedule 1.

8. When can the Concession be assigned?
- 8.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 8.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 8.1.
- 8.3 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.
- 8.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 8.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 8.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.
9. What are the obligations to protect the environment?
- 9.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.
- 9.2 The Concessionaire must at its cost 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.
- 9.3 The Concessionaire must not store hazardous materials on the Land nor store other materials on the Land where they may obstruct the public or create a nuisance.
- 9.4 If directed by the Grantor, the Concessionaire must take all steps necessary to control, or, at the Grantor's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if directed by the Grantor, engage a pest exterminator approved by the Grantor.
- 9.5 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if directed 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.

- 9.6 The Concessionaire must keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably directed by the Grantor the Concessionaire must paint all structures and facilities in colours approved by the Grantor and with paints of a type approved by the Grantor.
- 9.7 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire must, unless the Grantor directs otherwise, repair and make good at its own expense all damage which may have been done by the removal and must leave the Land in a clean and tidy condition.
- 9.8 The Concessionaire must not bury:
- (a) any toilet waste within 50 metres of a water source on the Land; or
  - (b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

10. What about Environmental Monitoring?

- 10.1 The Concessionaire must, during the Term, if the Grantor so directs, 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.
- 10.2 If the Grantor does not issue a direction under clause 10.1 the Concessionaire must, during the Term, pay to the Grantor the annual Environmental Monitoring Contribution specified in Item 7 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

11. When can new structures be erected or land alterations occur?

- 11.1 The Concessionaire must not erect, alter or bring on to the Land any structure not authorised in Schedule 3 nor alter the Land in any way without the prior approval 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 new structure or altering any structure on the Land
  - (b) altering the Land in any way.

- 11.5 The Concessionaire must at all times where a building warrant of fitness under the Building Act 2004 is required display a copy of the relevant current certificate 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.
- 11.6 The Concessionaire must keep and maintain all building systems and any structure on the Land in accordance with the, requirements of any compliance schedule.
- 11.7 The Concessionaire must 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 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two year period.

12. What about advertising?

- 12.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior 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.
- 12.2 If directed 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.
- 12.3 If directed by the Grantor, 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.
- 12.4 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

13. What are the liabilities and who insures?

- 13.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.
- 13.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 13.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 13.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance

or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.

- 13.5 Despite anything else in clause 13 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 13.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 13.7 Where the Grantor is found to be liable in accordance with clause 13.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 13.8 Despite anything else in clause 13 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.9 Without prejudice to or in any way limiting its liability under this clause 13 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 14 of Schedule 1 with a substantial and reputable insurer.
- 13.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 13.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 13.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

14. What about Health and Safety?

- 14.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 15 of Schedule 1), and with any safety directions of the Grantor.
- 14.2 Before commencing the Concession Activity the Concessionaire must provide the Grantor with a copy of that certification.
- 14.3 If the Concessionaire does not hold certification then before commencing the Concession Activity the Concessionaire must, if required by Item 15 of Schedule 1:
- a) prepare a safety plan;
  - b) have it audited by a suitably qualified person approved by the Grantor; and forward to the Grantor a certificate from the auditor certifying that the safety plan is suitable for the Concession Activity; and
  - c) the Concessionaire must obtain from the auditor details as to when the safety plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Grantor within 5 working days of the certificate being issued.
- 14.4 For any Concession Activity that is subject to the Health and Safety at Work (Adventure Activities) Regulations 2016, proof of registration with WorkSafe New Zealand will satisfy the Grantor's requirement under clause 14.3(b).
- 14.5 If clause 14.2 applies then if the Concessionaire amends or replaces the safety plan then before the amendment or replacement plan takes effect the Concessionaire must comply with 14.3(b) and (c).
- 14.6 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 14.7 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 14 and is not to be construed as implying any responsibility or liability on the part of the Grantor.
- 14.8 The Concessionaire must:
- (a) notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;
  - (b) take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
  - (c) take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;

- (d) record and report to the Grantor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
- (e) ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 14;
- (f) be satisfied that facilities or equipment provided by the Grantor to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
- (g) not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

15. What are the compliance obligations of the Concessionaire?

15.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever 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 Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953, Climate Change Response Act 2002 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Land; and
- (e) with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land.

