

# Canterbury Conservation Management Strategy (CMS) Review

The following is a conservancy overview based on the CMS Part One chapter headings (as determined by the national *CMS Framework* (January 2008), developed as an introductory stage for the CMS review.

The information was compiled from interviews with Canterbury Conservancy technical staff to provide a brief overview of the 'existing guidance', 'key areas' and 'issues' for the various departmental functions. The 'key areas' as identified have contributed to the choice of draft 'places' for Part Two of the CMS (see separate document on the website).

## Part One

### Management objectives and policies

#### Chapter headings

- 1.1 Treaty of Waitangi responsibilities
- 1.2 Public participation in conservation management
- 1.3 Conservation of natural resources
  - 1.3.1 Terrestrial and freshwater ecosystems, habitats and species
  - 1.3.2 Biosecurity and management of threats to indigenous ecosystems, habitats and species
  - 1.3.3 Islands
  - 1.3.4 Fire management
  - 1.3.5 Marine ecosystems, habitats and species
  - 1.3.6 Geological features, landforms and landscapes
  - 1.3.7 Ecosystem services
- 1.4 Historical and cultural heritage
- 1.5 People's benefit and enjoyment
  - 1.5.1 Planning and management for people's benefit and enjoyment
  - 1.5.2 Vehicles (including aircraft)
  - 1.5.3 Dogs
  - 1.5.4 Animals (including pets)
  - 1.5.5 Marine mammal viewing
- 1.6 Private accommodation
- 1.7 Activities requiring specific authorisation
  - 1.7.1 Concessions
  - 1.7.2 Sand and shingle extraction
  - 1.7.3 Commercial eeling
  - 1.7.4 Collection of materials

## 1.8 Other matters

1.8.1 International agreements and cooperation

1.8.2 Reclassifying public conservation lands

1.8.3 Closing conservation areas<sup>1</sup>

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<sup>1</sup> No overview has been prepared for this chapter. Potential closures (in terms of section 13 Conservation Act) may emerge as other chapters are developed.

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## 1.1 Treaty of Waitangi responsibilities

- Existing guidance
  - Section 4 Conservation Act and case law
  - Ngäi Tahu Claims Settlement Act 1998
    - Töpuni
    - Protocols
    - Nohoanga
    - Taonga species list
  - Post-settlement agreements
    - *Allocation of cultural materials guidelines...* (2007)
  - *Te Waihora Joint Management Plan* (2005)
  - *Aoraki/Mount Cook National Park Management Plan* (2004)
  - *Arthur's Pass National Park Management Plan* (2007)
- Key areas
  - Töpuni
    - Aoraki
    - Kura Täwhiti
    - Ripapa
  - Te Waihora
  - Cave Stream
  - Rock art sites
  - Ö Tu Wharekai / Ashburton Lakes-Rangitata
  - Banks Peninsula
  - Lake Forsyth (Wairewa)
  - Taiapure and mataitai areas
  - See also 1.3.3 Islands, 1.4 Historical and cultural heritage, and 1.7.3 Commercial eeling
- Issues
  - Providing for customary use requests
  - *Te Waihora Joint Management Plan* implementation and catchment statutory agencies liaison
  - NPMP implementation
  - Guidelines for DOC staff in implementing Section 4 and the Settlement Act
  - Consideration of commercial and non-commercial, non-customary use, Ngäi Tahu opportunities
  - Recognition/incorporation of Ngäi Tahu values within conservation work
  - Threatened and taonga species
  - 'Partnership' project participation

- Kereru and tui
- Inanga
- Marae-based
- Rock Art Trust

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## 1.2 Public participation in conservation management

- Existing guidance
  - *Conservation General Policy* (2005, Chap. 3)
  - *Conservation with Communities Strategy* (2003)
  - *Canterbury Conservation with Communities* (2005)
  - *Area Office Conservation with Communities Action Plans* – updated annually
- Key areas
  - Locations of community trusts, groups and projects
    - Some on public conservation land, others not.
    - Wide variety in action and resources
    - Approx 68, as follows:

<b>Environs \ Area Office</b>	<b>Waimakariri</b>	<b>Mahaanui</b>	<b>Raukapuka</b>	<b>Twizel</b>	<b>Aoraki</b>	
<b>Coastal</b>		9	1			<b>10</b>
<b>Bush/forest</b>	1		3			<b>4</b>
<b>Lakes and wetlands</b>	3		5	2		<b>10</b>
<b>Rivers and streams</b>	2		1	1		<b>4</b>
<b>Hills and high country</b>	8		2	1		<b>11</b>
<b>Te Waihora</b>		4				<b>4</b>
<b>Banks Peninsula</b>		14				<b>14</b>
<b>Other (mainly species-specific)</b>	5	5			1	<b>11</b>
	<b>19</b>	<b>32</b>	<b>12</b>	<b>4</b>	<b>1</b>	<b>68</b>

- Issues
  - Developing and maintaining public information, printed, web-site and on-site
  - Providing and supporting educational programmes and educational partnerships e.g. Enviroschools
  - Growing incidence of public participation/volunteering as recreation
  - DOC interaction with community groups and trusts
    - Largely active where DOC priorities cannot reach
    - Involving the community in decision-making and management.

- Varying needs for Memorandums of Understanding, management and/or operational plans, and/or historic site conservation plans.
- Realism about the degree of DOC support/resources/liaison that is possible.

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### 1.3.1 Terrestrial and freshwater ecosystems, habitats and species

#### Terrestrial and freshwater ecosystems and habitats

- Existing guidance
  - Natural Heritage Management System/Waters of National Importance/Freshwater Environments of New Zealand national database and ranking systems in preparation
    - identifying national priorities
    - directing protection efforts
    - restoration required where few protected remnants (especially braided rivers, coastal wetlands, lowlands)
  - *The New Zealand Biodiversity Strategy* (DOC/MfE 2000)
  - *A Biodiversity Strategy for the Canterbury Region* (ECan 2008)
  - Area Office *Biodiversity Action Plans* in preparation
  - Freshwater Fisheries Regulations: fish passage; translocation and possession of fish species
- Key areas
  - Terrestrial ecosystems
    - Canterbury foothills (unique)
    - Canterbury limestone (unique)
    - Coastal lagoons (especially south Canterbury)
    - Linkages between coastal lagoons, braided rivers and high country (across Area boundaries)
    - Beech 'gap' (primarily Wilberforce, Rakaia and Mathias)
    - Intermountain basins (unique, only Heron and Mackenzie reasonably intact)
  - Freshwater ecosystems
    - Nationally important catchments, many outside of public conservation land:
    - Wetlands (especially coastal, including river mouths and other lagoons)
    - All braided rivers
    - Slow-moving streams (mudfish habitat)
    - Lakes (size and altitudinal range: tarns to Pukaki; mountains to coast)
    - Geothermal waters
    - Lake Marion Faunistic Reserve (1 of 2 reserves in South Island)
  - Historic long-term action and monitoring sites

- Linkages to Environment Canterbury *Biodiversity Strategy*
- Issues
  - Historic Canterbury high-country focus; need to move into lowlands, but not forget high country
  - Land/farm development versus water quality/quantity, biodiversity and landscape
  - Great opportunities versus huge pressures
  - Getting action into priority areas
  - Priority species and ecosystems often on private land, a feature of NZ generally, but common in Canterbury, reflecting lowland extent
  - Implementation of Freshwater Fish Regulations re fish passage – setting of standards and influence on Resource Management Act processes
  - Inanga/whitebait spawning site disturbance
  - Shifting community values in favour of lowlands and wetlands
  - Community projects growing in activities/areas that are non and/or low priority work for DOC

### **Indigenous species**

- Existing guidance
  - *Hitchmough* ranking of threatened status
  - Threatened species management plans
  - *The New Zealand Biodiversity Strategy* (2001)
  - Area Office *Biodiversity Action Plans* in preparation
- Key areas
  - Operation Ark (Hurunui to Hawdon)
  - Arawai Kākāriki (Hakatere)
  - Project River Recovery (Mackenzie Basin)
  - Limestone areas
- Issues
  - 24 threatened freshwater fauna (fish and invertebrates)
  - Arresting extinction of species; initial intervention then moving to habitat focus (e.g. kaki – Project River Recovery)
  - Community projects growing for non-DOC priorities
  - Potential additional species
    - Often high community value
    - Kea, great spotted kiwi/rooa, white flippered penguin/kororā, southern crested grebe/kāmana, braided river species

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### 1.3.1 Terrestrial and freshwater ecosystems, habitats and species (cont.)

#### Recreational freshwater fisheries

- Existing guidance
  - Fish and Game *Sports Fish and Game Management Plans*
  - *General Policy* (2005) policy 4.1(i)
  - Fish and Game *Salmon Management Plan* (in preparation)
- Key areas
  - As for freshwater ecosystems above
- Issues
  - Active liaison and joint advocacy between DOC and Fish and Game councils
  - CMS guidance for Fish and Game management plans
  - Recognition of Treaty of Waitangi and Ngāi Tahu Claims Settlement Act
  - Fish passage as per ecosystem issues above
  - Land/farm development versus water quality/quantity and fish habitat
  - Criteria for sports fish liberation or not
  - Potential restoration of indigenous species habitats by control/removal of sports fish
  - Pest fish control
  - Recreational fishing desires – see 1.5.1

#### Game birds and their habitats

- Existing guidance
  - Fish and Game *Sports Fish and Game Management Plans*
  - *Te Waihora Joint Management Plan* (2005)
  - *Canada Goose Management Plan* [under review]
    - Sets maximum target population
    - Control emphasis is at congregating lakes and wetlands
- Key areas
  - Habitats strongly matched to indigenous species habitats
  - For hunters
    - Te Waihora, coastal lagoons and wetlands
    - Upland game (quail and chukar) habitat
- Issues
  - Active liaison and joint advocacy between DOC and Fish and Game councils
  - CMS guidance for Fish and Game management plans
  - Land/farm development versus water quality/quantity and bird habitat

- Current review of wildlife/game bird sp status
- Providing for Fish and Game management activity (e.g. air/vehicle access, population culling)
- Recognition of Treaty of Waitangi and Ngāi Tahu Claims Settlement Act
- Recreational hunting desires – see 1.5.1

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### 1.3.2 Biosecurity and management of threats to ecosystems, habitats and indigenous species

- Existing guidance
  - Natural Heritage Management System generating new/improved prioritisation systems
    - May identify sites missed in the past
  - *DOC Strategic Plan for Managing Invasive Weeds* (1998)
  - *Canterbury Conservancy Animal Pest Strategy* (2006)
  - *Canterbury Weed Surveillance Strategy 2008-2013*
  - *Canterbury Regional Pest Management Strategy* (ECan) (2005)
  - *Himalayan Thar Control Plan* (1993)
    - Thar Operational Plan (with control densities)
    - Thar liaison group and hunters' group
  - *Canterbury Conservancy Didymo Management Plan* (2006 onwards)
  - *South Island Wilding Conifer Strategy* (2001)
  - *Canterbury Wilding Conifer Strategy* (in preparation with ECan)
  - Biosecurity Act 1993
- Key areas
  - Braided riverbeds above Lakes Tekapo/Pukaki, and Ahuriri
  - Banks Peninsula – remnant forest, streams, coastline and marine
  - Kaitorete Spit dune-lands and Te Waihora
  - Heathcote/Avon, Brooklands and Ashley estuaries
  - Upper Rangitata and catchment, including cedar forests
  - Rakaia River and catchment, including cedar forests
  - Ashburton Lakes and surrounding grasslands
  - Hurunui, Poulter, Hawdon and Ohau catchment beech forests
  - Canterbury Plains remnants, especially wetlands and podocarp forest
  - Aoraki/Mt Cook alpine snow-meadows
  - Korowai/Torlesse Tussocklands Pak and Kura Tāwhiti/Castle Hill
  - Pöhatu Marine Reserve
  - Areas of significant natural value, as identified in ECan's *Regional Coastal Environment Plan*.
  - Island refugia
  - Community project areas (small predator control)

- Arthur's Pass – great spotted kiwi / roroa
- Mingha/Deception - blue duck / whio
- Quail Island - invertebrates, lizards and penguin
- Taylors Mistake – white flippered penguin/kororä
- Banks Peninsula - penguins and petrels
- Issues
  - Ongoing variability with priorities (influenced by Regional Pest Management Strategy, Ministry of Agriculture and Fisheries Biosecurity NZ and DOC strategies)
  - Need to prioritise Regional Pest Management Strategy obligations to meet available funding
  - Setting pest priority order
    - Emerging pests – new to NZ/South Island/Canterbury
    - Establishing pests
    - Potential escapes
    - Established pests
  - Protection of upper Rakaia/Rangitata beech-gap cedar forests
  - Ongoing Operation Ark/Mainland Island and Project River Recovery projects
  - Bringing the community on-side and encouraging involvement (e.g. technical advice, identifying priorities, displays, Weedbusters, reporting new sightings)
  - NZ in forefront and some great work being done.
  - Improving liaison between DOC/ECan/Land Information NZ/Federated Farmers/community e.g. for wilding pines and upper Rangitata broom control.
  - Actions improving in their effectiveness over time
  - Close DOC and Ministry of Agriculture and Fisheries Biosecurity NZ liaison re exotic species incursion (pre-border, at border, within NZ).
  - Recreational Hunting Areas (RHA)
    - Oxford Forest and Lake Sumner Forest Park
    - Very small part of total hunted area
    - Statutory requirement not being met for management plans
    - Prohibits Wild Animal Control aircraft activity
    - What future function?
    - Oxford Recreational Hunting Area subject to Animal Health Board 1080 control?

- NZ Derstarkers' Association reluctant to loose Recreational Hunting Areas unless something better
- Recreational hunting
  - Awaiting Parliamentary Review Panel report (due March/April 08)
  - Support through improved maps, game location information, permit systems, hunter liaison groups
  - Vehicle and aircraft access issues
- Wild Animal Control operators
  - Operations increasing again
  - Improving relationship with industry
  - Coordination of information on pesticide-use areas, Geographic Information System (GIS) mapping, aircraft operations areas, and with NZ Food Safety Authority
- Threats
  - Marine and freshwater invasive species (e.g. fish and weeds)
  - Animal and weed liabilities of 'tenure review' properties as they become incorporated into conservation lands
  - Wilding pines on/from Crown lands
  - Small animal entry to islands (e.g. rodents and mustelids).

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### 1.3.3 Islands

- Existing guidance
  - *Draft Offshore and Outlying Islands Strategy* (2007)
- Key areas
  - Shag Rock
    - Status?
    - Fur seals and petrels
  - Motunau Is Nature Reserve
    - Penguins
    - Existing Reserve Management Plan
  - Ripapa Island Historic Reserve
    - Tōpuni
    - Ngäi Tahu pä site
    - Quarantine station
    - 1880s Fort Jervis
  - Quail Island Recreation Reserve
    - Existing Reserve Management Plan
    - Mixed recreation, historic, scenic and biodiversity values
    - Ecological Restoration Trust
  - King Billy Island Scenic Reserve
    - Ecological Restoration Trust
  - Pukerauaruhe (Browns) Recreation Reserve
    - Maori and European historic site
  - Horomaka Recreation Reserve
    - Ngäi Tahu occupation site
  - Pa Island / Te Puke-ki-Waitahu Historic Reserve
    - Pa site
    - Petrels
  - Banks Peninsula rock stacks (Island Nook, Redcliffe Nook, Crown Island)
    - Status?
    - Cook's scurvy grass/nau and petrels
  - Motuariki and Little Motuariki
    - Status? NT? Scenic and scientific Res proposed 1980
    - Indigenous flora and recreation values
  - Lake Benmore islands (x 14)
    - Status? Reserves?
    - Mixed biodiversity and recreation values
- Issues

- Refugia value for plants and animals
- Some with unclear land status and/or lacking protection
- Determining island classification under an approved *Offshore and Outlying Island Strategy*
- Working with Ngäi Tahu; recognition of Töpuni and other values
- Working with community groups/trusts.

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### 1.3.4 Fire management

- Existing guidance
  - *Canterbury Wild Fire Threat Analysis* completed – quantifies risk (fire cause), values (conservation and other), and hazard (damage potential).
- Key areas
  - As identified by *Strategic/Tactical Fire Management Plans* at Area Office level, identifying localities of highest threat and those requiring mitigation work to reduce fire risk and/or the consequences of wild fire.
- Issues
  - Reduce DOC fire control responsibility for low-conservation value areas
  - Science/research-based management
  - Prevention before suppression
  - Public education
    - Fire risk and permit etc. awareness
    - At-risk recreation users (e.g. off-road vehicles)
    - Permit enforcement
  - Retaining skills for rapid suppression
  - Threats
    - Climate change variables
    - Demographic change / increased populations in some rural areas
    - Fuel-loading changes (e.g. through grazing reductions)
    - Reducing volunteer availability for fire-fighting
    - Increases in certain types of recreation (e.g. off-road vehicles).

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### 1.3.5 Marine ecosystems, habitats and species

- Existing guidance
  - *Marine Protected Areas Policy* (2005)
  - *Department of Conservation Marine Mammal Action Plan for 2005-2010*
  - *Threat management plan for Hector's dolphin* (due end March 2008)
  - *Classification, protection and implementation guidelines* (2008)?
  - Marine Natural Heritage Management System under development
  - Marine oil spill contingency plans
  - *Canterbury Regional Coastal Environment Plan* (under Resource Management Act)
- Key areas
  - Banks Peninsula harbours and bays
  - Pöhatu Marine Reserve
  - Marine Mammal Sanctuary
  - Dan Rogers Marine Reserve application area?
  - Areas of significant conservation/natural value, under the Canterbury Regional Coastal Environment Plan
- Issues
  - Making distinction between CMS versus Resource Management Act processes
  - Tourism and other impacts on dolphin
  - People/development interactions with an increasing fur seal population
  - Management plans for marine reserve(s)
  - Compliance/enforcement within Marine Mammal Sanctuary and Marine Reserve
  - Establishing and achieving priority actions
  - Identifying high-value sites for Resource Management Act (Canterbury Regional Coastal Environment Plan and coastal consent advocacy) and marine oil spill contingency planning.

### 1.3.6 Geological features, landforms and landscapes

- Existing guidance
  - *Geopreservation sites* publications/database
    - Also ECan inventory of Part 2 Resource Management Act matters
  - ECan's *Canterbury Regional Landscape Study* (1993)
  - Specific Banks Peninsula landscape studies and case law for Resource Management Act consent cases
- Key areas
  - Geopreservation sites
    - Landforms and features
    - Geothermal sites
    - Mineral, semi-precious stone and fossil sites
  - Intermontane basins
    - Mackenzie Basin
    - Ashburton Lakes/Hakaterere
  - Braided rivers and associated terrace and gorge landforms
  - Banks Peninsula
  - Coastal features
- Issues
  - Some omissions in geopreservation database and/or delays in updating (e.g. Blands Bluff)
  - Not all sites and features are vulnerable
  - Management of protected versus fossicked sites and implications of land status change to public conservation land (see 1.7.4 Collection of materials)
  - Mining impacts
  - Earthworks, wind farms and other development
  - Gravel and water extraction and hydro power and water storage development within/on waterways.
  - Subdivision, land-use intensification and development within the intermountain basins
  - Focus of any Resource Management Act advocacy through district and regional plans and consents?

### 1.3.7 Ecosystems services

- Existing guidance
  - *Conservation General Policy* (2005) definition "A wide range of conditions and processes through which natural ecosystems, and the species that are part of them, help sustain and fulfil life."
  - *DOC's sustainability strategy* (2007)
  - Ministry for the Environment/all-of-Government [?] process re Kyoto Protocol
- Key areas
  - Community domestic water supply catchments
    - Avalanche Creek, Arthur's Pass National Park
    - Glencoe Stream Aoraki/Mt Cook National Park
    - Pareora River?
    - Other?
  - Community other water supply catchments
    - Most hill and high-country public conservation lands
  - Key commercial activity areas
    - Aoraki/Mt Cook National Park
    - Arthur's Pass National Park
    - Ski fields
  - High-use public recreational areas
    - Front-country areas?
  - Flood protection/mitigation areas
  - Kyoto Protocol/forest carbon sink areas
- Issues
  - How/where to provide for ecosystem services?
  - Adequacy of existing provisions within NPMP
  - Promotion of services provision within Resource Management Act and other forum?
  - Other?

## 1.4 Historical and cultural heritage

- Existing guidance
  - Historic Places Act processes
  - Reserves Act re historic reserves
  - International Committee on Monuments and Sites (*ICOMOS*) *New Zealand Charter...* (1995)
  - *Historic Heritage Strategy* (1995)
  - *Kaupapa Atawhai Strategy: Atawhai Ruamano Conservation 2000* (1997)
  - *Historic Heritage Strategy: Canterbury Conservancy* (1998)
  - *Protocols on DOC Interaction with Ngäi Tahu on Specified Issues* (1999)
  - *National Park and Te Waihora Management Plans*
  - Current Conservation Management Strategy historic themes
  - Standard Operating Procedure (Protection Plan?) and database systems in-place
  - *Conservation plans* for 'actively managed sites'
  - Ngäi Tahu policy and projects
    - Iwi management plans
    - Ngäi Tahu Mäori Rock Art Trust
    - *Koiwi Tangata Policy* (1993)
- Key areas
  - Rock art sites
  - Kaitorete archaeological sites
  - Archaeological sites on conservation lands, including ex-pastoral lease lands
    - Godley Head – NZ's most intact World War II defence site
    - Ripapa Island – 1880s fortress on earlier pa site
    - Quail Island – leper and settler quarantine, Antarctic exploration
    - Birch Hill and others - pastoral run sites
    - Monavale School – break-up of early large pastoral runs
    - Tourism – Hermitage, Hooker Hut, memorials, Hurunui No.3 Hut, Red Hut
    - Trans-alpine travel passes – Amuri, Hurunui, Arthur's and Browning
    - Adderley Head – signals and communication
    - Huts and sites – representing development of tourism, pastoral, recreational and wild animal control
    - Greywacke stone building sites – uniquely Canterbury [?]

- Historic reserves (if not included above)
- Issues
  - National *Heritage Strategy* (1995) needing review to give clear current guidance
  - Integration with Ngāi Tahu concerns
  - Tōpuni recognition for Ripapa
  - Role of DOC for Ngāi Tahu managed sites/reserves (e.g. Onawe Pa, Oruaka)?
  - Recognition of historic sites not within historic reserves
  - Varying resources and commitment to historic issues
  - Completing site recording
  - Retaining historic site (e.g. hut) fabric in face of recreational and biodiversity operations
  - Encouraging and supporting community projects
  - Archaeological and historic site loss and damage through natural and other processes
  - Retaining management provisions from current reserve management plans
  - Seeking Section 4 Resource Management Act exemptions for district plan-listed sites.

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### 1.5.1 Planning and management for people's benefit and enjoyment

- Existing guidance
  - *Conservation General Policy* (2005) Chapter 9
  - *Aoraki/Mt Cook and Arthur's Pass National Park Management Plan* (2004 and 2007)
  - *Te Waihora Joint Management Plan* (2005)
  - *National Visitor Strategy* (1996)
  - *Recreation Strategy for Canterbury Conservancy* (1994)
  - *Canterbury Aircraft Guidelines* (2007)
  - *Recreation Opportunity Spectrum...*(ROS) mapping
  - *Canterbury Conservancy recreation opportunities review* (ROR) (2004)
  - *Canterbury Interpretation Plan* (2000)
  - Visitor Asset management System/ Asset Management Information System visitor assets management systems
  - Disabled access strategy in preparation
  - Standard Operating Procedures and manuals on asset-management processes, standards, monitoring, signs etc.
- Key areas
  - Two national parks, especially high tourist-use parts
  - Front-country accessible from Christchurch
    - Port Hills and Banks Peninsula
    - North Canterbury foothills
    - Hanmer basin
  - Torlesse/Castle Hill/Craigieburn basin
  - Ashburton Lakes/Rangitata basin
  - Mackenzie basin
  - Te Waihora/Kaitorete Spit
- Issues<sup>2</sup>
  - Understanding and responding to changing backcountry and front-country public-use patterns, due to:
    - Demographic changes
    - Lifestyle changes (e.g. 'time scarcity')
    - Attractions (temporary and permanent) of new areas and facilities (DOC and other)
    - Oil shock effects on public mobility
    - Climate change effects on snow fields and glaciers, hence access and use opportunities

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<sup>2 2</sup> Note: Recreational hunting, in accordance with the *General Policies*, is included within chapter 1.3.2 *Biosecurity and management of threats to ecosystems, habitats and indigenous species*.

- The growing incidence of conservation 'volunteerism' as recreation
- Does fostering recreation require additional areas and facilities or, in light of the changes above, require something else e.g. catering for 'volunteerism'?
- Giving statutory status to guidelines etc.
  - *Aircraft Guidelines*
  - Recreation Opportunity Spectrum mapping outcomes
- Confirmation or re-assessment of Recreation Opportunities Review (2004) outcomes
- *General Policy* requirement to identify vehicle and animal access provisions
  - DOC-maintained roads and vehicle tracks
  - 4WD/off-road
  - Mountain biking
- Management/control of helicopter access combinations
  - Skiing, mountain biking (cross-country and down-hill), snow-mobiles, kayaks, hunting, hiking, fishing
- Managing risk / visitor safety, especially in key areas/situations
  - Hooker valley
  - Bealey/Otira valleys
  - Inexperienced backcountry users
- Resource Management Act matters
  - Sufficient provisions to maximise Section 4 Resource Management Act exemptions for visitor asset management
  - Advocacy for Resource Management Act district and regional plans provisions for visitor assets (e.g. sewage disposal, hut woodburner emissions, bridge/riparian activity)
  - Advocacy for recreation and public access
- Community engagement (see chapter 1.2)
  - Mt Somers Track
  - Macaulay Hut
  - Motukarara-Little River Railtrail
  - Club huts for public use (Canterbury Mountaineering Club, NZ Alpine Club, Canterbury University Tramping Club, NZ Deerstalkers' Association)
- The direction for and maintenance of visitor programmes

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- Agency liaison
  - Councils (especially Christchurch City) and ECan on recreational opportunities in front-country, near major population areas
  - Ministry of Agriculture and Forestry re walking access
  - Councils and Land Information NZ re potential closures and/or criteria for this, of unformed legal roads through conservation lands
- Natural-quiet preservation
- Implementing Government request for new public campsites
- The future for gazetted 'walkways'
- Concessions within wilderness areas; national consistency
- Rock-climbing bolting policy
- Visitor monitoring
- Public assurance on biodiversity/recreation priorities within conservation parks
- Identifying any requirements for regulations under the Conservation Act, for the management of visitor activities
- Potential *Kyoto Protocol* influences on recreational and concessions activities and permissions
- Provision of interpretation material
- Confirmation of visitor centres (Aoraki/Mt Cook, Arthur's Pass and 'gateway' Visitor Centre in Christchurch)

### 1.5.2 Vehicles (including aircraft)

- Existing guidance
  - *Canterbury Aircraft Guidelines* [Dec. 2007]
    - Covers recreational and commercial activity
  - *Recreation Opportunity Spectrum* (ROS) outcome maps and criteria
    - Covers recreational and commercial activity
  - Codes
    - *Off-road Code*
    - *Mountain Bike Code*
    - *Braided River Care Code*
    - *Environmental Care Codes* (x 2)
- Key areas
  - High-country / tenure review lands

- Coastal (dune and wetland effects)
- Issues
  - Subjecting the *Aircraft Guidelines* and ROS outcomes to full public process and giving them 'statutory' weight under the CMS.
  - Opportunities for Wild Animal Control) and Recreational Hunting Area aircraft access variations re commercial and recreational hunting interactions.
  - Giving effect to the *Codes*
  - Vehicle activity as a means of assisting recreational hunting
  - Concessionaire activity
    - 4WD, mountain bikes, motorbikes, snowmobiles
    - Helicopter/vehicle combinations
    - Helicopter/hunting/fishing combinations.

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### 1.5.3 Dogs

- Existing guidance
  - Part 5C Conservation Act process
    - Draft schedule prepared for dog/no-dog areas
    - Public discussion document under preparation
    - Own statutory process, leading to areas being gazetted.
  - Wildlife Act?
  - Council bylaws??
- Key areas
  - Braided riverbeds
  - Coastal river mouth areas
  - Ground-nesting bird habitat
  - Penguin habitat
  - Pig (?) hunting areas
- Issues
  - Bird disturbance
  - Seal disturbance??
  - Control off public conservation land
  - Hunting dog 'training'
  - To combine or not, all or part of Part 5C Conservation Act process with the CMS process?

### 1.5.4 Animals (including pets)

- Existing guidance
  - *Conservation General Policy* 9.6(a)
- Key areas
  - Lake Sumner Forest Park
  - High-country conservation parks and 'tenure review' lands
  - Pegasus Bay dunes?
  - Areas with historic use patterns
- Issues
  - *Conservation General Policy* requires CMS provisions to allow animals on public conservation land
  - 'Translating' pastoral lessee controls to public conservation land management
  - Trans-catchment didymo control
  - Development of standard concession/permit conditions and care codes.

### 1.5.5 Marine mammal viewing

- Existing guidance
  - Marine Mammals Protection Act 1978
    - Moratorium for dolphin watching/swimming permits
  - Marine Mammals Protection Regulations 1992
  - Guidelines
    - Research priorities for allocating 'levy' money
    - Surveillance
    - Research and education cost recovery Terms of Reference
    - Roles and responsibilities: Conservancy and Area staff
- Key areas
  - Banks Peninsula, especially Akaroa and Lyttelton 'operational areas'
- Issues
  - Determining criteria for allocation of future permits.

Released under the Official Information Act 1982

## 1.6 Private accommodation

- Existing guidance
  - *Conservation General Policy* (Chapter 10)
- Key areas (and approximate number of huts)
  - Loch Katrine (were 60)
  - Craigieburn Range ski fields (10?)
  - Lake Pearson (3)
  - Lower Selwyn Huts (40?)
  - Pareora (5?)
  - Lake Ohau (3?)
  - Kaik – Waitaki River mouth (50?)
- Issues
  - Exclusions?
    - Lower Selwyn Huts
    - Where historic/statutory authorisations found to exist
    - Where compliance occurs with standard concessions conditions re public use
  - Re-validation of *Loch Katrine Recreation Reserve Management Plan* (1999) and revocation of Plan
  - Setting public-use conditions to obtain exclusions
  - Phase-out criteria/conditions
  - DOC role re recreation reserve/camp grounds and private accommodation within them?
  - Ministerial review of policy re length of occupation allowable on reserves?

Released under the Official Information Act 1982

### 1.7.1 Concessions

- Existing guidance
  - Part 3B Conservation Act
  - [Concessions Standard Operating Procedures]
  - Conforming tracks policy and guidelines (in preparation)
- Key areas
  - Two national parks
  - New conservation parks
  - 'new' areas (Tenure Review and Nature Heritage Fund)
  - Potential ski fields
- Issues
  - Linkages to Recreation Opportunity Spectrum/aircraft/vehicles
  - CMS identification/validation of conforming tracks
  - Utilities [General Policy 11.3 adequacy?]
  - Ski fields
    - Management of existing fields
    - Distinctions between commercial and club fields?
    - Guidance for new field applications
    - Any climate change implications?
  - Approval and management of events
    - Commercial versus non-commercial
    - Sporting (multi/endurance/mountain biking/rogaine)
    - Cultural/performance/'raves'
    - Social/weddings
    - Other (marquee and meal)
    - Educational.

### 1.7.2 Sand and shingle extraction

- Existing guidance
  - Part 3B Conservation Act
- Key areas
  - Conservation area riverbeds
- Issues
  - Some one-off concessions being granted
  - Need for Conservancy consistency re Assessment of Environmental Effects (AEE) considerations, standard conditions, royalties
  - Could identify exclusion zones.

Released under the Official Information Act 1982

### 1.7.3 Commercial eeling

- Existing guidance
  - Current *CMS* policy – eeling only at Te Waihora
  - *Te Waihora Joint Management Plan* (2005)
  - MAF *Fisheries Regulations* 1986
- Key areas (for no commercial eeling)
  - All [?] eel habitat, especially for long-finned eel
  - *Fisheries Regulations* 1986 closed areas
    - Te Waihora inflowing rivers, streams and mouths
    - Te Korua (within Te Waihora)
    - Lake Forsyth (Wairewa) catchment
    - Wainono Lagoon/Waihao catchment
    - Aoraki/Mt Cook and Arthur's Pass National Parks
    - Ahuriri arm of Lake Benmore, and tributaries to that arm
    - Rangitata River lagoon
  - Eastern Te Waihora köhanga area
  - Aoraki/Mt Cook and Arthur's Pass National Parks
- Issues
  - Long-finned eel a threatened species
  - Sufficiency of eel habitat in closed/protected areas
  - Effect of take from waterways flowing into conservation areas?
  - Some unauthorised take
  - [Relationship to recreational eeling?]

### 1.7.4 Collection of materials

- Existing guidance
  - Part 3B Conservation Act
  - Research and collection Standard Operating Procedure
  - Crown Minerals Act 1991
- Key areas
  - Mt Somers semi-precious stones
  - Wilberforce gold reefs
  - Fossil locations
- Issues
  - Interaction with Crown Minerals Act and access agreements?
  - Geopreservation sites?
  - Collection controls?

- Identifying collection/no-collection areas?
- Consider mineral fossicking sites?

Released under the Official Information Act 1982

### 1.8.1 International agreements and co-operation

- Existing guidance
  - International guidance for World Heritage Area and Ramsar/Wetlands of International Importance (WII) nominations and monitoring
  - NZ Government processes for World Heritage Area/Ramsar nominations
  - *Convention on Migratory Species of Wild Animals* (Government-signed 1999)
- Key areas
  - Current *South-West New Zealand (Te Wāhipounamu) World Heritage Area* (includes Aoraki/Mt Cook National Park)
  - Migratory bird flyways and habitats
    - Canterbury coastal lagoons and estuaries
  - Potential Ramsar/Wetlands of International Importance sites
    - Te Waihora
    - Estuary of the Heathcote and Avon Rivers / Ihutai
  - Ashburton Lakes/Hakatere and Rangitata River
- Issues
  - Potential expansion of World Heritage Area if Aoraki/Mt Cook National Park extended.
  - *Te Waihora Joint Management Plan* requires re-consideration of Wetlands of International Importance (WII) in 2010.
  - Possible community proposal for Heathcote-Avon/Ihutai Wetlands of International Importance
  - Community nomination (2007) of Ashburton/Rangitata for World Heritage Area.

Released under the Official Information Act 1982

### 1.8.2 Re-classifying<sup>3</sup> public conservation land

- Existing guidance
  - Current *Canterbury CMS* (2000)
  - Government directives re creating conservation parks
  - *Te Waihora Joint Management Plan* (2005)
  - *Aoraki/Mt Cook and Arthur's Pass National Park Management Plans* (2004 and 2007)
- Key areas
  - Mid-Southern Alps/Kā Tiritiri o te Moana conservation areas (upper Rangitata/Rakaia)
  - Recent and current conservation park proposal areas
  - Aoraki/Mt Cook National Park
  - Arthur's Pass National Park
  - Nature Heritage Fund purchase areas
  - Craigieburn Forest Park
  - Lake Sumner Forest Park and Lewis Pass National Scenic Reserve
  - Te Waihora
  - Quail Island Recreation Reserve
  - Kura Tāwhiti Conservation Areas
  - Nature reserves (ex-fauna and flora) by section 16(11)(c) Reserves Act 1977
    - Lake Heron and Maori Lakes
- Issues
  - What status for mid-Southern Alps conservation areas not included within conservation park proposals?
  - Potential extension of Aoraki/Mt Cook National Park into Mt Cook and Glentanner tenure review lands and into Tasman River Crown riverbed
  - Inclusion into Arthur's Pass National Park of 'Riversdale Flats' Reserve for National Park Purposes
  - Potential extensions to Craigieburn Forest Park, both from current CMS proposals and from tenure review/Nature Heritage Fund acquisitions
  - Potential boundary rationalisations and extensions to Lake Sumner Forest Park and Lewis Pass Scenic Reserve/National Reserve
  - Te Waihora Joint Management Plan proposal for Te Waihora conservation and mahinga kai park

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<sup>3</sup> Note that 're-classifying' is terminology from the Reserves Act 1977, but should also be taken to include undertaking 'status' changes under the Conservation Act 1987.

- Quail Island reserve status to recognise combined recreation, historic and biodiversity values
- Potential reserve status for Kura Tāwhiti to recognise combined scenic, historic, biodiversity and Ngāi Tahu Tōpuni values
- Re-classification of Section 16(11)(c) nature reserves to reflect their historic and current values
- Any Part. 4 Conservation Act 'Specially Protected Areas'?
- Need to assure public on management outcomes for conservation parks.

Released under the Official Information Act 1982

Concession number: PAC-12-02-12  
Section 1 Lower Selwyn Huts

DATED 2/11/2004

**Between**

**MINISTER OF CONSERVATION  
("the Lessor")**

**and**

Sec 9(2)(a)

**("the Concessionaire")**

**CONCESSION DOCUMENT**



Department of Conservation  
*Te Papa Atawhai*

**THIS LEASE** is made this first day of July 2004

**PARTIES:**

1. **MINISTER OF CONSERVATION**, ("the Lessor")
2. Sec 9(2)(a) [REDACTED] ("the Concessionaire")

**BACKGROUND**

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

## OPERATIVE PARTS

### TERMS AND CONDITIONS

#### 1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Document, unless the context otherwise requires:

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

"**Background**" means the matters referred to under the heading 'Background' on p2 of this Document.

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

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

"**Concession Fee**" means the amount specified in Item 6 of Schedule 1 and charged by the Lessor 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**" and "**Co-Siting**" mean the use of the land or the Concessionaire's structures or facilities on the Land by a third party for a purpose permitted by the Lessor; and "**Co-Sitee**" has a corresponding meaning.

**"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 Lease 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 40.

**"Land"** means a Conservation Area, a Park, or a Reserve, whichever is relevant in the context of this Document, and is the area more particularly described in Item 1 of Schedule 1.

**"Lease"** means the Lease granted under this Document by the Lessor 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.

**"Park"** means a national park constituted under 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 days on which the registered banks are open for general banking business in Wellington.

1.2 In this Document unless the context otherwise requires:

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

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

1.4 The covenants and powers contained in sections 106 and 107 of the Property Law Act 1952 are not to be implied in this Concession and are expressly negated.

## **2.0 GRANT OF LEASE**

2.1 In exercise of the Lessor's powers under section 17Q of the Conservation Act 1987 the Lessor **GRANTS** to the Concessionaire a **LEASE** 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 Lease is for the Term specified in Item 3 of Schedule 1.

3.2 Subject to clause 3.3 the Lessor, at the Concessionaire's cost, will renew the Term for a further period specified in Item 4 of Schedule 1.

3.3 The renewal is to be on the same terms and conditions expressed or implied in this Document excluding a right of renewal provided the Concessionaire:

- (a) observes the terms and conditions contained in this Document; and

- (b) has given to the Lessor written notice of the Concessionaire's intention to renew this Document at least 3 months before the end of the Term which notice is to be irrevocable.

3.4 The Term and all renewals, if any, will end on the Final Expiry Date specified in Item 5 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 Lessor 3 months' notice in writing.

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

#### **5.0 CONCESSION FEE**

5.1 The Concessionaire must pay to the Lessor in advance and in the manner directed by the Lessor the Concession Fee plus GST in the installments and on the Concession Fee Payment Dates specified in Items 6, 7 and 8 of Schedule 1.

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

#### **6.0 OTHER CHARGES**

6.1 In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Lessor:

- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Concessionaire's occupation of the Site, use of any structure or facility on the Land, or the carrying on of the Concession Activity;
- (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Lessor;
- (c) all costs incurred by the Lessor in providing an annual building warrant of fitness to a territorial authority, including costs paid to an independent

qualified person for a report establishing or re-establishing compliance with a compliance schedule. If work is required to a structure or facility of the Lessor's on the Land in order to obtain a new building warrant of fitness, the Lessor is to pay the cost of the work subject to the Concessionaire's obligations under clause 10.

- 6.2 If the Concessionaire surrenders this Document with the consent of the Lessor, the Concessionaire will continue to be liable for and must pay to the Lessor on demand in respect of its occupation of and activity on the Land all Other Charges which may be due for the current payment period even though this period may not expire until after the date of surrender.
- 6.3 Where the Lessor 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 Lessor whatever contribution the Lessor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Land. The Lessor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

## **7.0 CONCESSION FEE REVIEW**

- 7.1 The Lessor will review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) the Lessor 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 Lessor 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 Lessor's notice, the Concessionaire gives written notice to the Lessor 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 Lessor under clause 7.1 (c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Lessor'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 Lessor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Lessor or by the Concessionaire, whichever is applicable.

7.2 Immediately the Concessionaire gives notice to the Lessor 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 is to 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 is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
  - (ii) the Concession Fee Review will establish the market value for the Concession Activity as at that date instead of the date fixed under clause 7.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
  - (iii) each subsequent Concession Fee Review will take place in accordance with the procedure fixed in clause 7.1.

## **8.0 CONCESSION ACTIVITY**

8.1 Subject to clause 42, the Concessionaire is not to use the Land 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 COMPLIANCE**

- 9.1 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, 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 Document takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977 the National Parks Act 1980, the Resource Management Act 1991, 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 bylaws made under the Reserves Act 1977 or the National Parks Act 1980.
- 9.2 The Concessionaire must comply with all conditions imposed by the Lessor in granting this Document.
- 9.3 (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 Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.
- 9.4 If the Legislation requires the Lessor to spend money on the Lessor's own structures, facilities or land alterations on the Land, the Lessor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Lessor.
- 9.5 If the Legislation requires the Lessor to spend money on structures, facilities or land alterations on the Land which the Lessor considers unreasonable, the Lessor may determine this Lease and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 29.

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

- 10.1 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 Lessor.
- 10.2 In giving approval under clause 10.1 the Lessor may, in the Lessor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the

Concession Fee, as the Lessor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.

- 10.3 The Concessionaire must pay to the Lessor 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.
- 10.4 The Concessionaire must, upon request by the Lessor, submit written engineering or building plans and details to the Lessor 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.
- 10.5 The Concessionaire must not commence any work on the Land until the Lessor has given written approval.
- 10.6 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.
- 10.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

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

- 11.1 The Concessionaire is to keep and maintain in good and substantial repair and condition the Lessor's structures, facilities and land alterations.
- 11.2 At the end or earlier determination of the Term, the Concessionaire must quietly yield up the Lessor's structures, facilities and land alterations in the same good and substantial repair and condition as they were in at the commencement of this Document.
- 11.3 Subject to the Lessor providing to the Concessionaire reasonable notice the Lessor and the Lessor's employees and agents may at all reasonable times enter the Land to view its condition and the condition of the structures and facilities on it.

11.4 The Concessionaire must comply with any written notice given by the Lessor of any failure on the part of the Concessionaire to comply with any requirement of this Document.

## **12.0 INSURANCE OF STRUCTURES, FACILITIES AND LAND ALTERATIONS**

12.1 The Concessionaire must insure and keep insured with an insurer approved by the Lessor all structures, facilities and land alterations on the Land in the joint names of the Lessor and Concessionaire for their respective interests to their full replacement value against loss or damage caused by fire, earthquake, fire consequent on earthquake, avalanche, flood, volcanic activity; and including indemnity insurance for the cost of demolition, removal of debris and clearance of the Land.

12.2 The Concessionaire must provide the Lessor with a copy certificate of currency for the policy or policies of insurance before commencing the Concession Activity and on each renewal of the policy.

## **13.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS**

13.1 The Concessionaire must at the Concessionaire's expense:

- (a) 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 required by the Lessor, engage a pest exterminator approved by the Lessor;
- (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) if required by the Lessor 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.

## **14.0 PROTECTION OF THE ENVIRONMENT**

- 14.1 Except as approved in writing by the Lessor 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.
- 14.2 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.
- 14.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if required by the Lessor and for the disposal of all refuse material and is to comply with the reasonable directions of the Lessor in regard to these matters.
- 14.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Lessor the Concessionaire will paint all structures and facilities in colours specified in writing by the Lessor and with paints of a type approved in writing by the Lessor.
- 14.5 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire will, unless the Lessor 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.
- 14.6 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 Lessor may approve in writing, the Lessor 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 Lessor.
- 14.7 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 without the written permission of the Lessor in which event the following provisions are to apply:
  - (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
  - (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort or warmth;
  - (iii) an approved camp fire may not be lit:
    - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
    - (bb) within 3 metres of a log or dry vegetation;
    - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
    - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
    - (ee) during a prohibited fire season
  - (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977;
- (c) not store or permit to be stored fuels or other combustible materials on the Land without the written permission of the Lessor. 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 Lessor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.