15.2 The Concessionaire must comply with this Concession.

15.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 15.1.(a) is deemed to be a breach of this Concession.

- 15.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.
- 15.5 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or land alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% per annum of the amount spent by the Grantor.
- 15.6 If the Legislation requires the Grantor to spend money on structures, facilities or land alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Lease and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 23.
16. What if the Grantor's structures or facilities are damaged or destroyed
- 16.1 If the Grantor's structures or facilities or any portion of them are totally destroyed or so damaged:
- (a) as to render them untenable, the Lease is to terminate at once; or
  - (b) as, in the reasonable opinion of the Grantor, to require demolition or reconstruction, the Grantor may, within 3 months of the date of damage or destruction, give the Concessionaire 1 month's notice to terminate and a fair proportion of the Concession Fee and Other Charges is to cease to be payable according to the nature and extent of the damage.
- 16.2 Any termination under clause 16.1 is to be without prejudice to the rights of either party against the other.
- 16.3 If the Grantor's structures or facilities or any portion of them are damaged but not so as to render the premises untenable and:
- (a) the Grantor's policy or policies of insurance have not been invalidated or payment of the policy monies refused in consequence of some act or default of the Concessionaire; and
  - (b) all the necessary permits and consents are obtainable; and
  - (c) the Grantor has not exercised the right to terminate under clause 16.1,
- the Grantor must, with all reasonable speed, apply all insurance money received by the Grantor in respect of the damage towards repairing the damage or reinstating the structures or facilities; but the Grantor is not liable to spend any sum of money greater than the amount of the insurance money received.
- 16.4 Any repair or reinstatement may be carried out by the Grantor using such materials and form of construction and according to such plan as the Grantor thinks fit and is to be sufficient so long as it is reasonably adequate for the Concessionaire's use of the Land for the Concession Activity.

- 16.5 Until the completion of the repairs or reinstatement a fair proportion of the Concession Fee and other charges is to cease to be payable according to the nature and extent of the damage.
- 16.6 If any necessary permit or consent is not obtainable or the insurance money received by the Grantor is inadequate for the repair or reinstatement, the Term is at once to terminate but without prejudice to the rights of either party against the other.
17. What are the Grantor's rights to remedy defaults?
- 17.1 The Grantor may elect to remedy at any time, after giving notice, if practicable, any default by the Concessionaire under this Concession. Before electing to so remedy in accordance with this clause, the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.
- 17.2 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. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 14 day's of the Grantor's demand from the date of the demand until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.
18. When can the Concession be suspended?
- 18.1 If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events 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 Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.
- 18.2 If, in the Grantor's opinion, the activities of the Concessionaire are having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.
- 18.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.
- 18.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 18.1 and 18.2 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.
- 18.5 The word "investigates" in clause 18.4 includes the laying of charges and awaiting the decision of the Court.

- 18.6 During any period of temporary suspension arising under clauses 18.1 or 18.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 18.7 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 this clause 18 including loss of profits.

19. When can the Concession be terminated?

- 19.1 The Grantor may terminate this Concession either in whole or in part:
- (a) by 14 days notice to the Concessionaire if the Concession Fee or any other money payable to the Grantor under this Concession is in arrears and unpaid for 10 working days after any of the days appointed for payment whether it has been lawfully demanded or not; or
  - (b) by 14 days notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Grantor if:
    - (i) the Concessionaire breaches any terms of this Concession and in the Grantor's sole opinion the breach is able to be rectified; and
    - (ii) the Grantor has notified the Concessionaire of the breach; and
    - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or such earlier time as specified by the Grantor; or
  - (c) by notice in writing to the Concessionaire where the Concessionaire breaches any terms of this Concession and in the sole opinion of the Grantor the breach is not capable of being rectified; or
  - (d) immediately by notice in writing to the Concessionaire where the Concessionaire breaches clauses 13.9 and 14; or
  - (e) by notice in writing to the Concessionaire if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the conduct of the Concession Activity is manifestly inadequate; or
  - (f) by notice in writing to the Concessionaire if 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 any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Grantor's sole opinion affects or relates to the Concession Activity; or
  - (g) by notice in writing to the Concessionaire if 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