14.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 14.

14.9 The Concessionaire must immediately report to the Lessor any act in contravention of clause 14 and wherever possible the names and addresses of any person carrying out

such acts; and must provide the Lessor with details of the circumstances surrounding such incidents.

## **15.0 ADVERTISING**

15.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior written approval of the Lessor. 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.

## **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 Lessor 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.

## **17.0 TEMPORARY SUSPENSION**

17.1 The Lessor may temporarily suspend this Document if, in the opinion of the Lessor, 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 Lessor, the activities of the Concessionaire, its employees, clients or invitees are having or may have an adverse effect on the environment and the Lessor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Lessor, the Lessor may suspend this Concession until the

Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Lessor.

- 17.3 The Lessor may suspend this Concession while the Lessor investigates any of the circumstances contemplated in clauses 17.1 and 17.2 and also while the Lessor investigates any potential breach or possible offence by the Concessionaire whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act of which the Lessor has become aware.
- 17.4 The word “investigates” in clause 17.3 includes the laying of charges and awaiting the decision of the Court.
- 17.5 During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.6 The Lessor 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 19 including loss of profits.

## **18.0 ASSIGNMENT**

- 18.1 The Concessionaire is not to transfer, sublease, 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 Lessor. The Lessor may in the Lessor'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 Lessor, in the Lessor's discretion, decides otherwise.
- 18.3 If the Lessor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, Concessionaire, or assignee a covenant to be bound by the terms and conditions of this Document.
- 18.4 The Concessionaire must pay the costs reasonably incurred by the Lessor incidental to any application for consent, whether or not such consent is granted.
- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Lessor.

**19.0 DAMAGE OR DESTRUCTION OF LESSOR'S STRUCTURES OR FACILITIES**

19.1 If the Lessor's structures or facilities or any portion of them are totally destroyed or so damaged:

- (a) as to render them untenable, the Term is to terminate at once; or
- (b) as, in the reasonable opinion of the Lessor, to require demolition or reconstruction, the Lessor may, within 3 months of the date of damage or destruction, give the Concessionaire 1 month's written notice to terminate and a fair proportion of the Concession Fee and Other Charges will cease to be payable according to the nature and extent of the damage.

19.2 Any termination under clause 19.1 is to be without prejudice to the rights of either party against the other.

19.3 If the Lessor's structures or facilities or any portion of them are damaged but not so as to render the premises untenable and:

- (a) the Lessor'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 Lessor has not exercised the right to terminate under clause 20.1 or 20.2,

the Lessor must, with all reasonable speed, apply all insurance money received by the Lessor in respect of the damage towards repairing the damage or reinstating the structures or facilities; but the Lessor will not be liable to spend any sum of money greater than the amount of the insurance money received.

19.4 Any repair or reinstatement may be carried out by the Lessor using such materials and form of construction and according to such plan as the Lessor 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.

19.5 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.

19.6 If any necessary permit or consent is not obtainable or the insurance money received by the Lessor 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.

## 20.0 TERMINATION

20.1 The Lessor 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 Lessor 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 Lessor 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 Lessor, the services provided by the Concessionaire are manifestly inadequate; or
- (d) the Concessionaire is convicted of an offence, whether or not related to the Concession Activity, under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
- (e) the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Lessor, 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.

20.2 The Lessor may terminate this Concession by 12 months notice in writing to the Concessionaire pursuant to Schedule 3 Clause 2 of this lease.

20.3 If the Lessor 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.

20.4 The Lessor may exercise the Lessor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Lessor or any indulgence granted by the Lessor for any matter or default.

#### **21.0 LESSOR MAY REMEDY CONCESSIONAIRE'S DEFAULT**

21.1 The Lessor may elect to remedy at any time without notice any default by the Concessionaire under this Concession.

21.2 The Concessionaire must pay to the Lessor forthwith on demand all reasonable costs and expenses incurred by the Lessor, including legal costs and expenses as between solicitor and client, in remedying such default.

#### **22.0 DISTRAINT**

22.1 The Lessor may distrain for the Concession Fee (plus GST) and any other monies otherwise payable by the Concessionaire under this Concession which are in arrears or unpaid for the space of 14 days after they have become due and payable whether demanded or not.

#### **23.0 QUIET ENJOYMENT**

23.1 The Concessionaire, while paying the Concession Fee and performing and observing the terms and conditions of this Document, is entitled peaceably to hold and enjoy the Land and any structures and facilities of the Lessor without hindrance or interruption by Lessor or by any person or persons claiming under the Lessor until the expiration or earlier determination of this Concession.

#### **24.0 LESSOR'S DIRECTIONS**

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

## **25.0 POWERS, RIGHTS AND AUTHORITIES**

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

## **26.0 INDEMNITIES AND INSURANCE**

26.1 The Concessionaire will indemnify and keep indemnified the Lessor 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, clients or invitees or otherwise caused as a consequence of its occupation of the Land or as a result of its conduct of the Concession Activity on the Land.

26.2 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.

26.3 Without prejudice to or in any way limiting its liability under clause 26.1 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 the Concessionaire's use of the Land or 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, including those matters specified in clause 13.

26.4 With respect to clause 26.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

- 26.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Lessor 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 Lessor for all expenses incurred by the Lessor in making good any damage to the Land or the property of the Lessor resulting from such act or omission.
- 26.6 (a) The Lessor 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 26.6(b), such damage or interference is caused by any wilful act or omission of the Lessor, the Lessor's employees, agents or contractors;
- (b) Where the Lessor is found to be liable due to a wilful act or omission, the total extent of the Lessor's liability is limited to \$1M in respect of the Concessionaire's structures and facilities.
- 26.7 Notwithstanding anything else in clause 26 the Lessor is not liable for any indirect or consequential loss howsoever caused.

## **27.0 EXPIRY OF LEASE**

- 27.1 If the Lessor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, the occupation is to be on the basis:
- (a) of a monthly tenancy only, terminable by 1 month's written 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 Document.
- 27.2 If, on expiry of the Term, the future occupation of, or any operation on, the Land is not authorised by the Lessor, the Concessionaire accepts that the Lessor will have no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.

- 27.3 All structures or facilities remaining on the Land at the expiry, surrender or termination of this Document, or as otherwise approved by the Lessor, will be deemed to be fixtures and property in them will vest absolutely in the Lessor.
- 27.4 In that case the Lessor will not be liable to pay compensation to the Concessionaire for the structures and facilities and may, at the Lessor's option, remove or destroy or otherwise dispose of them, and recover the costs and expenses of their removal or destruction from the Concessionaire as a debt due to the Lessor.

## **28.0 FORCE MAJEURE**

- 28.1 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.
- 28.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

## **29.0 DISPUTE RESOLUTION AND ARBITRATION**

- 29.1 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.
- 29.2 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.
- 29.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 29.4 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.

29.5 The arbitrator must include in the arbitration award reasons for the determination.

### **30.0 NOTICES**

30.1 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.

30.2 A notice given in accordance with clause 30.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of a letter, on the third working day after posting;
- (c) in the case of facsimile, on the date of dispatch.

### **31.0 COSTS**

31.1 The Concessionaire must pay the Lessor's legal costs and expenses of and incidental to preparing and executing this Document or any extension or variation of this Document.

31.2 The Concessionaire must pay in full immediately on demand all costs and fees (including but not limited to solicitors' costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor:

- (a) to enforce or attempt to enforce the Grantor's rights and powers under this Document if the Concessionaire is in breach or default;
- (b) to recover outstanding money owed to the Grantor.

### **32.0 RELATIONSHIP OF PARTIES**

32.1 Nothing expressed or implied in this Document shall be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) preventing the Lessor from granting similar concessions to other persons.

### **33.0 OFFENCES**

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

#### **34.0 SEVERABILITY**

34.1 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.

#### **35.0 ENTIRE UNDERSTANDING**

35.1 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.

#### **36.0 REGISTRATION**

36.1 The Lessor is not required to do any act or thing to enable this Document to be registered and the Concessionaire will not register a caveat in respect of the Concessionaire's interest under this Document.

#### **37.0 VARIATIONS**

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

37.2 The Lessor 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 Lease was granted; or

- (b) because the information made available to the Lessor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Lease and the effects of the Activity permitted by this Document require more appropriate conditions.

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

### **38.0 GUARANTEE**

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

38.2 Subject to clause 38.1 and in consideration of the Lessor 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 Lessor against any loss the Lessor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.

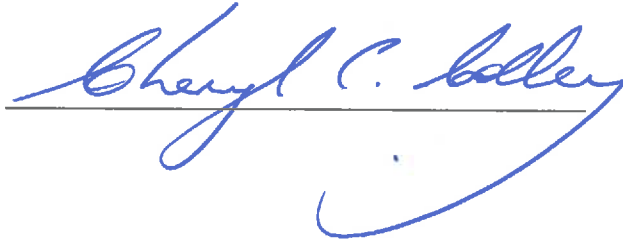
38.3 Subject to clause 38.1 the Guarantor covenants with the Lessor that:

- (a) no release, delay, or other indulgence given by the Lessor 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 Lessor the Guarantor may, for all purposes, be treated as the Concessionaire and the Lessor 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.

**39.0 CO-SITING**

- 39.1 (a) The Concessionaire will not allow Co-Siting without the prior written consent of the Lessor.
- (b) The Lessor's consent must not be unreasonably withheld, but is at the Lessor's sole discretion and subject to such reasonable terms and conditions as the Lessor thinks fit, including a requirement that the Co-Sitee be liable for direct payment to the Lessor of a Concession Fee in respect of the Co-Sitee's Activity.
- (c) The Lessor may withhold consent:
- (i) the Co-Siting would result in a substantial change to the Concession Activity on the Land; and
  - (ii) the Lessor considers the changes to be detrimental to the environment of the land.
- 39.2 Any contract, licence or agreement by the Concessionaire to permit a Co-Sitee, with the consent of the Lessor, to Co-Site must have annexed to it a copy of this Document, and must contain a Covenant on the part of the Co-Sitee not to cause the provisions of this Document to be breached by any act or omission of the Co-Sitee.
- 39.3 For the avoidance of doubt a Co-Sitee permitted on the Land must enter into a separate agreement with the Lessor in terms of which the Co-Sitee will be required to pay a fee to the Lessor to conduct an Activity on the Land. This separate agreement must not contain provisions which conflict with the Concessionaire's rights and obligations in relation to the Land.

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



**Steve Sharman**  
Community Relations Officer  
Dept. of Conservation  
Christchurch

Signed by:

Sec 9(2)(a)

as Concessionaire  
in the presence of :


Witness full name:

Witness signature:

Witness occupation :

Address :

Sec 9(2)(a)



## SCHEDULE 1

1. **Land:** 202 square metres being Section 1 Pt Reserve 4100 Blk XVI Leeston Survey District  
*(see definition of Land in clause 1.1)*
2. **Concession Activity:**  
Lease of land for a hut site *(see definition of Concession Activity in clause 1.1.)*
3. **Term:** 5 years commencing on 1 July 2004 *(see clause 3.1)*
4. **Renewal:** 3 rights of renewal for a further 5 years each, subject to clause 2 on schedule 3 attached *(see clause 3.2)*
5. **Expiry Date if all renewals are exercised:** 30 June 2024 *(see clause 3.4)*
6. **Concession Fee:** \$340 per annum + GST *(see clause 5.1)*
7. **Concession Fee Instalments:** 6 monthly in advance *(see clause 5.1)*
8. **Concession Fee Payment Date:** 1 January and 1 July each year *(see clause 5.1)*
9. **Penalty Interest Rate:** *(see clause 5.2)*  
Double the Grantor's bank's current highest 90 day bank bill buy rate
10. **Concession Fee Review Date:** 30 June 2007 and every 3 years from that date
11. **Public Liability General Indemnity Cover:** *(see clause 26.3)*  
for \$ 1,000,000
12. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 26.3)*  
for \$500,000
13. **Statutory Liability** *(see clause 26.3)*  
for \$ NIL
- 14(a) **Other Types of Insurance:** *(see clauses 12 & 26.3)*  
for \$NIL
- 14(b) **Amounts Insured for Other Types of Insurances:** *(see clauses 12 & 26.3)*  
for \$NIL
15. **Environmental Monitoring Contribution:** NIL
16. **Address for Notices:** *(see clause 30)*
  - (a) Lessor:  
  
The Conservator  
Department of Conservation  
Private Bag

Christchurch

(b) Concessionaire

Any action requiring notice in writing from the Lessor to the Concessionaire shall be deemed to have been completed on delivery of a registered letter to the last known address of the Concessionaire.

**SCHEDULE 2**

*Community Service Contribution*  
N/A

### SCHEDULE 3

#### SPECIAL CONDITIONS

1.0 INDEMNITY

The Concessionaire will indemnify and keep indemnified the Lessor from any loss whatsoever that might result to the Concessionaire as a result of flooding of the land or other damage, whether resulting from a natural occurrence or from increased lake levels occurring due to changes in average sea level rises, or deliberate changes in management of the lake levels of Te Waihora (Lake Ellesmere)

2.0 EXPIRY

Upon Expiry of the lease or upon expiry of any renewal of the lease the Concessionaire will assess the suitability of the land contained within the lease to meet the concession activity described in the First Schedule hereto. If in the opinion of the Lessor, the land is no longer fit for this purpose the lease may be terminated by the Lessor in terms of Clause 20 of this Lease PROVIDED THAT the Lessor shall give the Concessionaire 12 months notice in writing of such termination under this clause.

3.0 NO RIGHT OF FEE SIMPLE

The Lessee will have no rights of acquiring or purchasing the fee simple of the said land

4.0 HUT SITE MAY BE SUBJECT TO FLOODING

The Concessionaire enters into this lease agreement on the understanding that the hut site because of its proximity to Te Waihora (Lake Ellesmere) may be subject to flooding from time to time during the course of this lease and the provisions of Clause 1.0 above with respect to the Concessionaire indemnifying the Lessor shall apply accordingly.

5.0 CONCESSIONAIRE TO MAINTAIN HUT

The Concessionaire shall maintain the existing hut and attached structures together with any buildings, fences, gates or other structures now existing or which may be erected on the hut site in the future in good order and repair and in a neat and tidy condition to the satisfaction of the Lessor.

6.0 OCCUPANCY

The Concessionaire will use the hut site solely for the purpose of a site for a recreational hut and shall not reside there on a permanent basis PROVIDED THAT the Lessor may in its discretion authorise in writing the occupation of up to 3 (three)

of the 58 (fifty eight) huts for any time period for the purposes of security and maintenance of the hut settlement.

#### 7.0 LIMITATIONS ON USE

The Concessionaire shall be limited in his use of the hut site to those days shown on Schedule 4 attached

#### 8.0 ALTERATIONS AND STRUCTURES

The Concessionaire shall not erect any new building or structure or in any way alter the existing building on the hut site without the prior written approval of the Lessor and without first obtaining any necessary approval or consent from the Selwyn District Council or Canterbury Regional Council or any other relevant authority. Any additions or alterations approved under this clause must comply with the building standards set out in Schedule 5 attached

#### 9.0 WASTE DISPOSAL

The Concessionaire will ensure that all waste water arising from his use of the land is discharged into an approved holding tank which is to be periodically emptied by a licensed contractor. A lead-in period is to be given for compliance with this requirement; all huts are to comply by 30 June 2005. Installation and operation of the holding tank shall preclude outflow discharges to the environment at any time.

#### 10.0 LESSOR'S RIGHT OF INSPECTION

The Lessor and the Lessor's agents may at all reasonable times enter the land and premises to view its condition. If the Lessor gives the Concessionaire written notice of any failure on the part of the Concessionaire to comply with any of the requirements of this lease the Concessionaire shall take all reasonable steps to comply forthwith.

#### 11.0 CONCESSIONAIRES CONDUCT

The Concessionaire shall not:

- (a) Bring upon or store on the land or allow to be brought upon or stored on the land any machinery, goods, vehicles or things of an offensive, noxious, illegal or dangerous nature or anything that may cause nuisance;
- (b) Use the land or allow it to be used for any noisome, noxious, illegal or offensive activity, trade or business;

(c) Allow any act or thing to be done which may be or come to be a nuisance, disturbance or annoyance to the Lessor, other Concessionaires of land in the vicinity or any other person.

(d) Undertake any activity which may pollute Te Waihora (Lake Ellesmere).

## 12.0 TRANSFER

The Concessionaire will not mortgage, charge, assign, transfer, sublet or otherwise part with possession of the hut site or any parts thereof or any building upon the hut site without the prior consent in writing of the Lessor. Such consent shall not be unreasonably withheld.

## 13.0 NOXIOUS PLANTS AND ANIMALS

The Concessionaire will at all times during the lease and to the satisfaction of the Lessor keep the hut site clear from gorse, broom, sweetbriar and other noxious plants and from rabbits and vermin and in particular will duly and fully comply with the provisions of the Biosecurity Act 1992 and the Canterbury Regional Pest Management Strategy and all amendments to those Acts and strategies and with all notices or demands lawfully given or made by any person under those Acts and strategies or other lawful authority.

## 14.0 DOMESTIC ANIMALS

The Concessionaire will not keep any animals of any kind whatsoever on the hut site PROVIDED The Concessionaire may with the prior approval in writing of the Lessor keep a dog on the hut site for such time periods as may be specified in the approval.

## 15.0 HEDGES DRAINS ETC.

The Concessionaire will throughout the term of this lease, to the satisfaction of the Lessor cut and trim all live fences and hedges upon the hut site, and keep them clean and clear from weeds and will keep open all creeks drains ditches and water courses and will refrain from channelling or otherwise diverting water from the hut site on to any adjacent land.

## 16.0 RUBBISH DISPOSAL

The Concessionaire will not dispose of any rubbish on the hut site other than by burning in an incinerator approved by the Lessor and will use his best endeavours to avoid the risk of fire and shall at all times comply with all limitations, restrictions, conditions or prohibitions on burning which from time to time may be imposed under the Forest and Rural Fires Act 1977 or any regulation or bylaw.

## 17.0 PLANTS, MINERALS, GRAVEL ETC.

The Concessionaire will not cut harm remove or destroy any trees or shrubs or use or remove any mineral gravel or sand or otherwise injure the surface of the hut site except where necessary for permitted building development and maintenance, weed or pest control and shall only plant on the hut site species set out in schedule 6 attached.

#### 18.0 HUT OWNERS ASSOCIATION

The Concessionaire will at all times comply with the rules of the Hut Owners Association Incorporated for regulation of the Hut Settlement and will pay to the Association such fees and levies as it may impose for services provided to the hut site.

#### 19.0 LESSORS NOTICES AND REQUIREMENT

The Concessionaire will comply with all notices and directions given by the Lessor for the regulation of the Lower Selwyn Hut Settlement and in particular will at his own expense execute all works and observe all sanitary requirements of the Lessor in respect of the hut site or any building thereon.

**SCHEDULE 4**

**LOWER SELWYN HUTS- LIMITATIONS ON USE**

1. The land shall be used solely for the purpose of a site for a recreational hut and subject to Schedule 3 Clause 6.0 the Concessionaire shall not use the land as a permanent place of residence.
2. Use of the hut site and occupation of the dwelling shall be limited to:
  - (a) any weekend or public holiday and;
  - (b) the Christmas holiday period being defined as a period between December 1<sup>st</sup> and February 28<sup>th</sup> inclusive and;
  - (c) any 3 separate periods of up to 21 days consecutivelyin any one calendar year.

## SCHEDULE 5

### BUILDING STANDARDS

1. Maximum building floor area including carparking and attached structures is not to exceed 65 square metres per site. This includes carports, decks, verandahs, conservatories and similar structures
2. Maximum height of huts: 4 metres to ridgeline, parallel with existing unmodified ground contour
3. Shape, Colour and Design

As a guiding principle, buildings are to retain a "bach like" appearance through the use of:

- (a) Exterior cladding materials which should be traditional bach construction materials (eg corrugated iron (zincalume), weatherboards, cement board, stone etc)
- (b) colours which do not exceed 37% reflectance and are in harmony with the environment. Natural shades and light tones should be used.

4. Separation

- (a) minimum separation between huts: 4.0 metres
- (b) set back from boundaries: 2.0 metres

5. Outbuildings – maximum of 1 outbuilding not exceeding 9 square metres in floor area (not including toilets or wastewater tanks), with a maximum height of 3 metres.

6. Landscaping

- (a) New fencing (including replacement fencing) will not exceed 1.0 metre in height.
- (b) All plantings are to be of species endemic to the Te Waihora area (from the approved list of species set out in Schedule 6 attached)

7. Waste disposal – All huts are to have all greywater discharged into approved holding tanks (maximum 3000 litre capacity) which are to be periodically emptied by a licensed contractor. A lead-in period is to be given for compliance with this requirement; all huts are to comply 30 June 2005. Building consent(s) may be required. Installation and operation shall preclude outflow discharges to the environment.

8. There is to be no discharge of effluent to the environment.

9. General – These guidelines do not remove any requirements for consent from Environment Canterbury, or the Selwyn District Council where these might be required. Additions, alterations or replacements to all building and structures must be approved by the Lessor prior to work commencing.