- (h) immediately if there is, in the opinion of the Grantor, a permanent risk to public safety or to the natural and historic resources of the Land 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 Concession on the part of the Concessionaire.
- 19.2 The Grantor may exercise its power to terminate under 19.1(h) without giving notice.
- 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.
- 19.4 Termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

20. What happens on termination or expiry of the Concession?

- 20.1 If the Grantor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, (which permission may be oral or in writing), the occupation is to be on the basis:
  - (a) of a monthly tenancy only, terminable by 1 month's notice by either party; and
  - (b) at the Concession Fee then payable; and
  - (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.
- 20.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.
- 20.3 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.
- 20.4 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.

21. When is the Grantor's consent required?

- 21.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

22. What about other concessions?

- 22.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

23. How will disputes be resolved?

- 23.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, 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.
- 23.2 If the dispute cannot be resolved 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.
- 23.3 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.
- 23.4 The arbitrator must include in the arbitration award reasons for the determination.
- 23.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

24. What about prosecution for offences?

- 24.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Resource Management Act 1991, 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 Concession 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 Concession; 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 Concession.

25. How are notices sent and when are they received?

- 25.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 17 or 18 of Schedule 1. Any such notice is to be deemed to have been received:
  - (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of fax, on the date of dispatch;
  - (c) in the case of post, on the 3rd working day after posting;
  - (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 25.2 If any party's details specified in Item 17 or 18 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

26. What is the scope of the Concession?

- 26.1 Except as provided by legislation, this Concession and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Concession 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 Concession.

27. Can provisions be severed?

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

28. What about the payment of costs?

- 28.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.
- 28.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

29. What is the relationship of parties?

- 29.1 Nothing expressed or implied in this Concession is to 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 Licence Land;
- (c) granting any exclusive estate or interest in the Licence Land to the Concessionaire;
- (d) affecting the rights of the Grantor and the public to have access across the Licence Land.

30. What about a Guarantee?

- 30.1 Where the Grantor has in Item 18 of Schedule 1 required this Concession to be guaranteed by a third party the following clauses are to apply.
- 30.2 In consideration of the Grantor entering into this Concession 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 Concession; and
  - (b) indemnifies the Grantor against any loss the Grantor might suffer should the Concession be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.
- 30.3 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 Concession and any Concession Fee Review in accordance with this Concession 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.

31. What about Co-Siting?

- 31.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 31.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Grantor.
- 31.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable

for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.

- 31.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Land; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Land.
- 31.5 Subject to clause 31.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Land.
- 31.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Land; or
  - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
  - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Land; or
  - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 31.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 31.6.
- 31.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.
- 31.8 Where the Concessionaire is required under clause 31.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 31.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 31.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.

31.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

31.11 The Grantor must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

32. What about Identification cards?

32.1 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor in Item 16 of Schedule 1, obtain Concessionaire Identification cards from the Grantor. The Grantor is to supply such cards to the Concessionaire on a cost recovery basis.

32.2 The Concessionaire and any person acting under the authority of the Concession must carry and display a Concession Identification card when carrying out the Concession Activity.

32.3 The Concessionaire must obtain sufficient cards to ensure all people acting under the authority of the Concession can carry and display such cards when undertaking the Concession Activity.

33. What about registering the Concession?

33.1 The Grantor is not required to do any act or thing to enable this Concession to be registered and the Concessionaire must not register a caveat in respect of the Concessionaire's interest under this Concession.

33.2 Nevertheless, if the Concessionaire wishes to register this Concession under the Land Transfer Act 1952, the Grantor must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which this Concession may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Grantor in enabling such an issue of title and in having this Lease re-executed by the parties in a form suitable for registration.

34. Which clauses survive termination?

34.1 Clauses 13 and 25 survive the termination of this Concession.

35. Are there any Special Conditions?

35.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

36. The Law

36.1 This Concession is to be governed by and interpreted in accordance with the laws of New Zealand.

Released under the Official Information Act

## SCHEDULE 3

### SPECIAL CONDITIONS

#### Climate Change considerations

1. The Concessionaire acknowledges that the Grantor and the Department of Conservation are reviewing their obligations under the Climate Change Response Act 2002 and developing responses to address greenhouse gas emissions from activities conducted on public conservation land and waters. The reviews are likely to result in policies which seek to measure, manage, and reduce greenhouse gas emissions from Concession Activities. The Grantor wishes to signal to the Concessionaire that new concession conditions related to both climate change mitigation and adaptation may be imposed during the life of this Concession to address greenhouse gas emissions associated with the Concession Activity.
2. If the Grantor requests data relating to greenhouse gas emissions associated with the Concession Activity, the Concessionaire must provide any relevant data that is reasonably available to it within 6 months of the Grantor's request.
3. The Grantor may review and amend the conditions of this Concession to reflect climate change-related legislation and government, or Departmental policy and those conditions ("Revised Conditions") may, amongst other things, require the Concessionaire to measure, manage and reduce the greenhouse gas emissions of the Concession Activity.
4. Before amending the conditions of this Concession in accordance with clause 3, the Grantor will provide the Concessionaire the draft Revised Conditions. The Concessionaire may provide written comments on those draft Revised Conditions within 60 days. The Grantor must take into account any comments received from the Concessionaire on the Revised Conditions before finalising the Revised Conditions.
5. The Revised Conditions will apply to the Concession Activity 4 months after the Grantor has notified the Concessionaire of the Revised Conditions in accordance with clause 4 or any later date specified in the Revised Conditions.

#### Myrtle Rust

6. The Concessionaire must know the plants that are affected by myrtle rust and what the rust symptoms look like. This serious fungal disease only affects plants in the Myrtle (Myrtaceae) Family which includes pohutukawa, manuka, kanuka, and ramarama. See [Myrtle rust in New Zealand | NZ Government](#)
7. If the Concessionaire encounters suspected symptoms of myrtle rust, the Concessionaire must not touch it and must take the following steps:
  - a. Call the MPI Exotic Pest and Disease Hotline immediately on 0800 80 99 66;
  - b. Take clear photos, including the whole plant, the whole affected leaf, and a close-up of the spores/affected areas of the plant;
  - c. Don't touch or try to collect samples as this may increase the spread of the disease;
  - d. If accidental contact with the affected plant or rust occurs, bag clothing and wash clothes, bags, and shoes as soon as possible.

#### Wāhi Tapu

8. The Concessionaire must recognise the sensitivity of wāhi tapu and urupa and seek guidance of iwi who claim mana whenua over any parts of the Land prior to providing

interpretation on matters of iwi cultural significance and recognise the sensitivity of wāhi tapu and urupa.

#### **Interpretation Materials**

9. The Concessionaire must consult with and seek the guidance of iwi claiming mana whenua over any parts of the Land prior to providing interpretation on matters of cultural significance to such iwi.
10. The Concessionaire must provide detailed information of any historical, cultural, or natural science interpretation provided by the Concessionaire to its clients in the course of the Concession Activity, to the Grantor within thirty days of the date of any such written request by the Grantor.
11. If the Grantor considers the interpretative material provided by the Concessionaire above unsatisfactory, the Concessionaire must prepare an interpretation plan for approval by the Grantor within 60 days of advice from the Grantor that this is required.

#### **Fuels and Waste**

12. Further to clause 9.2 of Schedule 2, the Concessionaire must remove and dispose of any waste or rubbish in an approved manner off the Land at a Council approved site. Waste held on the Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or presents a potential hazard to wildlife.
13. Further to clause 9.3 of Schedule 2, the Concessionaire must ensure that any hazardous substances stored on the Land are held in approved containers according to Worksafe requirements. Storing greater than 50 litres of petrol will require approval from the Grantor.
14. A current fire extinguisher must be kept within proximity of stored fuels and be reasonably accessible for use in the event of a fire.
15. The Concessionaire must use clean fuels in preference to fossil fuels wherever possible.