## SCHEDULE 6

### APPROPRIATE PLANTS FOR SELWYN HUTS

#### Trees and shrubs

Titoki	<i>Alectryon excelsus</i>
Mingimingi	<i>Coprosma crassifolia</i>
Mingimingi	<i>Coprosma propingua</i>
Karamu	<i>Coprosma robusta</i>
Cabbage tree	<i>Cordyline australis</i>
Kahikatea	<i>Dacrycarpus dacrydioides</i>
Ake ake	<i>Dodonaea viscosa</i>
Pokaka	<i>Elaeocarpus hookerianus</i>
Broadleaf	<i>Griselinia littoralis</i>
Hebe	<i>Hebe salicifolia</i>
Lowland lacebark	<i>Hoheria angustifolia</i>
Kanuka	<i>Kunzea ericoides</i>
Manuka	<i>Leptospermum scoparium</i>
Ramarama	<i>Lophomyrtus obcordata</i>
Red matipo	<i>Myrsine australis</i>
Weeping matipo	<i>Myrsine divaricata</i>
Whitey wood	<i>Melicytus ramiflorus</i>
Kohuhu	<i>Pittosporum tenuifolium</i>
Lowland ribbonwood	<i>Plagianthus divaricatus</i>
Lowland totara	<i>Podocarpus totara</i>
Matai	<i>Prumnopitys taxifolia</i>
Kowhai	<i>Sophora microphylla</i>

#### Grasses, sedges, rushes

Toi toi	<i>Cortaderia richardii</i>
Pukio	<i>Carex secta</i>
	<i>Carex virgata</i>
	<i>Carex maorica</i>
	<i>Carex flagellifera</i>
	<i>Juncus gregiflorus</i>
	<i>Juncus pallidus</i>
Flax	<i>Phormium tenax</i>

**Canterbury Conservancy**

**Office Memo:**

File PAR 12-08-23

Poma Palmer (Management Planner)

To

03.02.10 DRAFT

Cheryl Colley (Community Relations Manager) &  
Phil Keene (Supervisor Concessions-SLM)

**Land occupation investigation – ‘The Kaik’ huts settlement –  
Waitaki Mouth south bank**

**Land unit and appellation:**

Land unit J41-525 in the Department land register.

Section 60A, Steward Settlement, Blk VIII, Papakaio Survey District.

**Land status and reserve administration history:**

1. Section 60A created as part of Steward Settlement farm land subdivision by Government circa early 1900s.
2. L&S file 8/232 (see Records below) identifies that Waitaki Acclimatisation Society (WAS) had some informal occupation of the land by 1912.
3. "Land permanently reserved for 'Camping-ground for fishermen and other persons'", by section 322 Land Act 1908; Gazette 1917 p726; 10-0-0 acres (4.0469 ha).
4. Gazette 1917, p 1124, by section 2 of the Public Reserves and Domains Amendment Act 1914, "vest[ed] control and management of the [reserve] in the said special Board [WAS], who shall hold the said reserve... in trust..." for the purposes of the gazetted reserve purpose.
5. Section 2 of the 1914 Act applied only to "Class I or Class II" reserves under the Public Reserves and Domains Act 1908, so the 1917 gazettal confirms that the reserve came under "Class II, Reserves for Public Works and General Purposes", being "Any other reserve not herein defined, and made for any purpose of public safety, utility, advantage,

or enjoyment.", as opposed to Class III reserves which included "recreation reserves".

6. The Public Reserves and Domains Act 1908 (the principle Act for the 1914 amendment) provides nothing further to determine how the reserve may be used or not used other than in accordance with the Gazetted purpose, nor any requirement for the vested body to obtain permission from Government for actions on the reserve.
7. The 1917 gazettal, in referring to "hold... in trust", may have allowed the option of title being issued for the reserve (as indicated by the CCL in advice to WAS in 1954 – see Records 1, f 21 below), but no provision for this has been found in the 1908 Act or 1914 Amendment.
8. Section 4(2) Public Reserves, Domains and National Parks Act 1928 required that "...public reserves... shall continue to be public reserves for the same purposes as those for which they were held immediately before... this Act." Neither the leasing (s 14) nor temporary occupation (s 15) provisions of the Act were applicable to this reserve case.
9. Section 12(2) Reserves and Domains Act 1953 reiterated the above 1928 provisions. Added to the 1953 Act were the s 84 Offences on reserves provisions, of which the occupation of reserve (s 84(1)(h)) or the erection of buildings (s 84(1)(n)) without authorisation "by the Minister or the Commissioner or the administering body" are an offence.
10. No such title, as referred in 7 above, was sought or issued, so section 7(2) of the Public Reserves and Domains Amendment Act 1914 allowed the vesting to be revoked with the consent of the Trustees; this being given in 1967 (see Records 2, f 34-42 below).
11. Gazette 1967, p 1904 revoked the above vesting and Gazette 1967, p 1894, pursuant to the Reserves and Domains act 1953, "appoint[ed]" the Waitaki Valley Acclimatisation Society (WVAS) to "control and manage" the reserve.
12. Part III of the Reserves Act 1977 redefined reserve classifications, but for reserves not classified under the Act, section 16(6) requires that the "...reserve shall be held and administered for the purposes of its existing reservation...". The reserve remains unclassified.

13. From 01 April 1987, by the Conservation Act 1987, the WVAS ceased to exist but no transfer of control and management to another body occurred, reserve vesting passed back to Minister, with control passing to DoC Otago Conservancy.
14. Since 1987, management has informally been by the Waitaki Kaik Fishing Reserve Committee; Secretary Sec 9(2)(a), Crib # 32, Kaik Road Fishing Reserve, 5H RD, Oamaru; Sec 9(2)(a) Committee management is in accordance with an "Agreement" with each crib owner as a "licensee" (see Appendix A<sup>1</sup> pdf).
15. Land north of Kaik Road became part of Canterbury Conservancy by a 2007 boundary change agreement with Otago Conservancy.

**Reserve occupation:**

16. 45 cribs occupy approximately the southern half of the reserve
  - i. The hut settlement is attractive, well laid out and very tidy (with a few crib site exceptions), with mostly well-maintained cribs [DoC internal, see S:\Picture Files\Kaik Huts].
  - ii. Each crib 'section' is approx 50 x 50 feet (15.24 x 15.24 m), 2500 sq ft (232.26 sq m), laid out in an orderly way, but there is no overall section plan.
  - iii. The licensee agreements (clause 15) specify building and boundary separation distances; these leave a 600 or 800 sq ft , depending on position in the settlement, maximum footprint for each crib.
  - iv. Crib owners wanting to build or extend buildings, make a request to the Committee and if approved the applicant seeks building consent from the Waitaki District Council, with any consent granted being copied to the Committee.
  - v. Approximately 10 cribs are permanently occupied (8 named letterboxes at roadside).
  - vi. The Committee charges a services levy of \$250 pa per crib.

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<sup>1</sup> Appendix A is an adaption of the "Conditions under which license holders may erect, own, lease, transfer, or occupy buildings on fishing reserves controlled by the Waitaki Acclimatisation Society." (see Records 1, folio 19, 1954, below).

17. The Committee requires crib owners to hold "an adult's shooting or fishing licence", and has a sign "Fishing licence holders only" at the reserve entrance.
18. Committee and/or hut owners provide or arrange water supply, electricity supply, public toilet facilities, a fire-fighting water tank, roads and communal grounds maintenance.
19. Central to the settlement is a grassed area, providing open space and up to 6 camping sites (toilets & water supply; no power points) used during the fishing season, and at other times by family and friends of crib owners.
20. The reserve's northern half is in pasture grazed by the adjoining farmer's dairy herd, by an informal arrangement with the Committee; in 'return' the farmer allows access to the river, via a vehicle track to the east of the cribs.
21. A small part (approx. 20 x 50 m) of the northern area, on the western side, is used by crib owners for storage of fire wood, trailers, caravans and other things, with Committee approval, and for the settlement's water pump, bore and pump shed.
22. Sites in the northern half of the reserve have been used by hut owners in recent years as rubbish pits, for green waste only.
23. Cribs in this reserve have recently sold for \$110,000, \$65,000 and \$70,000, with another currently for sale.
24. Current 2009 valuation of the reserve plus cribs is \$1,190,000 capital value, and \$65,000 land value (some uncertainty as to whether this includes the grazed part of the reserve).
25. As is usual for these hut settlement communities there is a mixture of cooperation, goodwill and tension between crib owners on best management, aesthetics, trees, occupants etc. The Committee's apparently successful operation since 1987 without any legal authority does say something for a degree of community cohesion.

**Reserve setting:**

26. Located on Kaik Road, which is the access road to the beach south of the Waitaki River mouth, 550 metres beyond the reserve. See Google Maps satellite photos.
27. Adjoined by the Waitaki Mouth Holiday Park, currently owned by the adjoining dairy farmer and for sale. At current surrounding dairying land values and for what is likely a very seasonal and marginally returning holiday park operation, the continuation of this public use facility cannot be assumed.
28. To the north of the reserve and fronting onto the Waitaki River is conservation area J41-522 (Pt Sections 53 & 11, Block VIII, Papakaio SD; 26.4 ha), comprising about two thirds developed dairying pasture and the balance in riparian willow and gorse. Occupied by Sec 9(2)(a) but with no current grazing licence (see file PAC 12-04-88); under action.
29. Formerly part of J41-522 above is the Waitaki River Mouth nohoanga site (Ngai Tahu Claims Settlement Act 1998, Schedule 95, Site no. 44). This 1.0028 ha site appears from the air photos to be in the willow/gorse area; legal access would either be through the Kaik reserve or from the Waitaki riverbed, but practical vehicle access is probably via the farm track immediately east of the Kaik reserve, by arrangement with the farmer.

**DoC policy guidance:**

30. Conservation General Policy (2005), Policy 10(h), "Existing private accommodation...will be phased out, except where specifically provided for or allowed in legislation...[as]...set out in any... conservation management strategy...". "Private accommodation" is defined as "Place to live or lodge which is not available to the general public on an open basis."
31. Otago CMS (1998), section "27.3 Private cribs (baches) and other private buildings", honours current leases/licences, and aims for lifetime phase-out but with some relenting where "there is a commitment from a parent department" and/or "no conservation values are involved".
32. Part IIIB Conservation Act requires a concession (lease) for activities in the nature of authorised cribs on public conservation land. For other

hut settlements (e.g. Lake Alexandrina and Lower Selwyn Huts) the hut sites have been valued as individual leasehold sections by a valuer.

### **Waitaki District Council management**

33. Council charges rates averaging \$315 per crib, up to \$600 for some, and \$14,216 in total.
34. Council requires building consents for all buildings and septic tanks.
35. No on-site (water supply, waste water disposal, power) or from-site (rubbish collection) services are provided by Council.
36. Of the 45 cribs, 43 have individual or combined septic tank systems, some with field drains and some with soak pits, one has a composting loo and one an "Enviro" Council-approved toilet.
37. The *Waitaki District Plan* (1999) has no specific mention of the settlement or obvious guidance for their management, and existing use rights apply.
38. Waitaki District Council (Jack Chandra, Planning/Policy Manager, pers coms 09.10.09) has some concerns with starting to see permanent accommodation, primarily due to small hut sites with limited space for waste disposal systems and higher waste volumes with permanent occupancy; sees potential for a combined huts sewerage scheme with disposal field on northern half of the reserve.

### **Records:**

39. Closed Dept Lands & Survey file 8/232 Gemmells Crossing (1912-1957) [this file includes Kaik correspondence, relevant folios copied to a new Canterbury Conservancy file PAR-12-08-23; folio numbers below are those from this new file].
  - folios 1-3, 1912, Waitaki & Waimate Acclimatisation Society [sic] seeks "lease... at nominal rent... as a means of getting over our difficulty...".
  - [no further file action until 1932, but see archived L&S file 8/17/1 below for 1916 action]

- f 5-8, 1932, Waitaki Acclimatisation Society seeks vesting, with (f 6) "the only use that is being made of these grounds is for Acclimatisation Fishing Reserves for huts, etc."
- f 9, 1932, L&S Wellington reveals that Gazette 1917, pg 1124, did vest control in Waitaki Acclimatisation Society.
- f 14 & 16, 1954, WAS to CCL advising that "Hutowners build their own cribs..." but asking if the Society could charge casual users for amenities.
- f 15, 1954, CCL to WAS, "The land must be used in conformity with the trust [the Gazetted purpose and vesting] and it would appear that the Society's proposals... [re hut owner building and charging casuals] are not inconsistent with this trust."
- f 17, 1954, CCL to DFO, "The Society have apparently given permission to various people to build cribs on... [refers to Gemmells Crossing reserve, but the same Gazetted and vesting applies to the Kaik]. No permission was obtained from this office for these crib sites and under the Public Reserves and Domains Act 1928 no approval was necessary."
- f 19, 1954, FO report to CCL, "This camp is very well laid out and very well kept. There are 12 cribs...". Attached are the "Conditions under which license holders may erect, own, lease, transfer, or occupy buildings on fishing reserves controlled by the Waitaki Acclimatisation Society."
- f 21, 1954, in response to WAS concerns about "fear of loss of continuity of tenure" (f 20), the CCL replied "I have perused the conditions of the licences already issued and as these are on a year to year basis and subject to the licensee being also the holder of a fishing license this office has no objection to the Society issuing these year to year licenses on this basis." Advice also given that sale of the land to WAS would need to be at "full current market value"; and that "Application could be made to the District Land Registrar for a title to the land and this title would disclose the trust under which the land is held. The effect of this would be that the Society could not sell the land or use it except in conformity with the Trust."
- f 22-30, 1955, CCL & HO to/from WAS re freeholding options and costs, led to HO decision "That application by [WAS] to purchase freehold... be declined." [NB: WAS never actually made an application to freehold, they just enquired about it.]
- f 31, 1955, DG to CCL, advising preparedness to reconsider above decision, based on a freeholding case at Waikakahi Domain, provided "(1) the area is not used by other than fishermen. (2) public access is assured along the present riverbank, and (3) the

Marine Department concurs." [the Marine Dept at that time had administrative functions for acclimatisation societies].

- f 32, 1955, CCL to WAS, despite above DG advice, the CCL advises that the application to purchase has been declined.

40. DoC file PAR-13-08-48 (1957 – present) Otago – Local Purpose – Kaik Fishing Reserve – Waitaki River [relevant folios copied to a new Canterbury Conservancy file PAR-12-08-23; folio numbers below are those from this new file].

- f 34-42, 1967, between WAS and CCL, upon the proposed amalgamation of the Waitaki and Waimate Acclimatisation Societies into the Waitaki Valley Acclimatisation Society, the 1917 vesting was revoked and an appointment made to "control and manage" the reserve for the same 1917 purposes, by section 21 Reserves and Domains Act 1953.
- f 46, 1986, CCL to solicitors for WVAS, confirming that the reserve was "vested in the Crown with the [WVAS] appointed to control and manage [it]."
- f 47, 1987, Secretary of Waitaki Kaik Fishing Reserve Committee (since 1962) administering the reserve for WVAS, to CCL, enquiring about freeholding option given imminent amalgamation of acclimatisation societies.
- f 48, 1987, CCL to Committee, advising "it is most unlikely that the Department would be prepared to consider actual freeholding the land to your committee" [a folio margin note says "Why not?"] but suggesting that they seek WVAS views.
- f 51-57, 1990, between Committee, Regional Conservator & Central South Island Fish & Game Council, re transfer of reserve control & management to CSIF&GC and possible vesting of the reserve in the WKFR. CCL advice (f 56) that there was no automatic transfer of c&m to CSIF&GC and that section 29 Reserves Act does allow for appointment of a voluntary body like Committee to control and manage.
- f 60, 1991, RC in response to Committee query, advises that "the Department does not feel it is appropriate to consider vesting of the reserve in your committee. The present use of the reserve is seen as a private use of a public reserve at no cost to the hut holders."
- f 63, 1991, Ngai Tahu Maori Trust Board to RC, expressing an ownership and development interest in the reserve "as a possible settlement of its claim to the Waitangi Tribunal."
- f 64-65, 1991, DoC Otago internal memos; variously, reserve disposal inappropriate due to Ngai Tahu interest, vesting of the land

in the Committee not favoured, the possibility of an occupation licence to the Committee as 'head licensee' with rent being charged, and RC agreement on possibility of granting a licence.

- f 66-67, 1991, DoC legal advice obtained;

Sec 9(2)(h)

41. Archived (Archives NZ, Christchurch) Dept Lands & Survey file 8/17/1, Fishing Reserves - Waitaki Acclimatisation Society (1916-1969).

- folio1, 17.07.1916, L&S Wellington to CCL Dunedin, re three reserves, "(1) South Waitaki... Society has spent considerable sums of money on these areas at various times, but apparently have no title and they are therefore not in a position to prosecute trespassers or prevent damage to the reserves..."
- f 6, 21.07.16, Ranger Atkinson (Oamaru) to CCL Otago in response to report request, re "section 60A, near the mouth of the Waitaki River in Block VIII Papakaio District. This section was set aside as a fishing reserve and is very generally used by fishermen. The Society has greatly improved the section by fencing and extensive tree planting... I would strongly urge that this reserve be vested in the Society so that body may have control..."
- f 7, 02.08.16, CCL to Under-Secretary Lands (USL) Wgtn, supporting above vesting.
- f 12, 08.09.16, Chief Surveyor to USL, supplying "tracings and descriptions of... reserves recommended to be gazetted..."
- [Next folio dated 1960 and this and all subsequent folios not about the fishing reserve.]

**Comment:**

42. On-site management of the reserve appears to function well, despite the absence of explicit legal authority since 1987.

43. The reserve and crib settlement, and adjoining campground, provides a popular recreational opportunity as found at most major river mouths in Canterbury and often elsewhere.
44. The 'licensee agreements' (see Appendix jpg), as the means for authorising the crib occupation seem to be based on the terms approved in 1954 by Lands and Survey for use in accordance with the Reserves and Domains Act 1953. This arrangement while used in good faith by the Committee and crib owners, has not kept pace with the subsequent changes in the legislation and administering body. It appears that a services levy is being charged as a rental, and the building/boundary distances are difficult to implement in the absence of any site plan.
45. The reserve's gazetted purpose as a "camping ground for fishermen and other persons" is being adhered to only if private cribs are considered a valid "camping ground" activity, and if shooting/fishing licence holders and friends and family of crib owners are considered a sufficient breadth of "other persons". Private cribs held by fishing licence holders however, have been considered by the Crown for decades to be compatible with the reserve purpose.
46. The statutory and policy authority under the various reserves acts since 1908 to allow private cribs on the reserve is, at this distance in time, uncertain. Regardless, the records consistently show that the CCL had knowledge by 1932 of the reserve's use for private cribs, raised no concerns and gave tacit approval to the cribs, and even considered (f 17, 1954, 12 cribs present) that no approval from the CCL was necessary under the "Public Reserves and Domains Act 1928". Further in 1955 the CCL approved the use of annual licences for the cribs, as issued by the WAS as the administering body under the 1953 Act.
47. Since the formation of DoC in 1987, the concern has primarily been about how to authorise the reserve use rather than question the cribs legality per se, although the legality was questioned in 1991. It is acknowledged however, that Lands and Survey accepted the cribs were compatible with the reserve's status and that other fishing hut settlements exist elsewhere in Canterbury on reserves, albeit that their reserve purposes may be different. Reserve status therefore, is not incompatible per se with fishing hut settlements. Further the failure by the Department to take any steps to regularise the situation since 1987


means the policy environment now is less favourable to the crib owners than previously.

48. Consistent with the Conservation General Policy (2005), to avoid private accommodation on public conservation land being "phased out", it is required that the accommodation has been "specifically provided for or allowed in legislation". Such explicit provision or allowance is not found within the current reserves legislation but given the permissive attitude by the Crown to the cribs over the last 50 years and the 23 year delay by the Department in dealing with the situation there is clearly an equitable argument that these cribs have been allowed.
49. CCL advice in 1954 (Records 1, f 21), was that WAS could obtain title to the reserve land, which opportunity WAS perhaps naively did not seize. If they had, then the transfer to WVAS in 1967 may have been a transfer of the title, not vesting of control and management in trust changing to an appointment of control and management (for which change there is no explanation on file), and in due course a possible transfer of title in 1987 to CSIF&GC.
50. In 1955 L&S Head Office advice was given about a freeholding option providing some conditions were able to be met; these conditions could have been met but the CCL did not pass on this advice and chose to decline the freeholding option.
51. Ngai Tahu interest in the reserve, as expressed in 1991, may now have been overtaken by the Ngai Tahu Settlement, with a nohoanga site established near the reserve. It is unknown if Ngai Tahu sought title to the reserve settlement, as it did in other cases (Greenpark Huts & Fishermans Point at Te Waihora) or if they would have a "first refusal" interest if the reserve was being freeholded.
52. At no time in the history of the settlement has a true rental, as opposed to a services levy, been paid for occupation of the Crown reserve. It cannot be expected that anyone can occupy public conservation land at no cost; the same could be expected if the reserve was vested in any other agency.
53. No concession is held nor rental being paid by the adjoining farmer for grazing of the northern part of the reserve (or yet for the adjoining area, J41-522); any supposed benefit to the crib owners from the informal access arrangement to the river are negated by the fact that

the land between the reserve and the river is public conservation land and legal road. For the conservation land, even if under a grazing licence, public access should be assured.

54. Reserve administration fees paid to the Reserve Committee are for on-site amenities only, and Council rates are as for all occupation within the district.
55. The privately owned campground beside the reserve currently provides a publicly available camping facility for the area. Should the future of this campground not be assured there are considerable public conservation lands in the vicinity should an alternative, public camping site be required, without having to use the reserve area occupied by the cribs.
56. Permanent occupation of the reserve for about 20% of the cribs raises issues of wastewater volume disposal (a Waitaki District Council and/or Environment Canterbury concern), a shifting of use further away from the public 'camping ground' reserve purpose, and may raise crib valuations and hence Council rate payments and any Crown rentals. Some permanent occupation does assist settlement security however. The determination and any enforcement of what is 'permanent occupation' is difficult, although locally, management of both the Selwyn Huts (Selwyn District Council) and the Lower Selwyn Huts (DOC) involve permanent occupation limitation conditions.
57. Legal advice is that possible options for ongoing crib occupation and reserve management include some combination of the following:

Sec 9(2)(h)



58. Freeholding is an option but has not in the past (e.g. f 31, 1955) been favoured by the Department (legality) or Committee (cost), would

trigger Ngai Tahu 'right of first refusal', and there is no guarantee that the reserve could be disposed of to the crib owners or the Committee.

59. Options for public and Ngai Tahu access through the settlement to the adjoining conservation lands, nohoanga site and Waitaki riverbank, and public use of the reserve area not occupied by the cribs and central 'village green' is somewhat constrained by access currently being through the crib settlement. Use of the settlement's 'roads' would be required, with the alternative being on a 'grace and favour' basis with the adjoining landowner.
60. Options for public use of the 'not occupied' reserve area, and the adjoining conservation lands, should be kept open in consideration of public and Government concerns about loss of coastal campgrounds any uncertainty regarding the future of the adjoining privately-owned campground.
61. There may be scope for some rationalisation of conservation land holdings in the area, ensuring the crib settlement's future, maintaining public and Ngai Tahu access routes, and retaining a camping ground.