#### **Hazardous Spills**

16. In the event of any hazardous spill, the Concessionaire must:
  - a. Take all practicable measures to stop the flow of the substances and prevent further contamination onto the Lease Land or water;
  - b. Immediately contain, collect, and remove the hazardous substances and any contaminated material, and dispose of all such material in an appropriate manner/authorised facility;
  - c. Notify the Grantor as soon as possible;
  - d. Undertaken any remedial action to restore any damage to the soil; and
  - e. Take all measures to prevent any reoccurrence.

#### **Machinery Usage**

17. The Concessionaire must ensure that all machines (including quad bikes, boats, and generators) used in conjunction with the Concession Activity are well maintained, regularly checked for oil leaks, and cleaned thoroughly prior to being used on public conservation land.
18. The Concessionaire must undertake any refuelling a minimum of 20 metres from the nearest waterbody and on flat ground, bare of vegetation, where possible.

### **Limits on Storage**

19. The Concessionaire must not store anything on the Land (including inside the structures) which would have the potential to contaminate any waterways during flooding.

### **Vehicle Use**

20. Vehicles must only be driven on the existing access road at the site. Vehicle parking must be limited to the curtilage surrounding the huts, where there is no significant vegetation cover.

### **Sanitary Facilities**

21. The Concessionaire must ensure that they and their clients use the toilets when in the vicinity of the Hut.

### **Wastewater Disposal (Toilet and Greywater)**

22. Further to clause 9.5 Schedule 2 there must be no discharge of sewage from any toilet facilities onto the Land or adjoining public conservation land.
23. Further to 9.5 and 11.1 of Schedule 2 the Concessionaire must obtain the prior written approval of the Grantor prior to installing any new toilet facilities on the Land.
24. The Concessionaire must comply with any lawful notice or direction issued by local authorities regarding sewage and/or storm water disposal from the Land. The Concessionaire must indemnify the Grantor for any loss or damage caused or suffered as a result of non-compliance with this condition, including without limitation, the cost of ensuring compliance with any such direction or notice.

### **Fire**

25. Further to clause 9.1 of Schedule 2, where an outdoor, permitted fire occurs, the Concessionaire must be in attendance at all times during the course of the fire and must be present until the fire is fully extinguished. Where a permitted fire occurs, the Concessionaire must bring all firewood on to the site from outside of Public Conservation Land.
26. The Concessionaire acknowledges that the fires currently permitted by the Grantor include three log burners, one located in each hut. The Concessionaire will take measures where practical to reduce the fire risk of these log ~~fireplaces~~, including but not limited to, regular inspections. *BURNER*
27. The Concessionaire must comply with the requirements of the Fire and Emergency New Zealand Act 2017 and Fire Safety and Evacuation of Buildings Regulations 2006 in respect to the building.
28. The Concessionaire shall ensure that all clients and invitees are aware of the prohibition of outdoor fires, the fire risk during periods of high fire danger, and that smoking is not permitted on the Land.

### **Kea Protection**

29. The Concessionaire must ensure that all structures on the Land present no risk to kea and are "kea proofed" for the protection of kea. All nails, paint, flashings, and other materials containing lead are to be removed and replaced with nontoxic leadfree alternatives.

### **Animals**

30. The Concessionaire must not take any cats, dogs, or other animals onto the Land without the prior written approval of the Grantor. Please see the DOC website for further details about where you can take your dog and access rules: Dog access (doc.govt.nz).

### **Accidental Discovery Protocol**

31. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
- Work must cease immediately until further notice and advice shall be sought from the Grantor;
  - If it is an archaeological site as defined by the Heritage New Zealand Pouhere Taonga Act 2014 then Heritage New Zealand must be contacted and their advice also sought;
  - If it is an archaeological site relating to Māori activity then the Papatipu Rūnanga must be contacted and their advice sought;
  - If it is an artefact as defined by the Protected Objects Act 1975 then the Ministry for Culture and Heritage must be notified within 28 days;
  - If it is human remains the New Zealand Police should also be notified;
  - In the event of cessation of approved work because of discovery of potential historical artefact or archaeological site the Concessionaire must not recommence work until permitted to do so by the Grantor.