#### **Recommendations:**

1. That there is sufficient justification to satisfy the "specifically provided for or allowed in legislation" clause within Policy 10(h) of the Conservation General Policy (see para 30 above), i.e. the cribs do not need to be phased out, and a legal solution to them remaining should be sought.
2. Work with the Committee and crib owners initially, and if needed with Waitaki District Council, to choose a future lease and/or management option.

3. If required, include within the reviewed CMS some form of recommendation 1 above, to satisfy Conservation General Policy 10(h).
4. Investigate with the Committee, options for a public access route through the reserve to the riverbank for the public and to the nohoanga site for Ngai Tahu.
5. Investigate, in consultation with the Committee, Ngai Tahu, the adjoining landowner, Waitaki District, and Environment Canterbury, options for future public and Ngai Tahu use, access, camping ground use, and land rationalisation.

**Glossary:**

CCL: Commissioner Crown Lands, Otago Land District, Department of Lands and Survey, Dunedin

CSIF&GC: Central South Island Fish and Game Council

DFO: District Field Officer, Department of Lands and Survey, Dunedin

DG: Director-General, Department of Lands and Survey, Head Office, Wellington

L&S: Department of Lands and Survey

WAS: Waitaki Acclimatisation Society

WKFR: Waitaki Kaik Fishing Reserve Committee

WVAS: Waitaki Valley Acclimatisation Society

**Appendix A: Waitaki Kaik Fishing Reserve Committee Agreement**



102053.pdf

File:

Mike Cuddihy, Conservatory Canterbury

Cc: Cheryl Colley, CRM; Kingsley Timpson, AMW; Evan Alty, Solicitor.

## **Loch Katrine Recreation Reserve and unauthorised huts – planning advice following field inspection 29.06.10<sup>1</sup>**

Having visited the reserve, reviewed my previous statutory report<sup>2</sup>, and read and re-read the *Loch Katrine Recreation Reserve Management Plan* (1999) [the plan] then in my opinion the plan remains fundamentally sound and should be adhered to. Relatively minor updates, additional matters needing consideration today, and other observations are set out below. Some planning advice follows.

### **1. Regional setting**

The plan acknowledges the conservation values linkages between Loch Katrine and Lake Sumner, and the “spectrum of recreational opportunities offered by high country lakes”. Today these two lakes are at the least-modified and most-remote end of that spectrum for at least the larger high-country lakes within Canterbury, if not for virtually all but the smallest of them. While pastoral lease land development has crept through to the Loch Katrine and Lake Sumner shores, this has not occurred to the extent seen in other high country areas and inter-montane basins.

### **2. Access**

The vehicle track beyond Lake Taylor is initially of rough 4wd standard, then rough gravel road standard as upgraded by Council [since 1999?]. Lakes Station has a single-lane gravel road standard farm track through its lands, through to Loch Katrine. It seems hard to publicly justify the difference between these public and private access standards; public pressure must in time come on Council to upgrade the whole track to at least a good 4wd/moderate ground-clearance vehicle standard.

Access into the reserve at the reserve boundaries has now reduced from the two points in 1999 to the one off the legal road – the streambed route. This may have implications in future for flood-proof access, and see also the comments re Hurunui Irrigation below.

### **3. Adjoining land use / local setting**

Since 1999, Lakes Station development has pushed through to and along the south west faces above both lakes. Actions such as tenure review and simpler things like fencing the reserve’s back boundary will result in clearer definition between protected and future freehold/covenant lands and between biodiversity/public use lands and farmland.

This development likely reduces the “semi-wilderness” values identified in the *Hurunui Lakes Working Party Findings* (1994) but the area does still have the also-

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<sup>1</sup> By Mike Cuddihy (Canterbury Conservator), Kingsley Timpson (Waimakariri Area Manager) & Poma Palmer (Conservancy Management Planner).

<sup>2</sup> Docdm-585416 The Loch Katrine huts issues – relevant statutory and other planning documents.

identified “relatively remote” values and certainly looks on to a remote area stretching along the Alps.

Camping is popular at the 2wd road-end at Lake Taylor and it would seem likely to also be popular at Loch Katrine should the access road be upgraded and the reserve made more user-friendly to other than hut owners.

#### **4. Resource Management Act provisions**

See previous statutory/planning summary (docdm-585416).

Since 1999 the regional/district policy/plan framework has reinforced the approach of the plan.

Perhaps more significantly, Lakes Station has brought ‘development’ closer and into the local landscape, raising the spectre of other development such as accommodation, although perhaps not with the current Lakes Station ownership, although that will not last forever. RMA case law gives lessons about not allowing precedents. If DoC was to depart from the plan’s current approved huts approach, towards something that looked more like an authorised private hut settlement, albeit publicly available and assuming this was achievable under the District Plan, then there is a risk of setting a precedent of acceptable effects that may allow additional accommodation within the area outside of the reserve. Further loss of the character of the area may eventuate.

The plan does acknowledge a 1980s attempt to provide a Crown subdivision for holiday homes near the reserve, but this did not eventuate and would now be contrary to the District Plan.

It should be noted that any departure from the plan in terms of accommodation provisions may require a publicly notified consent process that may also challenge the Regional Policy Statement and would likely be contested by public interest groups unless they were on-board.

#### **5. The Department’s statutory framework**

See previous statutory/planning summary docdm-585416.

Public conservation lands have different statutory purposes and our legislation and general policy either explicitly or implicitly requires consideration of “the purposes for which the land is held”. The purpose here at Loch Katrine is a reserve under the Reserves Act, specifically created in 1954 for recreation in the form of camping and picnicking, and gazetted for recreation in 1979.

The reserve is not a conservation area under CA87 that was formerly Crown Land pre-1987 as for the Lower Selwyn Huts or the West Coast CMS-accepted huts, or legal road as in the Taylors Mistake/CCC baches case; it is more akin to the recreation reserve at Lake Alexandrina or the Lewis Pass and Rangitoto scenic reserves where in these three cases unauthorised huts and structures were removed or brought into Department ownership during the 1980s and 1990s.

Solutions found elsewhere in New Zealand to unauthorised huts on public conservation lands cannot be automatically transferred to another site. Also, since 1999 the *Conservation General Policy* has delivered a firm policy on this issue.

## 6. The reserve itself

The reserve is a strategic site for public entry and use of the Loch Katrine and Lake Sumner area. At present it is somewhat of a mess and is physically, visually and socially dominated by the baches, in obvious building presence and in subtle ways (e.g. the rotary clothesline on/near the beach). Even if access was improved it is not an encouraging site for camping and picnicking at present. The baches occupy many of the limited potential camping sites and there is little if any separation of the activities of picnicking/open space, camping, and huts.

The current use/dominance situation is very similar to that at the Lake Alexandrina outlet recreation reserve in the 1970-80s, before action was taken to remove semi-permanent caravans, reclaim the camping area for public use, and retain an unobstructed lake frontage area for non-camping public use.

An important lesson from Lake Alexandrina is that it is not essential to have a hut settlement and hut owners to get a regular user group interest in and care for an area; one argument given for retaining the Loch Katrine private huts. A similar or same effect can be obtained through an 'association' of campers, and in this Loch Katrine case we will still have the LK Association and their public-use huts.

The new LK Assn public huts locality is largely as per the Concept Plan in the plan and while visually obvious (but not dominant) in the landscape at present, that is primarily because there has been no restoration planting (or even until very recently a fence to separate the yellow/green-tone pastoral development lands from the reserve, allowing the development to encroach into the reserve) and a grasslands site for the huts including the slope in front of the huts. In time the site's return to brown-tone rough pasture and with taller indigenous vegetation will both 'settle' and screen the new huts and block out the developed pasture behind.

The siting of the new huts furthest from the lake front is consistent with good use separation planning, although the original intention for the concession (R. Suggate pers coms 05.07.10) was that they be sited on the southern side of the vehicle track servicing the current upper terrace baches. This would have placed the huts at a slightly lower level.

There is a need for a long-term, future generations, view for the reserve. The plan acknowledges that revegetation will take a long time, but clearly it would be helped by stopping the current 'pruning' of shrub species (*Coprosma*, matagouri etc) and stopping the gathering of firewood from within the reserve's beech forest, an action set out within the plan and consistent with reserve status.

Aside from revegetation, the Department is not going to be thanked by future generations if this significant site is allowed to continue to be dominated by private structures on inappropriate sites, even if there is some public use ability. The plan clearly sets out a solution which is being implemented via the LK Assn concession which allows for up to 10 huts, at the plan's Concept Plan location. The only query I

would have is the distance to the existing public toilets, but (R. Suggate pers coms 05.07.10) this separation was acceptable to the LK Assn at the time. Perhaps the now greater than intended separation and the alleged difficulties (non-compliance with regional plan?) with the toilets' septic tank and soakage field system may require re-assessment of toilet systems.

Getting the new public huts operational and in public use would seem an urgent task to help swing the public use emphasis for the reserve and reduce the dominance of the current bach owners, especially the non-Association ones (the 'Trust' members). I see an argument for Department assistance to the Association to compete these public use huts; conversely with the slow action with the Trust members there is no incentive for the huts to be completed or for the Assn to be further supported by these members.

### **7. Hurunui Irrigation**

The Hurunui Irrigation proposal raises two relevant matters.

First, the lack of firm action in dealing to the unauthorised baches and managing the reserve in a way deserving of its strategic site, may be perceived as inconsistent with the Department's advocacy for conservation values within the area, and seized on during RMA hearings. The Department may appear to be pro-development when it suits us.

Second, the Lake Sumner weir will apparently (N. Head pers comms 02.07.10) raise Lake Sumner and Loch Katrine lake levels on a more frequent basis to their current maximum flood levels (likely over early summer), not just the upper range of their normal fluctuation levels, with a likely consequence of periodically flooding and hence rendering unusable the reserve's lower flats, likely including the toilets and/or their soakage field. Amongst other things the risk of this requires great care when considering allowable uses for the reserve's higher lands if we are to maintain the reserve's primary purpose for camping and picnicking.

### **8. December 2009 Draft Discussion Paper (docdm-518394)**

The Waimakariri Area Manager prepared the above draft discussion paper, which I and others critiqued, myself quite severely. Amongst other things the paper selectively interpreted our statutory requirements. If Department management and concession permissions are to be based on good research and legislative interpretation then the discussion paper should be updated based on the critiques and the discussion outcome reassessed. This information is publicly available after all.

### **9. Public discussions**

My understanding to date is that discussions by the Department with the public or public bodies have been limited to the Loch Katrine hut owners, and to staff (?) at Hurunui District Council. I am not aware of discussion being held with the wider public, or with representative likely interest groups, such as those who made submissions on the plan or the Canterbury Aoraki Conservation Board who approved the plan. Given the reserve's status and the very specific nature of the plan these limited discussions, if correct, would seem a very risky approach to be taking especially if appearing to promote an outcome contrary to the current plan. It is, very much, not a good public participation model and appears contrary to the Conservation General Policy, policies 3(d) & (e).

## 10. Legal advice

Sec 9(2)(h)

## 11. The plan and the CMS review

The preface to the plan records that “the plan’s future will be considered under the review of the Canterbury Conservation Management Strategy” (the CMS). The pre-draft CMS sets Loch Katrine within the context of a “Lake Sumner, Lewis Pass and St James” place and currently, in accordance with both the Conservation General Policy and the plan, reiterates the policy of private bach removal. This pre-draft document has been discussed with the Conservation Board and publicly displayed on the CMS web page.

The CMS review is soon to be underway again and if the Department wishes to continue discussions with the bach owners with a view to amending the plan’s approach, then the Board will also need to be involved.

## Planning advice

I offer the following planning advice:

1. That the current *Loch Katrine Recreation Reserve Management Plan* is a sound document with justifiable policies and implementations.
2. The apparent consultation process being followed at present with the Loch Katrine Trust members embodies poor public process given the specific nature of the plan and the reserve status, and appears biased in favour of the Trust members over the wider public interest.
3. There is a risk of setting undesirable precedents under the RMA for accommodation development in the Lake Sumner/Loch Katrine area and/or undermining Department credibility with the Hurunui Irrigation proposal if the situation is not handled carefully.
4. If the Department wishes to revisit the plan’s policies, through the CMS review, and get CACB support and NZCA approval, then
  - a. there needs to be consensus within the Department on what future policies we want, formed within the Department and based on a good written analysis of the case, and
  - b. the public participation process needs to be opened up asap, including with the Conservation Board, in the CMS pre-draft stages.

Poma Palmer  
Management Planner  
Canterbury Conservancy  
05.07.10

# Approved 31 May 2012

## CMS national issues – private accommodation

There are three distinct categories of privately owned accommodation on public conservation land (pcl). Each requires a different policy approach:

A. Existing private baches/cribs/huts and encampments **not** available for use by the public. These may or may not have been authorised in the past. General policy directs that private accommodation should be phased out.

B. Huts and lodges owned and occupied by persons other than the Department and available for public use, although use may be restricted (for example club huts and lodges and huts owned by guided walking concessionaires).

C. On-site accommodation required as part of a concession related activity (e.g. caretaker's cottage, worker accommodation). This accommodation is exclusive to the owner/occupier, is not generally available for public use and is removed at the end of the concession term.

The primary focus of this paper is the first category – existing private accommodation which is not available for use by the public. It is this category which has proven the most contentious and where in the past there has been the greatest degree of inconsistency between CMSs. Appendix 1 provides an overview of the issues relating the private accommodation on public conservation land.

This paper provides policy guidance for planners drafting the CMS section on private accommodation and related facilities. It explores options for phasing out in more detail.

## What are we trying to achieve?

Implementation of the private accommodation provisions of each CMS should result in the following outcomes:

1. A nationally consistent framework for management of private accommodation and related facilities on public conservation land that can be used in statutory planning documents across the country.
2. Identification of conditions and timeframes for the phase out of existing private accommodation on public conservation land.
3. Avoidance of any new private accommodation facilities being located on public conservation land.
4. Protection of conservation values from adverse effects associated with provision of accommodation facilities.
5. Decisions about concession applications for private accommodation on public conservation land are tested against a nationally consistent set of criteria.

## The Management Framework

### A. Exclusive private accommodation (baches, cribs, encampments)

#### A1. Policy guidance for planners – management approach

CMSs must implement General Policy (see relevant extracts in attachment A). In summary:

- New private accommodation and related facilities should not be permitted.
- All existing private accommodation on public conservation land (that is not otherwise covered by s50 National Parks Act<sup>1</sup>) is to be phased out, unless it is specifically allowed or provided for in legislation.
- Concessions, CMS or management plans should specify details of timeframes and conditions for phase out.
- At the end of the phase-out period private accommodation should be removed unless retained by the Department for public use.
- If private accommodation is to be authorised, a concession is required, and a ground rental should be charged.

In addition to the CGP requirements, CMS policy should also state:

- That exclusive private accommodation should not be sold or transferred
- That the building footprint should not be increased beyond that existing when the CMS was approved. [this will require measurements to be made and a record kept of the building footprint and location]
- That the style and character of the building remains largely unmodified [ a photographic record should be made at the time of CMS approval]
- Phase out should occur if a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act).

The above CMS conditions should then be reflected in the conditions for the individual concessions for each bach.

It would also be good practice for every CMS to contain a schedule of all exclusive private accommodation in the conservancy, its location, legal description and the current term of the concession. Placing the schedule in the CMS ensures it remains a public register and should help ensure consistent policy application over the life of the CMS irrespective of staff or operational changes. The name of person authorised in the concession document as at x date (eg July 2011?) should also be recorded in the permissions database.

Phasing out of private accommodation is invariably contentious and can become highly political. There is often a history of the Department or its predecessors commencing the process then deferring it when faced with opposition. Various policy approaches have included imposing set timeframes, approvals only for the lifetime of the current owner/occupier, and conditions on concessions that DOC is given first right of refusal on any assignment or offer for sale, with purchase price based on building asset value only. It is strongly recommended that the CMS specify a date with exceptions to that for individual baches or groups of baches depending on past authorisations.

As one way to comply with CGP, provision can be made for public use of the facility. The accommodation is not then exclusively for private use. There are various approaches. Examples include a club or association structure to manage the bach(es) with opportunity for the public to join as members, or opportunity for periodic public use through rental, ballot or booking system, although this level of detail is not required to be set out in the CMS. However, as the West Coast Conservancy has noted there are significant practical difficulties implementing a policy approach that requires owners to make their private accommodation available to the public.

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<sup>1</sup> The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters and since 1996 such accommodation could only be authorised by concession – s 50(1)(d) refers..

The principles in the *Rangitoto* case (see attachment B) could be used to inform the management approach taken in those conservancies affected by the Hauraki Gulf Marine Park and also reserves because of s44 Reserves Act.

Finally, one approach does not fit all. Before developing any CMS policy in respect of exclusive private accommodation the following questions must be asked for each individual bach and group of baches:

- Is the bach authorised? By whom, when, and for how long? What is the legal status of the authorisation? What is the status of the land?
- Have historic and cultural heritage values been assessed and considered?
- What is the nature of the relationship with the bach owner? Phase out is a sensitive issue, often requiring individual solutions. Discussions must be in good faith, underpinned by consistent and clear principles endorsed by all decision makers. Legal redress and compliance can be costly and slow. A negotiated agreement with clear, consistently applied policy is to be preferred.

Planners should gather background information on existing private accommodation on pcl in each Conservancy: find out about their authorisation history, whether any specific legislation applies to them, if any concessions provide for right of renewal etc.

## A2. Required National Policy Guidance and Clarification

In drafting CMSs the following matters require guidance and direction if national consistency is to be achieved:

- <sup>Sec 9(2)(h)</sup> [REDACTED]
- Definition - The CMS glossary should include a standard definition of what “private accommodation and related facilities, including encampments” means, to help avoid situations where people try to apply policies for these to other types of buildings/circumstances.
- Phase out - Clear guidance as to the expected timeframes (e.g. 20 years) or mechanisms (e.g. on the death of the current owner) for ‘phase out’, acknowledging that there will be individual exceptions due to past authorisations. Very clear and consistent policy guidance at national level supported by legal advice would be of considerable benefit to conservancies as they deal with the often emotive and difficult issue of phase out.
- Public use - the implementation issues identified by the West Coast Conservancy should be addressed nationally if other CMSs are to adopt this approach.
- Temporary shelters - any seasonal shelters that are used as overnight accommodation require a concession. Many district plans contain policies governing management of maimais.
- Change to the land status - In some instances the public conservation land occupied by exclusive private accommodation may have low conservation values. One policy approach could therefore be to revoke the land status and follow the correct land disposal procedure (e.g. implement right-of-first refusal mechanisms, then - if land is still available for disposal - offer the freehold land at valuation to the bach owner). Treaty settlement, district plan provisions and other implications would need to be considered. Consideration should be given to the appropriateness of disposing of pcl in each specific circumstance, and whether district plan provisions provide for appropriate management of the land etc. However some national policy guidance in respect of this option could be useful. (CGP 6(c) and (d) apply).
- Extent of permissible renovation and alteration - CMS policy should be clear that the footprint of the building is not to be increased (this will require a record of the floor area of all baches on pcl at the time of the CMS review). National guidance would be

useful in respect of the extent of permissible renovation and alteration to the building, particularly if such work is likely to increase the lifespan of the building or significantly alter its character or the extent to which it harmonises with the landscape. National guidance should clarify that private accommodation should not be replaced if damaged or destroyed by an event (e.g. fire or flooding – see Policy 36 below).

- OSH/public liability implications of making a building available for public use – concession conditions should include a standard clause stating that liability lies with the concessionaire and they must hold valid insurance policies covering themselves for this (ie general public liability insurance, statutory liability insurance to cover court costs/fines relating to OSH incidents etc).

### **A3 Pre-statutory engagement**

- Bach owner associations (where they exist).
- Historic Places Trust.
- Territorial local government (city and district councils) - particularly where there is private accommodation on public land administered by those councils.
- Conservation Board – Responses from conservancies indicate there are a wide range of views amongst conservation board members and some boards have experienced difficulty gaining consensus on the preferred policy approach to exclusive private accommodation.

## **B. Huts and lodges owned and occupied by persons other than the department and available for public use.**

### **B1 Policy guidance for planners – management approach**

General Policy provides for the use of existing and future public accommodation on public conservation land (eg CGP 10(a)-(c)).

Provision of new opportunities for public accommodation is consistent with the Department's vision and partnership approach. However, national policy direction would be useful as the extent to which CMSs should identify such opportunities and enable additional accommodation to be provided/managed on pcl by companies and individuals for profit. Such accommodation may either be in the form of new buildings or transferral of management responsibilities for existing huts to concessionaires for a specified term (eg for a network of backcountry huts DOC may otherwise be unable to afford to maintain in the current economic climate). Commercial accommodation managed by concessionaires, for use by paying public, could include facilities of a more luxurious standard than the typical backcountry standard provided by DOC (e.g. existing Hump Ridge track and hut network in Southland). Policy guidance is provided in the CMS national issues paper on setting limits.

## **C. On-site accommodation required as part of a concession/other use related activity**

### **Current thinking**

This form of private accommodation does not appear to be a significant issue.

The CMS guidance notes do not need to contain any more policy direction than that already provided in General Policy.

## For inclusion in the CMS

### Private Accommodation (CGP 10 and GPNP 9)

#### Policies

31. Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.

32. Should phase out all existing private accommodation on public conservation land that is not otherwise covered by s50 National Parks Act<sup>2</sup> or specifically allowed or provided for in legislation by either:

(a) phasing in public use of the building/s (refer Policy 34a); or

(b) removing the building/s at the end of the phase-out period (refer Policy 34b), unless retained by the Department for public use.

33. Should consult X Conservation Board and the concession applicant when assessing a concession application for private accommodation, in order to determine whether it should be granted and, if so, which of the two phase out methods (32a or 32b) is most appropriate for each individual circumstance.

34. If private accommodation is to be authorised in accordance with Policy 32, concession conditions should specify that:

(a) the building/s are to be made available, where appropriate, for use by the public - with specific details on how this requirement will be phased in over time stated in each individual concession (if option 32a is chosen); or

(b) the building/s are to be removed<sup>3</sup> on the death of the person named on the authorisation at the time the CMS is publicly notified, or within twenty years of CMS approval, whichever occurs first (if option 32b is chosen); and

(c) the style and character of all buildings are to remain largely unmodified; and

(d) the floor area and footprint of all buildings is not to increase beyond that existing at the time of CMS approval; and

(e) all buildings must comply with all relevant local authority requirements; and

(f) transfer/assignment to another party should not be authorised [ie the building/s cannot be sold or transferred to anyone else] and

(g) an indemnity be given by the concessionaire and that the concessionaire hold adequate insurance (e.g. general public liability insurance, statutory liability insurance) to cover this indemnity.

35. Should only grant the renewal<sup>4</sup> of authorisations for private accommodation and related facilities, including encampments, on public conservation lands and waters to the existing authorisation holder<sup>5</sup>, if:

<sup>2</sup> The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.

<sup>3</sup> Unless retained by the Department for public use/active management of historical and cultural heritage values.

<sup>4</sup> Where the existing/previous concession does not contain a right of renewal and is due to (or has) expire(d) and the authorisation holder applies for a new concession, the application should be considered against the other policies in this section and the relevant General Policy.

<sup>5</sup> Ie should not grant transfers/assignments to other parties.

- (a) the existing authorisation contains a right of renewal; and
- (b) the right of renewal is exercised by the authorisation holder before the existing authority expires; and
- (c) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.; and
- (d) any new authorisation is granted before the existing authorisation expires

36. Should not authorise replacement of private accommodation if:

- (a) a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act), or
- (b) buildings are destroyed or so damaged by an event (e.g. fire, flood etc) as to render them untenable..

37. Remove unauthorised buildings from xxxxx [public conservation land and/or waters], in accordance with xxxxx Management Plan, notwithstanding Policies 32 to 36. [*This is an optional policy for places such as Loch Katrine Reserve and can be reworded as required to fit local circumstances*].

38. Remove buildings not authorised in accordance with Policy 32 from public conservation lands and waters no later than one year after CMS approval.

Appendix X - Each CMS should contain a schedule of all exclusive private accommodation in the Conservancy, its location, legal description and the current term of the concession.

Glossary - Each CMS should include the following standard definitions of private accommodation and related facilities:

'Private accommodation' means a place to live or lodge which is not available to the general public on an open basis. (Conservation General Policy, 2005)

'Public accommodation' means a place to live or lodge in that is open to or shared by all people. (General Policy for National Parks, 2005)

'Related facilities' means any structure or piece of equipment that is used in conjunction or association with private accommodation. Examples include garages, outhouses, and outdoor showers.

'Encampment' means non-designated sites used for the purpose of shelter or camping on either:

- (a) a permanent or semi-permanent basis by private individuals or groups; or
- (b) for more than short-term use by individuals or groups. (Conservation General Policy, 2005)

## Other management considerations

Request that each Conservancy completes the following tasks prior to 30 July 2012:

- a) Update concession files<sup>6</sup> for all existing authorised private accommodation on pcl. Each file should contain the following information:
- a photographic record of each building, showing it's current form as at x date (prior to 2012);
  - measure and record existing floor area and footprint of buildings;
  - record number and GPS locations of buildings;
  - note the authorisation holder's name/s as at 1 January 2012.

If possible, it would also be helpful to include the following information on the file:

- provide summary of authorisation history from time first occupied until now (ie include reference to authorisations granted by other agencies prior to DOC management);
- note whether any specific legislation provides for private accommodation at the site or not.


- b) Create a spreadsheet containing details about all unauthorised private accommodation known to be located on pcl. At a minimum, this should include the location of the building/s. Contact details would also be useful, as the building owners are likely to be interested in CMS policies 37/38.

- c) Populate the template for CMS Appendix X (this should list all private accommodation known to exist on pcl, including unauthorised private accommodation):

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6 DoC staff need to check concession provisions relating to access before visiting each bach site, as per the following legal advice:

Sec 9(2)(h)



Appendix X: Schedule of private accommodation and related facilities located on public conservation land in ... Conservancy.

Location of building/s	Legal description of land occupied	Concession expiry date [state "no concession" if that is the case]	Circumstances
St James	...	...	The St James conservation area purchase agreement (2008) allowed the previous landowners to retain two existing private homesteads, and to build a third, at the Ada homestead site.
Lower Selwyn Huts	...	...	58 buildings authorised by specific leases since the settlement was established in //, now in accordance with the Te Waihora Joint Management Plan (2005).

Released under the Official Information Act 1982

## Appendix 1: Private accommodation on public conservation land - issues

### Existing CMS approaches to private accommodation

Northland. Current CMS policy requires phase out over time. Deadlines for bach removal have been set for individual baches and groups of baches depending on previous authorisations and agreements and individual circumstances. There are issues of consistency because of previous agreements. Private accommodation sometimes exists because it was a condition of the sale of land to the crown (e.g. one on Urupukapuka Is in the Bay of Islands). They were built by Maori and are on land being returned to Iwi under treaty settlements. In this situation the settlement will resolve the issue.

Auckland. The current Auckland CMS has no explicit policy regarding phase out.

Waikato. Private accommodation on public conservation land is a significant issue in Waikato Conservancy. The scale of the issue is considerable. In the Lower Waikato River there are approximately 500 illegal dwellings which are whitebaiters huts that have developed and evolved over the past 60 or more years. Some of these structures are very basic and some are quite elaborate and even have satellite TV. The status of the land occupied by these buildings is variable and complex but it is almost certain that some of them will be on public conservation land in the form of esplanade reserve or marginal strip. Many will be on Crown land being part of the bed of the Waikato River.

There is also another small arm of the Waikato River in the vicinity of Lake Arapuni that has a number of fishing huts in similar circumstances to those in the Lower Waikato. Again, these are mostly unlicensed and some even have electricity reticulated to them.

A further issue is the matter of duck huts on public conservation land. These are mostly in relation to significant wetlands such as the Whangamarino and Kopuatai. Action taken over the years includes authorising the occupation of duck huts with permits that allow public access outside of the duck hunting season. The Conservancy has also worked with the local authority in terms of limited building consents and other public safety issues. The issue of the occupation of this public land has also come up in Treaty negotiations and that is still very much a live issue given the Treaty negotiations with the Hauraki Collective.

Tongariro/Whanganui/Taranaki. There are no specific policies in either the Tongariro/Taupo or Whanganui CMSs requiring phase out. However the policy not to permit new structures for exclusive private use has been effective to deal with newly erected illegal structures.

Wellington/Hawke's Bay. Current CMS policy requires phase out (2019 or 2050 depending on location).

Canterbury. The current CMS, approved in 2002, includes reference to the then draft, but now approved, Loch Katrine Management Plan and the implementation of that document to deal with unauthorised private accommodation on pcl (see attachment C). This situation has been through the courts and the Ombudsman.

West Coast. The West Coast CMS (recently approved by NZCA) contains policies that recognise the history and culture associated with existing private accommodation while ensuring that adverse effects are adequately avoided, remedied or mitigated, and that recognises that its not generally appropriate for private accommodation to be maintained on PCL and accordingly the intention is to reduce inappropriate exclusive private use over time and to encourage private owners to allow public use.

The specific policies allow for the grant of concessions for private occupation subject to a number of conditions provided that the facility has been previously authorised including making provision, where appropriate for public use. The policies don't allow the authorisation of new private accom facilities. The policies also have other provisions relating to the grant of concessions, their transfer and provides direction in the event of a facility being substantially damaged or destroyed.

Southland. Current policies provide for some flexibility and deal with private accommodation on a case by case basis. The 2011 Stewart Island/Rakiura CMS is more explicit regarding eventual phase out and removal (see attachment D).

### Issues relating to the three main categories of privately owned accommodation on public conservation land

#### **A. Exclusive private accommodation (permanent homes, baches, cribs, encampments)**

##### **A.1 Issues**

###### **A1.1 Issues raised by owners:**

- lack of security of tenure. Bach owners prefer either freehold title or a long term concession, preferably in perpetuity. [CGP policy 6 will apply to the creation of freehold title]
- concession expiry dates [Part 3B Conservation Act allows a right of renewal up to the maximum term of the concession (i.e. up to 30 years with a maximum 60 years in exceptional circumstances)]
- inability to transfer or assign a right of occupancy
- a de facto 'property right' from decisions or action (or lack of action) by previous administering bodies
- lack of Departmental recognition for the financial investment, longstanding family connections and emotional attachment
- owners have 'customary rights' through long association
- restrictive 'phase out' policies limiting the extent of replacement following destruction or damage, or deterioration over time
- baches represent a disappearing kiwi character and culture, are often historic and provide a sense of community
- bach owners are caretakers and guardians of public conservation land
- one size does not fit all - individual circumstances must be taken into account
- a submitter to the West Coast CMS submitted that Conservation Act s17N (2) means attempts to restrict the rights of bach owners are unlawful. (s17n(2): Effect of general policies, cms and management plans - 'No such statement, strategy or plan shall restrict or affect the exercise of any legal right or power by any person ....')

###### **A1.2 Issues raised by the public:**

- Alienation of public conservation land for private benefit
- Structures and occupancy detract from natural values and in many instances the purpose for which the land is held
- Structures and occupancy may hinder public access

###### **A1.3 Other issues**

- Sewage disposal and emergency evacuation (raised by district and regional councils)
- Inconsistency of policy approaches between baches on DOC public land and on local government administered land (e.g. unformed legal road). In some case neighbouring baches can have different land status. (On the West Coast the three

district councils in the conservancy each took a different policy stance in respect of baches on unformed legal road).

- Boundary disputes as to land boundaries and status.

#### A1.4 Issues raised by DOC staff

- Buildings constructed without building or resource consent or contrary to RMA zoning provisions risk being 'sanctioned' by DOC if allowed to remain
- Risk to DOC if baches are required to be made available to public use (Building Act, RMA, Health Act, Residential Tenancy Act, HSE Act etc)
- Rental from DOC administered property goes to the Crown. There is limited Departmental funding to maintain or upgrade private accommodation which has been acquired by DOC.
- Treaty settlement processes may mean policy application appears inconsistent.
- CGP does not differentiate between permanently occupied substantial houses and makeshift temporary seasonal structures such as whitebait stands and duck huts yet the effects of each on pcl values are very different.
- Requiring private accommodation to be removed from pcl may lead to private accommodation being provided on floating barges and house boats adjacent to but outside pcl where the Department has limited control, and where the effects of such accommodation may be greater than if on land. (e.g. Fiordland National Park)<sup>7</sup>
- Use of **will** in CGP vs **should** in GPNP, for phasing out existing private accommodation.
- What to do with unauthorised buildings that exist on pcl and have been there for some time. Especially those previously thought to be sited on non-pcl land. Eg the Westland District Council recently notified the West Coast Conservancy of a number of baches they had thought were on unformed legal road, but were actually on pcl.

When notified in July 2007 the West Coast CMS attracted numerous submissions from bach owners concerned at attempts to phase out private accommodation. The subsequent analysis of submissions and discussion of revised CMS objectives and policies is a good summary of issues and suggested policy responses in respect of private accommodation (see attachment E).

#### A2 'Phase out'

CGP 10(h) provides a range of implementation mechanisms. Phase out must be 'in accordance with the conditions and timeframes set out in **any relevant:**

- concession **or**
- conservation management strategy **or**
- [conservation management] plan.'

CGP 10(h) does not specify a date for the phase out of all exclusive private accommodation, only that it 'will' be phased out (vs GPNP, which states private accommodation in National Parks 'should' be phased out). How that is achieved in each conservancy will depend on local circumstances and the individual facts of each situation. There are a wide variety of agreements and circumstances under which baches exist on pcl, which is why CGP cannot set a specific date.

CGP 10(h) provides an exception to phase out – '*except where specifically provided for or allowed in legislation*'. This clause recognises that there is some exclusive private accommodation, particularly in Canterbury, on pcl that is allowed for in legislation. It is

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<sup>7</sup> If the beds of the rivers are part of the national park, a house boat would require a concession.

critically important that the land status is clarified and the history of the accommodation is fully researched to determine if the exception applies.

While GPNP does not specify a phase out date, Policy 9(h) requires a CMS or national park management plan to set out conditions and timeframes for phase out. Could be useful for CMS guidance notes to provide a list of national parks known to contain unauthorised private accommodation facilities??

Reliance on 'natural attrition' (building destroyed by fire or other event, neglected or abandoned) to phase out baches can be very slow and haphazard approach and cannot be considered an appropriate policy response to the requirement to 'phase out'.

Policies which allow the current owner to continue to occupy their bach for the remainder of their lifetime have many practical problems. Administration is difficult and requires the Department to pro-actively research death notices. Bach owners can prolong the phase out process by transferring the ownership of the bach to the youngest family member between the time the CMS is notified and it being approved. Phase out of a group of baches may be sporadic. However the main problem is that the issue is not being dealt with effectively or decisively and is only being passed on to the next generation.

The draft Waikato CMS, which is now under review, proposed phase out either on the death of the person named in the authorisation or in 20 years, whichever occurs first. This policy approach overcomes many of the difficulties of 'lifetime' authorisations. However, this approach may not be practicable in reality. Some existing concessions contain right of renewal clauses. Other existing concessions may grant concessionaires the right to occupy the building site for a term well beyond the 20 year date suggested for phase out. It is possible that a number of private accommodation facilities will remain on pcl after any phase out date set by a CMS, for such reasons. Another option is for the CMS to specify phase out on death or in 20 years, or longer only if specifically provided for in the existing concession.

Policy guidance on this wording relating to phase out: "should be removed at the end of the phase-out period, unless retained by the Department for public use" would be useful. What type of management arrangements would fit the test of accommodation being 'retained by DOC for public use'? E.g. could the concessionaire still legally retain ownership of the building if a system was put in place to open the building up to public use? Or would ownership need to be transferred to DOC and then a management agreement drawn up to allow the previous concessionaire to retain responsibilities relating to building maintenance etc and/or conferring some ongoing rights to use the building for x days per year etc?

### A3 Court decision

*Rangitoto Island Bach Community Association Inc and Anor v Director-General of Conservation and Anor* (CIV-2-4-404-2378), 2006 High Court Decision by Harrison J<sup>8</sup>.

This was a judicial review of the Minister of Conservation's decision not to consent to the continued occupation of baches on Rangitoto Island. There had been a 70 year history of attempts to progressively bring the exclusive occupancy of the baches to an end. The Minister's decision was set aside and the Minister directed to have regard to the Hauraki Gulf Marine Park Act 2000 provisions. While the specific Hauraki Gulf legislation differentiates this decision from circumstances elsewhere, the decision does contain a set of principles and matters to be considered when dealing with continued occupation of private baches under the Reserves Act 1977.

The principles are:

- Regard must be given to the Reserves Act purposes of preserving the qualities of the reserve and ensuring public access (s3) and prohibiting the use of the reserve for permanent or temporary accommodation without the Minister's consent (s44(1)).
- Historic features (such as historic baches) are to be managed and protected to the extent compatible with the primary purpose of the reserve.
- In granting any consent the Minister is entitled to grant licences on a periodic basis, limited to rights of occupation and obligations of maintenance. The Court suggested the Minister may like to consider conditions requiring 'licensees to maintain the baches at their own expense in good and habitable condition; to limit rights of exclusive (private) use to fixed but reasonable periods, to make the baches available to the public at other times; and to covenant not to add to or change the physical structures without DOC approval'.

The final outcome of the review of Rangitoto baches is yet to be determined with a paper to go to the Minister of Conservation later this year for a decision. Phase out will be one of several options to be presented.

### A4 Legal Advice

Sec 9(2)(h)

### A5 Baches available for public use - 'West Coast *Te Tai o Poutini* CMS' Approach

CGP requires the phase out of exclusive private accommodation. However, accommodation that is available for use from time to time by the public may be granted a concession to remain, subject to conditions. This approach is consistent with the 'Rangitoto' Court decision referred to in A3 above and is the policy adopted for the West Coast CMS (refer to Policy 3.7.1 3a) below).

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<sup>8</sup> This decision will be highly relevant in those conservancies which are affected by the Hauraki Gulf Marine Park. It will also be relevant on baches occupying reserve land since there is scope under s44 Reserves Act to authorise personal accommodation.

### 3.7.1 Accommodation and Related Facilities (pg 147)

#### Objectives

1. To recognise the history and culture associated with existing private accommodation facilities located on public conservation lands in the West Coast *Tai Poutini* Conservancy, whilst ensuring any adverse effects are adequately avoided, remedied or mitigated.
2. To recognise that it is not generally appropriate for private accommodation and related facilities to be maintained on public conservation lands and waters, which are for the benefit of the New Zealand public. Accordingly, the intention is to reduce inappropriate exclusive private use of accommodation facilities over time, and to encourage private owners to allow public use of these facilities.

#### Policies

1. Concessions may be granted for the occupation of private accommodation and related facilities on public conservation lands provided that the facility has been previously authorised, the style and character of buildings remain largely unmodified, all buildings remain within their current footprint and comply with all relevant local authority requirements, and any adverse effects can be avoided, remedied or mitigated.
2. No new private accommodation facilities should be authorised.
3. When granting concessions for previously authorised private accommodation or related facilities, or consenting to a transfer/assignment to another party, the conditions should:
  - a) make provision, where appropriate, for public use of the facility; and
  - b) provide for a first right of refusal to any subsequent purchase or assignment of the facility to be offered to the Department to manage. Any such purchase/assignment would be at the buildings asset value only, not determined on the basis of location.
4. Private accommodation which is substantially damaged or destroyed is unlikely to be allowed to be replaced, unless it can be demonstrated that there is significant public good in doing so.

West Coast Conservancy staff developed comprehensive Draft Guidance Notes for concessions /SLM officers and Area Office Community Relations Rangers to use when dealing with concession applications for existing exclusive private accommodation (docdm-656824). The following issues have arisen in implementing the policy that concession conditions should make provision, as appropriate, for public use of the facility:

- Where the accommodation is the concessionaire's permanent home
- Insurance implications for the bach owner – if the owner receives payment for the use of the bach then some insurance companies would require a different policy with higher premiums.
- Who and how to determine a charge which is fair to both the public who wish to stay on pcl and the bach owner to offset their reasonable costs?
- What is DOC's response if the concessionaire consistently denies requests for public use?
- What are DOC's obligations to ensure the bach complies with all relevant legislation and the occupying public are safeguarded (e.g. Building Act, Health Act, etc)

In response to the question whether their CMS policy is effective, West Coast staff commented:

*'The short answer is no, the policy is not very effective. We had 82 baches as at our CMS approval date and we're likely to have 82 baches in 10 years time, unless some of them burn down in the mean time. Due to indemnity and insurance issues, it is difficult to effectively implement the public use requirement of the policy.'*

## **A6. Heritage Assessment**

CGP 5 requires a CMS to identify historic and cultural heritage on pcl, to set out the required conservation outcomes and where the heritage is assessed as having high significance to actively manage that heritage. Where a bach is assessed as having historic or cultural heritage value, CGP 10 allows the Department to retain the building for public use at the end of the phase-out period.

DOC practice is that any structure on public conservation land older than 30 years should be the subject of a heritage assessment before being modified or removed. The Historic Places Trust does advocate for the retention of worthy baches of heritage value but there seems to be no national assessment criteria or ranking system. Social and cultural factors are important considerations in any such assessment.

It is possible that as numbers of traditional kiwi baches decline, whether from successful phase out policies, fire or other causes, that those remaining attain greater historic and cultural significance.

## **B. Huts and lodges owned and occupied by persons other than the department and available for public use.**

### **B1 Description**

This category includes:

- huts and lodges for recreational, educational and community purposes owned or operated by clubs, trusts or other organisations with open membership. The public can access these huts and lodges by joining the organisation or in some cases, if they are not a member, by paying a tariff for the hire or use of the facility. Examples include huts owned and operated by the NZ Alpine Club, Deerstalkers Associations, angling clubs, ski clubs and tramping clubs as well as facilities operated by trusts such as the Humpridge Track huts.
- huts and lodges owned and operated by concessionaires offering accommodation and facilities to paying clients or guests (for instance private huts for guided walk concessionaires on the Routeburn, Hollyford and Milford tracks).

### **B2 Issues**

B2.1 Issues raised by owners:

- Costs of concession / ground rental
- Declining membership and levels of interest means cost have to be spread over fewer and usually older members
- Club huts and lodges are often older buildings in remote locations with high maintenance costs
- Buildings or facilities may now be outmoded or redundant (e.g. ski lodges in marginal club ski-fields)
- Costs of ongoing building compliance and certification

B2.2 Issues raised by public:

- Alienation of public conservation land
- Barriers (perceived or real) to joining and cost of membership

- Lack of knowledge of how to hire or access facilities
- Restrictions on use.

### B2.3 Issues raised by DOC staff

Generally the arrangements for this type of accommodation have been in place for several decades and work well. Issues which have arisen include;

- theft and vandalism where the hut is unlocked and open to the public
- declining club membership and aging huts leading to deferred maintenance. Locally this can be an issue where a tramping or other club has previously built and maintained a hut which has then passed to DOC to administer but there are historic agreements granting free use to club members.
- changing weather patterns forcing some club ski fields to close and issues which arise with redundant or infrequently used facilities
- concessionaires operating outside the conditions of their concession (e.g. party sizes exceeding limits)
- customer demand for a luxury backcountry experience creating servicing issues impacting on the experience of other pcl users (e.g. increased aircraft activity to service concessionaire's huts)
- tension in setting sustainable levels of activity consistent with the pcl visitor setting and the hut owner's need for a financially viable operation
- business competition issues [current Otehei Bay Lodge court case (Northland) between business competitors concerning the status of the lease and public access]

## C. On-site accommodation required as part of a concession/other use related activity

**C1 Description** This type of private accommodation is exclusive to the authorisation holder and not generally available for public use. Examples include caretaker's cottages and worker accommodation.

### C2 Issues

C2.1 Issues raised by owners:

- Security of tenure
- Concession term

C2.2 Issues raised by public:

- Alienation of public conservation land
- Constraints on public access

C2.3 Issues raised by DOC staff

- Concessionaire to be responsible for all resource consents, building consents etc, including any associated consents for water takes, stormwater and wastewater disposal
- Removal of structures once concession expires, or as otherwise specified in concession

### Current thinking

This form of private accommodation does not appear to be a significant issue.