### **Wasp Control**

32. The Concessionaire must keep the buildings and toilets clear of wasps and similar pests.

### **Ownership of building and associated structures**

33. For the avoidance of doubt, the three Huts and the three associated woodsheds and the toilet block on the Land are owned by and are the responsibility of the Concessionaire.

### **Style, Character, and Footprint**

34. The style and character of the buildings and associated structures must remain largely unmodified and remain within their current footprint.

### **No Rebuilding**

35. If the building and associated structures are substantially damaged or destroyed, the Concessionaire must not replace them unless it can be demonstrated, to the satisfaction of the Grantor, that there is significant public good in doing so.

### **Maintenance**

36. Subject to conditions 34 and 35 of Schedule 3, the Concessionaire may undertake maintenance and repair works to the buildings and associated structures.
37. The Concessionaire must advise the Grantor of any major maintenance or upgrades to the existing buildings and associated structures, prior to the works being undertaken.

### **Department Monitoring**

38. Clause 10.2 of Schedule 2 is amended to read:

If the Grantor does not issue a direction under clause 10.1 the Concessionaire must, during the Term, either:

- a. pay to the Grantor the annual Environmental Monitoring Contribution specified in Item 6 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity, or
- b. pay to the Grantor the standard Department charge-out rate for staff time and mileage required to monitor the effects of the concession activity and compliance with concession conditions.

39. The Grantor may send any officer of the Department on any of the activities authorised during the term of this Concession for the purpose of assessing the impact on conservation values, the standard of service offered and compliance with the terms and conditions of the Concession, at no expense to the Grantor.

#### **Building and Structure Integrity**

40. The building must be weatherproof and in a reasonable state of repair. In particular:
- a. The building and its building elements (including walls, floor, and roof) must have a low probability of rupturing, becoming unstable or collapsing during the term of the concession.
  - b. The building and its building elements must not show signs of significant deterioration that would threaten its structural stability during the term of the concession.
  - c. The building's wall, floor, roof, windows, and doors must be in a condition that will ensure adequate resistance to penetration by, and the accumulation of, moisture from the outside during the term of the concession.
  - d. The building must be in condition that prevents surface water from entering the building during the term of the concession.
  - e. There must be no impediment (such as jammed doors or windows) to making a quick exit from the building in the case of fire or similar emergency.
  - f. The building must be in a condition that would help prevent or minimise infestations of pests and vermin (such as fleas, bed bugs, rats, and mice) inside the building.
  - g. The building must have adequate passive ventilation to reduce moisture build up inside.

#### **Grantor does not Endorse Compliance**

41. Nothing in this Concession shall be deemed to amount to endorsement by the Grantor of the standard of the building and associated structures or services for the purposes of compliance with the Building Act 1991 and/or 2004 or Resource Management Act 1991 or any other statutory requirements relating to the concession activity.

#### **Public Use**

42. The Concessionaire must ensure the accommodation facility is available to be booked and used by the general public on the following terms:
- a. A publicly available booking system be maintained by the Concessionaire.
  - b. The fees payable for public booking of accommodation facilities shall be based on market rates, price being fair and reasonable.
  - c. Exclusion of the public beyond availability of a booking vacancy is limited to proven knowledge that the person is unlikely to meet the obligations in respect of care in the use of the accommodation facility or payment for booking.

43. The Concessionaire acknowledges that a dedicated webpage for the Loch Katrine huts will be developed on the DOC website. The Concessionaire will provide the required information for this webpage, as requested by the Grantor.
44. For the avoidance of doubt, the general public is defined as all or most people, especially those not part of a specific group that the Concessionaire shares commonality with.
45. The Concessionaire shall allow the Grantor to annually audit the public booking system.
46. The Concessionaire shall provide an annual return of booking reservations to the satisfaction of the Grantor, on the beginning of the financial year, 31<sup>st</sup> May each year.
47. The Concessionaire must record all related queries and bookings. These records must be made available to the Grantor within 10 working days of the request.