Q. Should the CMS guidance notes contain any more policy direction than that already provided in General Policy?

## ATTACHMENT A – GENERAL POLICY

### Conservation General Policy (CGP) 2005

#### Policy 10 'Accommodation and Related Facilities':

- 10(a) *Accommodation and related facilities on public conservation lands and waters may be allowed for public recreation, educational and community services, consistent with the outcomes planned for places.*
- 10(b) *Accommodation and related facilities on public conservation lands and waters owned and occupied by people and organisations other than the Department, will require a concession.*
- 10(c) *Any application for a concession will comply with, or be consistent with, the objectives of the relevant Act, the statutory purposes for which the place is held, and any relevant conservation management strategy or plan.*
- 10(d) *Any application for a concession to provide accommodation or related facilities, or to extend or add to an existing structure or facility, should meet the following criteria:*
- i. the accommodation or related facility cannot reasonably be located outside public conservation lands and waters;*
  - ii. it cannot reasonably be built elsewhere on public conservation lands and waters where the potential adverse effects would be significantly less; and*
  - iii. the applicant cannot reasonably use or share an existing structure or facility.*
- 10(e) *All accommodation and related facilities including replacements, additions and extensions on public conservation lands and waters should:*
- i. be consistent with the outcomes planned for places;*
  - ii. avoid or otherwise minimise adverse effects on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access;*
  - iii. complement and, wherever possible, be located close to existing accommodation and related facilities;*
  - iv. be located, designed, constructed and maintained to meet all legal requirements and standards;*
  - v. be of such a scale, design and colour that they harmonise with the landscape and seascape;*
  - vi. provide for disabled people in places where this is practicable; and*
  - vii. be available for use by the public.*
- 10(f) *The Department and all concessionaires should monitor the effects of the use of accommodation and related facilities on natural resources and historical and cultural heritage, and on the benefit and enjoyment of the public, including public access, to inform future management decisions.*
- 10(g) *New accommodation and related facilities, including encampments, on public conservation lands and waters, for exclusive private use should not be permitted.*
- 10(h) *Existing private accommodation and related facilities, including encampments, on public conservation lands and waters will be phased out, except where specifically provided for or allowed in legislation, in accordance with the conditions and timeframes set out in any relevant concession or conservation management strategy or plan. They should be removed at the end of the phase-out period, unless retained by the Department for public use.*
- 10(i) *A ground rental should be charged for existing private accommodation and related facilities, including campgrounds, on public conservation lands and waters.*
- 10(j) *The Department should consult the relevant conservation board on all proposals for departmental accommodation and related facilities, including replacements, additions and extensions, on public conservation lands and waters.*

Note:

1. CGP refers to 'exclusive private accommodation' [10(g)] and 'private accommodation' [10(h) and (i)]. The context of CGP suggests the reference to private accommodation and exclusive private accommodation are the same and that is the assumption made in this paper.
2. 'Private accommodation' is defined as 'Place to live or lodge which is not available to the general public on an open basis'.
3. CGP 10(h) uses the term 'will', which is a fetter: "Existing private accommodation and related facilities, including encampments, on public conservation lands and waters will be phased out..." The equivalent policy in GPNP 9(h) uses the term 'should'.

## **General Policy for National Parks (GPNP) 2005**

### *Policy 9 'Accommodation and Related Facilities'*

- 9(a) *Accommodation and related facilities in national parks may be allowed for public use, including accommodation provided by recreation clubs with open membership, and educational services that relate to national parks, consistent with outcomes planned for places.*
- 9(b) *Accommodation and related facilities in national parks, other than public accommodation provided by the Department, will require the authorisation of the Minister of Conservation, except for accommodation for the staff of a concessionaire, which will require a concession.*
- 9(c) *Any application for a concession or an authorisation to establish accommodation and related facilities will be consistent with the purposes of the National Parks Act 1980, any statutory purposes for which the place is held, and the national park management plan.*
- 9(d) *Any application for a concession or an authorisation to establish accommodation and related facilities in a place, or to extend or add to an existing structure or facility, should meet the following criteria:*
  - i) *the accommodation or related facility cannot reasonably be located outside the national park; and*
  - ii) *it cannot reasonably be built elsewhere in the national park where the potential adverse effects would be significantly less; and*
  - iii) *the applicant cannot reasonably use or share an existing structure or facility.*
- 9(e) *All accommodation and related facilities, including replacements, additions and extensions and signage, in national parks should (unless otherwise provided for in an existing lease):*
  - i) *be consistent with the outcomes planned for places;*
  - ii) *minimise adverse effects on national park values and on the existing benefit, use and enjoyment of the public, including public access;*
  - iii) *avoid proliferation of the built environment;*
  - iv) *complement existing accommodation and related facilities;*
  - v) *be located, designed, constructed and maintained to:*
    - a) *preserve a sense of naturalness;*
    - b) *where possible, be close to other buildings;*
    - c) *meet all legal requirements and standards;*
    - d) *minimise risks from natural hazards; and*
    - e) *avoid adverse effects on natural surface and underground waters and all water bodies;*
    - vi) *be of such a scale, design and colour as to harmonise with the landscape and seascape;*
    - vii) *provide for disabled people in places to the extent required by law; and*
    - viii) *be available for use by the public.*
- 9(f) *The Department and all concessionaires should monitor the effects of the use of accommodation and related facilities on national park values and on the benefit and*

*enjoyment of the public, including public access, to inform future management decisions.*

9(g) *New accommodation and related facilities, including encampments, for exclusive private use should not be permitted in national parks.*

9(h) *Existing private accommodation and related facilities, that are not authorised in accordance with section 50 of the National Parks Act 1980, should be phased out from national parks, in accordance with the conditions and timeframes set out in the conservation management strategy or national park management plan. They should be removed at the end of the phase-out period, unless retained by the Department for public use.*

9(i) *The Department should consult the relevant conservation board on all proposals for accommodation and related facilities provided by the Department for public and departmental use in national parks, including replacements, additions and extensions.*

Note:

1. Similar to CGP, GPNP refers to both 'exclusive private accommodation' [9(g)] and 'private accommodation' [9(h)]. The context suggests all reference to 'private accommodation' is to 'exclusive private accommodation' and this paper is drafted on that assumption.
2. The definition of 'private accommodation' in GPNP is the same as in CGP.

Released under the Official Information Act 1982

## ATTACHMENT C - EXTRACTS FROM CANTERBURY CMS 2002

### 5.4.2.6 Private Dwellings and Structures

- considering applications and managing concessions for private accommodation (baches and houses) and other structures on land managed by the Department

#### Current Situation

A Draft policy: private baches on land administered by the Department of Conservation was prepared in 1990. The policy aims to phase out use of land managed by the Department for private accommodation, and to make such areas available for public use and enjoyment. The policy precludes the construction of new baches and allows existing baches to continue where they have historic value, and the natural, historic and recreational values of the area are not affected.

The presence of private accommodation also conflicts with the public, open space use provisions of the Reserves Act relating to recreation reserves.

Generally, there is no reason why private buildings or structures (such as boatsheds) should be situated on land managed by the Department. Exceptions exist in the case of inherited (leased) occupancies.

The presence of baches has both positive and negative aspects. The positive aspects can be the distinctive, practical and amateur style of the buildings, representing a phase in the development of New Zealand. They can also be part of the landscape character of some locations. Bach owners generally have an affinity with the environment surrounding their baches. They sometimes contribute to search and rescue operations and discourage vandalism. The baches also provide a facility (albeit exclusive) for owners and invitees to experience the natural environment.

However, baches can have an adverse effect on the environment, and on other users' enjoyment of the immediate area. The presence of buildings, changes to vegetation and landforms, and the effect of sometimes inadequate rubbish and sewage disposal methods detract from the natural character. The public are also often reluctant to make use of areas near baches for recreation. In many cases lease conditions restricting the periods of occupation of, size of, additions or alterations to, and maintenance of baches have not been enforced over the years. This has resulted in the baches becoming a more prominent feature in the natural landscape.

The Conservancy recognises bach owners' historical use of some departmental areas, but increasing recreational and environmental pressure requires the gradual withdrawal of private accommodation from lands managed by the Department.

There are three authorised bach settlements in Canterbury on land managed by the Department, one close to Te Waihora/Lake Ellesmere - Lower Selwyn (58 sites) and two at Lake Alexandrina (Takamoana) (approx 110 sites).

The Lower Selwyn sites are held on nine-year leases expiring in June 1999, and are generally used by game shooters and fishers. These hut owners have expressed a wish to freehold their sites. The hut area is periodically flooded by high lake levels. The Department anticipates higher average lake levels in association with the Lake Ellesmere Water Conservation Order, and as a consequence of predicted sea level rise. These predictions mean the Lower Selwyn area may not be suitable for a permanent hut settlement.

At Lake Alexandrina (Takamoana) two Reserves for Fishing Purposes accommodate baches and holiday homes primarily used by anglers. Administration of these reserves recently passed from the Central South Island Fish and Game Council to the Department. While the settlements are considered to be authorised, none of the baches holds a concession. It is proposed to re-gazette the reserves Local Purpose Hut Settlements with building design and use guidelines in place under the Reserves Act and/or the Resource Management Act processes.

A number of other baches, huts and boatsheds have been situated on land managed by the Department, many without formal consent from the Crown. These sites occur at Loch Katrine (60 baches), Lake Pearson (4), Lake Heron (9), Lake Ōhau (6?) and Pareora River (6). Some of these sites have been occupied for more than 30 years.

### Statutory Framework

Part IIIB of the Conservation Act 1987 allows the Department, under delegated authority from the Minister, to issue concessions for the occupation of land managed by the Department.

### Objectives

- To reduce the number of existing private bach sites, ensure no new private baches are established, and remove unauthorised buildings from land managed by the Department
- To clarify the ongoing administration of authorised bach settlements
- To consider applications for private bach sites and grant concessions where the activity cannot reasonably be sited elsewhere and where adverse effects on natural, landscape or historic resources and recreational values can be avoided, remedied or mitigated.

### Implementation

The Conservancy will:

1. Generally not permit any new private baches on land managed by the Department. Approval to rebuild and/or alter any buildings may be granted only to existing licensed baches provided local authority requirements are met.
2. Manage existing concessions for baches located on land managed by the Department in terms of those concessions. Market value for bach sites will be determined to fairly reflect the use of public land for private purposes.
3. Investigate the future status and tenure of the Lower Selwyn huts.

4. Action reserve re-classification and concession applications for the Lake Alexandrina huts reserves huts, in accordance with developed hut settlement management guidelines.
5. Renew or grant concessions for existing baches not covered by Implementations 3, 4 or 5 above only where the building's historic or recreational values outweigh its adverse impact on natural and historic resources and recreational values and other alternative uses of the site.
6. Identify and remove unauthorised structures from lands managed by the Department.
7. Remove unauthorised baches by demolition, relocation, fixed-term tenancies or other appropriate methods.
8. Complete and implement the Loch Katrine Recreation Reserve Management Plan draft (1993) as it relates to the unauthorised huts.

#### Priorities

- The Department will investigate the future status and tenure of the Lower Selwyn hut settlement. This will involve liaison with hut owners, North Canterbury Fish and Game Council, Selwyn District Council, Canterbury Regional Council, Ngāi Tahu and other interested groups.
- The Lake Alexandrina reserve classification and management guidelines will be actioned.
- The Loch Katrine Recreation Reserve Management Plan will be implemented.

#### Less Achievable Tasks

Due to administrative costs, it may not be viable to remove some of the smaller unauthorised occupations.

Table 34: Key Private Dwellings and Structures Priorities

Name	Issue	Method	Results Sought	Place
Loch Katrine baches	Unlicensed bach occupation of Loch Katrine Recreation Reserve	Implement Loch Katrine Recreation Reserve Management Plan	1. Protection of remote character of the area. 2. Uses compatible with recreation reserve status	Hurunui
Lower Selwyn Huts settlement	1. Future of settlement 2. Tenure 3. Waste disposal	1. Relocation 2. Lease 3. Waste management system	Reduced conservancy involvement in hut settlement	Plains
Lake Alexandrina bach settlements	1. Lack of concessions 2. Lack of management guidelines	1. Reserve reclassification 2. Concessions 3. Guidelines	Fully authorised and well-managed settlements	Waitaki

## ATTACHMENT D – EXTRACTS FROM STEWART ISLAND/RAKIURA CMS 2011

Stewart Island/Rakiura is popular for recreational hunting. Hunting blocks include designated campsites and some of these campsites contain hunters' huts managed by the Rakiura Hunter Camp Trust.

### 1.6 Accommodation and related facilities

Existing structures on public conservation lands include both authorised and unauthorised structures. Some have been authorised while others are unlawful because no approvals were obtained to erect, use or occupy them.

It is not generally appropriate for individuals to have and maintain private accommodation and related facilities on public conservation land. It is important to facilitate public access to public facilities within the Stewart Island/Rakiura CMS area. Therefore the allowance of public access on an open and equal basis is a key consideration for any new applications for accommodation and related facilities.

Within the Stewart Island/Rakiura CMS area the existence of accommodation facilities is minimal.

There are no known permanent unauthorised accommodation structures within the CMS area, however the unlawful erection of temporary basic shelters in the more remote areas continues.

There are currently no unauthorised accommodation structures on or in public conservation waters within the Stewart Island/Rakiura CMS area. An example is structures being erected in or floating on public conservation waters such as the Freshwater River.

Conversely, within the Stewart Island/Rakiura CMS area there are a number of accommodation facilities not owned by the Department of Conservation but which are authorised. All but one of these facilities are available to the public on an open and equal basis. The exception is the authorised private accommodation facility associated with the Big Glory Bay marine farm. This accommodation facility is essential to the marine farming activity and, as such, should be permitted for this use as long as it is essential for the marine farm operation.

A number of huts commonly known as hunters' huts<sup>9</sup> are located throughout the Stewart Island/Rakiura CMS area. These huts are authorised under concession to the Rakiura Hunter Camps Trust and are available for public use through a booking system. The Rakiura Hunter Camps Trust is a trust that was formed to resolve the issues (for example the building of illegal structures) surrounding hunting campsites within the Stewart Island/Rakiura CMS area. The Rakiura Hunter Camp Trust has 12 concessioned hunter huts on public conservation lands within the Stewart Island/Rakiura CMS area. Throughout the consultation process for these planning documents hunters' huts were the topic of many submissions and hearings. It was considered that an overall limit should be placed on the number of future hunters' huts to be located on public conservation lands within the Stewart Island/Rakiura CMS area. The remote experience offered within the Stewart Island/Rakiura CMS area is highly valued by a range of visitors including users from the hunting

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<sup>9</sup> Hunter huts are available to the public on an open and equal basis and can be booked up to one year in advance. They are called hunter huts as they are managed by the Rakiura Hunter Camp Trust and have been concessioned to provide accommodation on a range of hunting blocks for recreational use.

community. A proliferation of structures has the potential to impact upon the remote values present. Applications for new hunters' huts are to be considered against the criteria for new accommodation and related facilities.

The Kilbride Homestead at Mason Bay is located within the Rakiura National Park and held under private lease. A conservation plan for the homestead was prepared in 2008, identifying the future compatible uses of the homestead, including accommodation. The homestead is authorised under concession which provides for limited public access and bookings consistent with its protection as an historic asset. More information on the homestead and the management of it can be found in the Rakiura National Park Management Plan, sections 8.2 – Northern place and 8.3 – Mason Bay place.

Commercial accommodation facilities, such as those provided for concessionaires offering guided walk activities, are covered under section 1.7.1 – Authorisations. There are currently no commercial accommodation facilities provided for public use on public conservation land within the Stewart Island/Rakiura CMS area.

### **Management Objectives**

1. To ensure that unauthorised accommodation facilities are not established on public conservation lands and waters and to remove any existing unauthorised buildings and structures from conservation land and waters.
2. To ensure that no new private accommodation and related facilities are established on public conservation lands and waters.
3. To phase out private accommodation and related facilities on public conservation lands.
4. To ensure that any new accommodation facility authorised and established on public conservation lands is consistent with the outcomes, objectives and policies of the place in which it is to be located.
5. To continue to monitor and manage existing concessioned accommodation facilities in a manner which avoids or mitigates any adverse effects of these facilities.

### **Management Policies**

1. Should use the following criteria when considering applications for new accommodation and related facilities:
  - a) whether the facilities could reasonably be located outside public conservation lands and waters;
  - b) whether the applicant could reasonably use or share an existing facility; and
  - c) whether the facility could reasonably be located in another location with fewer potential adverse effects.
2. Should ensure that all accommodation and related facilities including replacements, additions and extensions on public conservation lands and waters:
  - a) are consistent with the outcomes, objectives and policies for places;
  - b) avoid or otherwise minimise adverse effects on natural resources and historical and cultural heritage and on the benefit and enjoyment of the public, including public access;
  - c) complement and, where possible, are located close to existing accommodation and related facilities;
  - d) are of such a scale, design and colour that they harmonise with the landscape and seascape;

- e) provide for disabled people in places where this is practicable;
- f) are available for use by the public; and
- g) are located, designed, constructed and maintained to meet all legal requirements.

3. Should consider applications for accommodation and related facilities in accordance with Conservation General Policy 10 and ensure that the accommodation is available for members of the public to use on an open and equal basis.

4. Should only authorise accommodation facilities in places where the adverse effects on the existing track network are avoided or otherwise minimised and will not adversely affect users of that network.

5. Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.

6. Will remove any unauthorised structures from public conservation lands and waters.

7. Should only grant the renewal of authorisations for existing private accommodation and related facilities, including encampments, on public conservation lands and waters if:

- a) the existing authorisation contains a right of renewal; and
- b) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.

8. Should require that any applications for new hunter huts to meet the following criteria, in addition to meeting the criteria of policies 2, 3 and 9:

- a) facilities should be sited away from existing tracks;
- b) facilities should result in a positive environmental and recreational outcome;
- c) facilities should be available for public use via a booking system on an open and equal opportunity basis; and
- d) consideration should be given to the capability of the applicant to undertake any ongoing maintenance associated with the facility.

9. Should only consider authorising a maximum of six additional hunters' huts. Consideration should be given to the following areas in the first instance:

- a) Murray River; and
- b) Upper Lords River.

10. May continue to authorise the private accommodation facility associated with the marine farm at Big Glory Bay. Future authorisation will only be granted if the use of the accommodation is related to marine farming activity, the facility is essential for the farm's operation, and any adverse effects of the facility can be avoided or mitigated.

Released under the Official Information Act 1982

## ATTACHMENT E: WEST COAST CMS - RESPONSES TO SUBMISSIONS AND MATTERS PRESENTED AT HEARINGS ON SECTION 3.7.2 'ACCOMMODATION AND RELATED FACILITIES'

### Overview:

There are 81 concessions for private accommodation (baches and some permanent homes) on public conservation land on the West Coast. The majority of these are located near the coastline in South Westland, and many are privately owned and associated with whitebaiting activities. The draft West Coast *Te Tai o Poutini* Conservation Management Strategy (CMS) notified in July 2007 proposed policies to assist with managing the effects of these activities, including a provision that all private accommodation on public conservation land be phased out by 2025.

Submissions on the draft CMS closed on 5 October 2007. Of the 311 written submissions received, 31 included comments on Section 3.7.2 'Accommodation and related facilities' and 17 submitters spoke in support of their submissions on this Section at the CMS hearings held in February 2008. All submitters made a positive contribution to the CMS development process. One submitter supported the wording of the 2007 version of Section 3.7.2, while 30 submitters opposed the wording to some extent. Almost without exception, the matters presented in submissions and hearings opposing this Section were consistent. The following is a summary of the points raised and the Department's response to these matters.

The text and policies in Section 3.7.2 (renumbered 3.7.1) have now been amended and two new objectives added. Submitter concerns have been incorporated where appropriate. Both the 2009 version and the publicly notified (July 2007) version of the draft CMS are available for comparison on the Department's website: [www.doc.govt.nz/westcoastcmsreview](http://www.doc.govt.nz/westcoastcmsreview)

### Security of tenure

Without exception, all bach owners were seeking security of tenure – either freehold or as a long term concession and preferably in perpetuity. Policy 1 from Section 3.7.2.2 created most concern with concessionaires:

- “1. Exclusive private use of existing accommodation and related facilities located within public conservation lands will be phased out in accordance with the conditions set out in Policies 2-7 below:”

Use of the term **will** was of particular concern. This was taken from the Conservation General Policy 2005 (CGP) and the requirement to ensure the draft CMS was consistent with this document.

In terms of legislation governing private accommodation, the Conservation Act 1987 requires that, with some exceptions, no activity shall be carried out in a conservation area unless authorised by a concession. An activity is defined as to include a trade, business, or occupation. The exceptions do not relate to anything associated with private accommodation. Therefore **all** private accommodation on public conservation land requires a concession.

The Department has considered the extent and nature of the submissions on this matter. It has also further considered the intent of the Conservation Act, which does allow for concessions for private accommodation. Given the extent of the submissions, the ambiguity between the legislation and the CGP, Policy 1 has been deleted and replaced with the following wording:

- “1. Concessions may be granted for the occupation of private accommodation and related facilities on public conservation lands provided that the facility has been previously authorised, the style and character of buildings remain largely unmodified, all buildings remain within their current footprint and comply with all relevant local authority requirements, and any adverse effects can be avoided, remedied or mitigated.”

This new wording provides the decision maker with more discretion.

Freeholding or disposal of public conservation land is addressed through section 3.8.2 ‘Statutory Land Management’. The CGP also addresses this matter. Disposal of public conservation land is addressed on a case by case basis.

The majority of private accommodation owners were comfortable with having a concession for their bach, provided a number of other matters discussed below were taken into account.

### **Concession expiry date**

Most submitters sought that concession licences be granted in perpetuity - or at least with a guaranteed right of renewal. Part 3B of the Conservation Act only allows a right of renewal up to the maximum term that the concession can be granted (i.e. 30 years, or up to 60 years in exceptional circumstances). The revised policies do not specify a timeframe for the length of term a concession may be granted for, meaning decisions on concession expiry dates will continue to be made on a case-by-case basis in future.

### **Character and history of the accommodation**

Many submitters gave a valuable account of the history of their accommodation structure. The histories were varied, but almost all had a long history, predominantly dating back to the late 1940’s. However some sites were considerably older. The history of the land tenure in many instances was also complex.

Submitters sought that this history be taken into account when considering applications for concessions and that baches are recognised for their social and cultural values.

Most of the accommodation constituted what could reasonably be termed the “classic kiwi bach”. That is, they were basic small structures enjoyed by families in relatively remote locations. These places were often the focus for holidays and provided people with opportunities undertake activities such as whitebaiting and to enjoy the conservation values in the general area. While some of these activities could continue regardless of whether they had a bach to stay in (i.e. they could camp or in some circumstances stay in other adjacent private accommodation), in almost all situations submitters were seeking to protect the kiwi bach culture. Hence the reason for retaining the baches as concessions and therefore controlling any development. They were seeking conditions that would maintain the baches within their current footprint and style, provided they are able to undertake repairs and maintenance on them.