#### **Weed Control**

48. Further to clause 9.2 of Schedule 2, the Concessionaire must not plant any introduced species.

#### **Grantor Use**

49. The Concessionaire must allow the Grantor to access the facility for building inspections, search and rescue requirements and any other emergency purposes only.

#### **Termination and Expiry**

50. Further to clause 20.4 the removal of structures and other improvements and the remediation of the Land is at the Concessionaire's expense.

#### **LPG Use**

51. The Concessionaire acknowledges that any gas cookers and LPG storage must be compliant with the LPG regulations.

#### **Erosion or Natural Hazard**

52. Further to clause 14.6 of Schedule 2 the Concessionaire acknowledges that the Land may be within a coastal erosion or other natural hazard zone and that any erosion or other hazard that occurs at any time will not affect the obligations of the Concessionaire. Nothing in this Concession, express or implied, shall oblige the Grantor to undertake works to protect the Land or the building or associated structures thereon from erosion or to repair damage caused by erosion or natural hazard. The Grantor is not responsible for the costs of any restoration, or repair, or incidental matters, nor under any legal liability whatsoever in respect thereof.

#### **First Right of Refusal**

53. Further to Schedule 2, clause 8.1 the Grantor will have the first right of refusal on any proposed purchase or assignment of the Concessionaire's hut and associated structures. If the Grantor in his/her absolute discretion chooses to exercise this first right of refusal, purchase will be at a price agreed between the Concessionaire and the Grantor, based on the asset value of the Hut and associated structures only, excluding any value based on the Land. In the event the price cannot be agreed, it will be determined in accordance with clause 23 of Schedule 2, based on the criterion set out in this clause. In the event the Grantor does not wish to exercise his/her first right of refusal, the provisions of clause 8 of Schedule 2 will apply.

### **Review of Special Conditions**

54. In addition to the express opportunities the Grantor has to review the conditions elsewhere in this Concession, the Grantor may within three (3) months after or before each Concession Fee Review Date, and after consulting with the Concessionaire, delete, amend, vary or add any condition to more effectively manage the Concession Activity and/or its effects.

### **Fee Waiver**

55. The Concessionaire acknowledges that the Concession Activity Fee and Concession Processing Fee waiver provided by the Grantor are conditional on the following being met:
  - a. The Concessionaire must provide for public use of the accommodation in the form of a booking system;
  - b. The Concessionaire must spend all revenue generated from the concession on the management of, or public interest in, the area covered by the authorization.

### **Adherence to Concept Plan**

56. The Concessionaire must not undertake any works that are inconsistent with the Concept Plan as per Schedule 5 or any superseding Plan.

### **Activity Fee**

57. This condition is imposed in the case that a Fee Waiver no longer applies to the Concession Activity:

For the purpose of assessing the Concession Activity Fee payable under Schedule 1, Item 6 the Concessionaire shall provide a chartered accountant certified set of financial statements that clearly show the gross annual revenue associated with each aspect comprising the Concession Activity during the previous 12 months and return it to the Grantor no later than three (3) months after the end of the financial year, ending 31<sup>st</sup> March. If the gross annual revenue associated with the Concession Activity cannot be clearly identified in the financial statements, a reconciliation between the Concession Activity and financial statements must be prepared and accompany the financial statements. The Grantor reserves the right to request further or different information in order to verify the financial statements provided are true and correct and to best monitor and determine any effects of the Concession activity on the Land.

### **Revenue Expenditure**

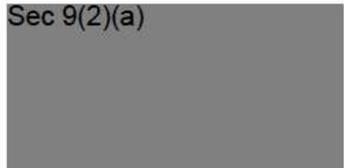
58. The Concessionaire will submit to the Grantor annually on the anniversary of the commencement date, a schedule of the planned work for the financial year ahead based on the anticipated revenue generated by the Concession Activity and the work completed during the previous financial year period based on the actual revenue generated by the Concession Activity. This schedule must contain a break-down of the project tasks, project costs and resources allocated

SCHEDULE 4

Figure 1: Map of Loch Katrine huts, woodsheds and toilet block



Released under the Official Information Act



SCHEDULE 5

Figure 2: Loch Katrine Reserve Site Plan (modified September 2013)