A new Objective 1 has been developed in response to these concerns, which reads:

- “1. To recognise the history and culture associated with existing private accommodation facilities located on public conservation lands in the West Coast Tai Poutini Conservancy, whilst ensuring any adverse effects are adequately avoided, remedied or mitigated.

A new Objective 2 has also been developed, which reads:

“2. To recognise that it is not generally appropriate for private accommodation and related facilities to be maintained on public conservation lands and waters, which are for the benefit of the New Zealand public. Accordingly, the intention is to limit inappropriate exclusive private use of accommodation facilities over time, and to encourage private owners to allow public use of these facilities.”

A new Policy 2 has been added, which reads:

“2. No new private accommodation facilities should be authorised.”

## Replacement

Policy 4 in the 2007 version was designed to assist with the mandatory phasing out of private accommodation:

“4. If a private accommodation facility is destroyed or significantly damaged (i.e. no longer meets safety or legal requirements) authorisation to rebuild the facility should not be granted.”

Many submitters felt that this policy was unfair. If others were allowed to have continued rights of occupation of a site, why shouldn't they? It was also argued that if it was deemed acceptable to grant a concession in the first place then it should be acceptable to replace a building if needed.

This proposed policy has now been replaced with the following:

“4. Private accommodation which is substantially damaged or destroyed is unlikely to be allowed to be replaced, unless it can be demonstrated that there is significant public good in doing so.”

## Transferability of Concessions

Most submitters raised concern with Policy 2(i) in the 2007 version, which read:

“i) Concessions should be non-transferable and terminate on either the death of the concessionaire or authorisation holder (if this occurs before the expiry of the term) or 1 January 2025, whichever occurs first.”

Submitters explained that in many instances they had made a significant financial investment in their accommodation structures and, while most had no intention of selling them beyond their family, felt that if they had to they should be able to. Part 3B (17ZE) also provides for the transfer of concessions.

Submitters explained that because they currently had some security, they were more inclined to look after the structure, and invest in maintenance. If they had little or no financial value, and were likely to be removed in the near future, it is highly likely that they would not be maintained and possibly left to become derelict. In some instances owners have invested considerable money and time in maintaining and renovating these structures to make the weather tight and more comfortable. Further to this, some of these structures are permanent residences, and they are those owners' primary assets. To remove the opportunity for transfer or sale, would result in a loss of a significant financial investment.

This proposed policy has been replaced with the following:

“3. When granting concessions for previously authorised private accommodation or related facilities, or consenting to a transfer/assignment to another party, the conditions should:

- a) make provision, where appropriate, for public use of the facility; and
- b) provide for a first right of refusal to any subsequent purchase or assignment of the facility to be offered to the Department to manage for public use (where considered of value). Any such purchase/assignment would be at the buildings asset value only, not determined on the basis of location.”

### **Size of temporary shelters**

Some submitters requested that the size of temporary shelters be increased from the proposed four metres square footprint.

The revised Policy 5 now provides for temporary shelters with footprints of up to six metres square.

### **Introductory text**

Some submitters raised concern with the tone or intent of the Introduction to Section 3.7.2 and that the effects from private accommodation were predominantly negative. Many of the issues raised in this section are either compliance matters, or matters that can easily be addressed through conditions of a concession. In addition, many submitters gave examples of how they have become guardians of the area, and are undertaking weed control, waste/litter management, one submitter is now a voluntary ranger, and many also provide advice and assistance to visitors coming in the area. The introduction has been revised to reflect the matters raised through submissions and now reads as follows:

“A range of public and private accommodation and related facilities are located within public conservation lands on the West Coast *Tai Poutini* Conservancy. The Department provides and maintains many backcountry huts and other facilities for the benefit and enjoyment of the public. Other people and organisations, including educational institutions, clubs and concessionaires, also provide public facilities (e.g. Lake Kaniere Lodge, Pioneer Hut, Centennial Hut and the Ross Information Centre).

Public conservation lands are for the benefit of the people of New Zealand. It is not generally appropriate for individuals to have and maintain private accommodation and related facilities for exclusive private use. However, it is recognised that there are historic and cultural values associated with some private accommodation facilities located on public conservation lands.

Historically, whitebaiters, fishers, hunters and others have erected private accommodation and related facilities such as baches, huts, temporary shelters and maimais near rivers, estuaries and the coast. This has usually occurred in areas dominated by extensive tracts of public conservation lands, where no alternative opportunities exist to build on private land. Most of these facilities epitomise the ‘traditional kiwi bach’ once commonplace throughout New Zealand, have a long history of occupation and many have been passed down through several generations of the same family. Some of these facilities are permanent residences, while others are used seasonally – often during the

whitebaiting season. Private accommodation facilities in some instances (e.g. Waiuta) contribute to the integrity of a recognised historic area.

A concession or other authorisation is required for all accommodation and related facilities located within public conservation lands.”

### **Operational matters**

Some submitters also raised queries about land status and the provision of other facilities. These are operational matters and have been referred to either the Concessions/Statutory Land Management team in the Conservancy Office or to the relevant local Area Office for consideration.

Released under the Official Information Act 1982

## Loch Katrine Recreation Reserve huts and Canterbury CMS review

Conservation Management Strategies (CMS) are currently being reviewed for each conservancy, through a national process. For further information please refer to: [www.doc.govt.nz/getting-involved/consultations/how-doc-consults/consulting-on-conservation-management-strategies](http://www.doc.govt.nz/getting-involved/consultations/how-doc-consults/consulting-on-conservation-management-strategies)

Several nation-wide issues are being dealt with through the development of "national issue papers" to provide conservancy guidance and nationally consistency. One such issue is private accommodation on public conservation land. The national issue papers, approved at Deputy Director General level within DOC, have been developed from legislation administered by DOC and from the national *Conservation General Policy* (2005), and sets out policy for inclusion within each CMS.

Working from Conservation Act 1981 and Reserves Act 1977 provisions for fostering and/or providing for public recreation, including as provided by concessionaires, the *Conservation General Policy* states, in respect of private accommodation:

"10 (h) Existing private accommodation and related facilities, including encampments, on public conservation lands and waters will be phased out, except where specifically provided for or allowed in legislation, in accordance with the conditions and timeframes set out in any relevant concession or conservation management strategy or plan. They should be removed at the end of the phase-out period, unless retained by the Department for public use."

The national issues paper for private accommodation (approved 31 May 2012), working from the *Conservation General Policy*, sets out the following policies for use within each CMS. Most of the policies are standard ones that will be included within Part 3, Specific Policy Requirements, of the CMS. Where, as for Loch Katrine, there is a specific private accommodation issue, the policies or key parts of them may be included within Part 2, Places, of the CMS.

### Policies

1. Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.

2. Should phase out all existing private accommodation on public conservation land that is not otherwise covered by s50 National Parks Act<sup>1</sup> or specifically allowed or provided for in legislation by either:

- (a) phasing in public use of the building/s (refer Policy 4a); or
- (b) removing the building/s at the end of the phase-out period (refer Policy 4b), unless retained by the Department for public use.

3. Should consult X Conservation Board and the concession applicant when assessing a concession application for private accommodation, in order to determine whether it should be granted and, if so, which of the two phase out methods (2a or 2b) is most appropriate for each individual circumstance.

4. If private accommodation is to be authorised in accordance with Policy 2, concession conditions should specify that:

- (a) the building/s are to be made available, where appropriate, for use by the public - with specific details on how this requirement will be phased in over time stated in each individual concession (if option 2a is chosen); or

- (b) the building/s are to be removed<sup>2</sup> on the death of the person named on the authorisation at the time the CMS is publicly notified, or within twenty years of CMS approval, whichever occurs first (if option 2b is chosen); and

- (c) the style and character of all buildings are to remain largely unmodified; and

- (d) the floor area and footprint of all buildings is not to increase beyond that existing at the time of CMS approval; and

- (e) all buildings must comply with all relevant local authority requirements; and

- (f) transfer/assignment to another party should not be authorised [ie the building/s cannot be sold or transferred to anyone else] and

- (g) an indemnity be given by the concessionaire and that the concessionaire hold adequate insurance (e.g. general public liability insurance, statutory liability insurance) to cover this indemnity.

5. Should only grant the renewal<sup>3</sup> of authorisations for private accommodation and related facilities, including encampments, on public conservation lands and waters to the existing authorisation holder<sup>4</sup>, if:

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<sup>1</sup> The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.

<sup>2</sup> Unless retained by the Department for public use/active management of historical and cultural heritage values.

<sup>3</sup> Where the existing/previous concession does not contain a right of renewal and is due to (or has) expire(d) and the authorisation holder applies for a new concession, the

- (a) the existing authorisation contains a right of renewal; and
- (b) the right of renewal is exercised by the authorisation holder before the existing authority expires; and
- (c) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.; and
- (d) any new authorisation is granted before the existing authorisation expires

6. Should not authorise replacement of private accommodation if:

- (a) a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act), or
- (b) buildings are destroyed or so damaged by an event (e.g. fire, flood etc) as to render them untenable.

7. Remove unauthorised buildings from xxxxx [public conservation land and/or waters], in accordance with xxxxx Management Plan, notwithstanding Policies 2 to 6. [*This is an optional policy for places such as Loch Katrine Reserve and can be reworded as required to fit local circumstances*].

8. Remove buildings not authorised in accordance with Policy 2 from public conservation lands and waters no later than one year after CMS approval.

Appendix X - Each CMS should contain a schedule of all exclusive private accommodation in the Conservancy, its location, legal description and the current term of the concession.

Glossary – Each CMS should include the following standard definitions of private accommodation and related facilities:

‘Private accommodation’ means a place to live or lodge which is not available to the general public on an open basis. (Conservation General Policy, 2005)

‘Public accommodation’ means a place to live or lodge in that is open to or shared by all people. (General Policy for National Parks, 2005)

‘Related facilities’ means any structure or piece of equipment that is used in conjunction or association with private accommodation. Examples include garages, outhouses, and outdoor showers.

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application should be considered against the other policies in this section and the relevant General Policy.

<sup>4</sup> It should not grant transfers/assignments to other parties.

'Encampment' means non-designated sites used for the purpose of shelter or camping on either:

(a) a permanent or semi-permanent basis by private individuals or groups; or

(b) for more than short-term use by individuals or groups.

(Conservation General Policy, 2005)

The key aspect of the above policies is that, in time, all private accommodation on public conservation land will be removed or made available for public use; policy variations are just about the time frame and means for doing this.

Where there is an existing statutory management plan process for the removal of private accommodation, and that process has already been tested and approved through a public statutory process, as has occurred with the *Loch Katrine Recreation Reserve Management Plan* (1999), then policy 7 allows that process to continue.

Taking then, the *Conservation General Policy*, the national issues policy directive, and the *Loch Katrine Recreation Reserve Management Plan* policy, the pre-draft Canterbury CMS, within the whole Lake Sumner, Lewis Pass, St James and Hanmer Place, proposes the following descriptive text, outcomes and policy for Lake Sumner and Loch Katrine.

#### ***Lake Sumner and Loch Katrine***

[Descriptive text]

"Lake Sumner Road gives access to Lake Taylor with a 4WD track into the Hurunui valleys, with Hurunui District Council wishing to extend a gravel road formation to Loch Katrine. Boat access exists from Loch Katrine to Lake Sumner. Legal roads extend through farmland beyond Loch Katrine but there is community disagreement on vehicle use of these.

Lake Sumner, nationally one of few large unmodified high country lakes, is largely surrounded by public conservation land, and has been proposed for modification for irrigation water storage. A proposed weir at the lake outlet would affect lake levels, including for Loch Katrine, and could significantly affect lake-edge and wider ecosystems and species, recreational opportunities, and the outstanding natural character of the lake and its setting within the Lake Sumner Forest Park.

Loch Katrine Recreation Reserve has a collection of unauthorised private huts in the process of being removed in accordance with the *Loch Katrine Recreation Reserve Management Plan* (1999), with an allowed replacement with publicly-available facilities. It is expected that this reserve will have increasing public use and landscape significance as its access and public accommodation facilities (camping and huts) are improved and as adjoining farmland is developed.”

[Outcomes]

“The high country lakes of Lake Sumner and Loch Katrine remain unmodified with natural lake levels and intact lake-edge to ridge-top ecosystems on the surrounding conservation lands. Vehicle access is by gravel road to Loch Katrine and a four-wheel-drive track to the southern shore of Lake Sumner, while all lake shores can be accessed by boat from Loch Katrine. With farm development near Lake Sumner, conservation lands have become more important to protect biodiversity values and provide recreational opportunities around the lakes such as camping, boating, fishing and hunting. Riparian and wetland areas on farmland en-route to Loch Katrine are protected through joint landowner and community actions guided by the Canterbury Water Management Strategy.

Loch Katrine Recreation Reserve provides an attractive lake-side setting, enhanced by native plantings, for day-use, camping and overnight stays in publicly available accommodation huts. Apart from public facilities and up to ten huts, managed through a concession by a community group, there are no other structures on the reserve. With better road conditions more people are using the reserve and local users are involved in its management.

Camping use on the Lake Sumner shore recognises the Ngai Tahu use priority at the nohoanga site.”

[Policies]

1. “Work with Hurunui District Council and the community on the upgrade of the Lake Sumner Road and resolution of public access issues into the Hurunui valley where legal road access already exists.
2. Work with the existing community of interest for Loch Katrine but recognise the likely wider, developing community of interest.
3. Should remove all private accommodation and structures from Loch Katrine Recreation Reserve and other lake-edge conservation lands.

4. Concessionaire huts should be located in accordance with a landscape design plan for the reserve that gives priority to camping on level, above-floodplain sites and blends the huts into planted and regenerating indigenous vegetation.
5. Should continue with a single community group concession for a maximum of ten accommodation huts, with a single, easily accessible public booking system."

[Note: The CMS format also allows for "milestones" and it is likely a milestones timeframe will be added in respect of removing the Loch Katrine private accommodation huts – see policy 8 above.]

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## **CMS national issues – private accommodation**

National policy for private accommodation within CMS has been approved – see docdm-930973.

The CMS Part 3 – Specific Policy Requirements for Canterbury content will be as set out below.

The national policy (pg 7) requests that each conservancy completes the following tasks prior to 30 July 2012. Canterbury didn't meet this target but the task still needs to be done. There is some further guidance in the policy paper.

**We've done some work on Table PT below but it needs completion and the following actions undertaken.**

- a) Update concession files for all existing authorised private accommodation on pcl. Each file should contain the following information:
- a photographic record of each building, showing it's current form as at x date (prior to 2012);
  - measure and record existing floor area and footprint of buildings;
  - record number and GPS locations of buildings;
  - note the authorisation holder's name/s as at 1 January 2012.

If possible, it would also be helpful to include the following information on the file:

- provide summary of authorisation history from time first occupied until now (ie include reference to authorisations granted by other agencies prior to DOC management);
- note whether any specific legislation provides for private accommodation at the site or not.

- b) Create a spreadsheet containing details about all unauthorised private accommodation known to be located on pcl. At a minimum, this should include the location of the building/s. Contact details would also be useful, as the building owners are likely to be interested in CMS policies 37/38.
- c) Populate the template for CMS [Table PT] (this should list all private accommodation known to exist on pcl, including unauthorised private accommodation):

### Canterbury CMS text

#### Private Accommodation

Existing structures on public conservation lands include some private accommodation which is not available to the general public. Some of these structures have been properly authorised, but some are unlawful because no approvals were obtained to erect, use or occupy them.

It is not generally appropriate for individuals to have and maintain private accommodation and related facilities on public conservation land. Private accommodation is to be phased out, except where specifically provided for or allowed in legislation.

Within Canterbury the situation with regard to private accommodation on public conservation land is as follows:

**Table PT – Private accommodation**

Location of buildings	Legal description of land occupied	Concession expiry date	Circumstances
St James Conservation Area	Section 14, Square 183, Amuri  M31 014	????????	The St James conservation area purchase agreement (2008) allowed the previous landowners to retain two existing private homesteads, and to build a third, at the Ada homestead site.
Loch Katrine Recreation Reserve	RS 41017, SO 14864  L32508	No concessions	[was 60] huts to be removed in accordance with provisions brought into the CMS from the <i>Loch Katrine Recreation Reserve Management Plan</i> (1999).
Loch Katrine Marginal Strip	Crown Land, SO 5530  L32512	No concession	[Position of hut to be confirmed wrt marginal strip and lakebed]
Lake Pearson	Pt Lot 4, DP 21925  L34006	No concessions	3 huts [check w Wai Area]

Craigieburn	??????????????	??????????????	[confirm public availability of Cragieburn/Hamiltons (?) baches]
Lower Selwyn Huts	Pt Reserve 4100, Blk XVI, Leeston SD M36473	Date?	58 huts authorised by specific leases since the settlement was established in the late 1880s, now in accordance with the Te Waihora Joint Management Plan (2005).
Lake Heron ?	??????????	??????????	9? [check w Rau Area]
Rangitata?	??????????	??????????	1? [House on grazing licence/dairy farm area?]
Lake Ohau?	??????????????	??????????????	1? [check w Twi Area]
Pareora Huts	??????????????	??????????????	8 [Likely vesting in council by draft CMS date? What progress and what to put here in meantime?]
Kaik - Waitaki River Mouth	Section 60A, Steward Settlement, Blk VIII, Papakaio SD J41525	No concessions	45 huts authorised by a history of licences deemed compatible with the reserve's purpose.

Private Accommodation (CGP 10 and GPNP 9)

Policies

31. Should not authorise new private accommodation and related facilities, including encampments, on public conservation lands and waters.

32. Should phase out all existing private accommodation on public conservation land that is not otherwise covered by s50 National Parks Act<sup>1</sup> or specifically allowed or provided for in legislation by either:

- (a) phasing in public use of the building/s (refer Policy 34a); or
- (b) removing the building/s at the end of the phase-out period (refer Policy 34b), unless retained by the Department for public use.

33. Should consult Canterbury Aoraki Conservation Board and the concession applicant when assessing a concession application for private accommodation, in order to determine whether it should be granted and, if so, which of the two phase out methods (32a or 32b) is most appropriate for each individual circumstance.

34. If private accommodation is to be authorised in accordance with Policy 32, concession conditions should specify that:

<sup>1</sup> The exception in s50 NPA relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.

- (a) the building/s are to be made available, where appropriate, for use by the public - with specific details on how this requirement will be phased in over time stated in each individual concession (if option 32a is chosen); or
- (b) the building/s are to be removed<sup>2</sup> on the death of the person named on the authorisation at the time the CMS is publicly notified, or within twenty years of CMS approval, whichever occurs first (if option 32b is chosen); and
- (c) the style and character of all buildings are to remain largely unmodified; and
- (d) the floor area and footprint of all buildings is not to increase beyond that existing at the time of CMS approval; and
- (e) all buildings must comply with all relevant local authority requirements; and
- (f) transfer/assignment to another party should not be authorised [ie the building/s cannot be sold or transferred to anyone else] and
- (g) an indemnity be given by the concessionaire and that the concessionaire hold adequate insurance (e.g. general public liability insurance, statutory liability insurance) to cover this indemnity.

35. Should only grant the renewal<sup>3</sup> of authorisations for private accommodation and related facilities, including encampments, on public conservation lands and waters to the existing authorisation holder<sup>4</sup>, if:

- (a) the existing authorisation contains a right of renewal; and
- (b) the right of renewal is exercised by the authorisation holder before the existing authority expires; and
- (c) the person holding the authorisation has complied with all of the terms and conditions of the authorisation.; and
- (d) any new authorisation is granted before the existing authorisation expires

36. Should not authorise replacement of private accommodation if:

- (a) a building falls into such a state of disrepair that it needs work requiring a building consent under the Building Act 2004 (note, minor repair and maintenance using comparable materials does not require building consent under the Building Act), or
- (b) buildings are destroyed or so damaged by an event (e.g. fire, flood etc) as to render them untenable..

37. Remove unauthorised buildings from Loch Katrine Recreation Reserve, in accordance with the provisions in 2.6 Lake Sumner, Lewis Pass, St James to Hanmer Place, notwithstanding Policies 32 to 36. [This picks up the policies etc within the Loch Katrine Recreation Reserve MP]

38. Remove buildings not authorised in accordance with Policy 32 from public conservation lands and waters no later than one year after CMS approval.

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<sup>2</sup> Unless retained by the Department for public use/active management of historical and cultural heritage values.

<sup>3</sup> Where the existing/previous concession does not contain a right of renewal and is due to (or has) expire(d) and the authorisation holder applies for a new concession, the application should be considered against the other policies in this section and the relevant General Policy.

<sup>4</sup> Ie should not grant transfers/assignments to other parties.

# Draft Canterbury, Otago and Southland Murihiku Conservation Management Strategies 2013

## Private accommodation and related facilities Common Issues Report

### Background

For the purposes of this paper, private accommodation means a 'Place to live or lodge which is not available to the general public on an open basis', as defined in the Conservation General Policy 2005 (CGP). Examples include private whitebaiting and/or duck shooting huts, encampments, and related facilities such as storage sheds and other structures located on public conservation lands and waters; which are collectively referred to as private accommodation in this report. It does not include:

- i) huts and lodges owned and occupied by persons other than the Department that are available to the public, such as club huts (e.g. skiing/tramping/hunting clubs), or huts and lodges owned by guided walking concessionaires<sup>1</sup>; or
- ii) on-site accommodation required as part of a concession related activity<sup>2</sup> (e.g. worker accommodation).

Early in the Conservation Management Strategy (CMS) drafting process a national policy paper was prepared to address the issue of private accommodation. This paper followed the direction given by CGP 10(g) and (h) and the General Policy for National Parks 2005 (Policies 9(g) and 9(h)), which state that new private accommodation should not be permitted and existing private accommodation should<sup>3</sup> be phased out by way of removal or retention by the Department for public use. The private accommodation provisions in Part Three of the draft Canterbury, Otago and Southland Murihiku CMS were based on this national policy paper.

### Summary of issues raised in submissions

1. The main issue raised in submissions relates to the policy<sup>4</sup> requiring all existing private accommodation (not otherwise covered by section 50 of the National Parks Act 1980 (NPA80), or specifically allowed or provided for in legislation) to be phased out by either: phasing in public use; or removing the building at the end of the phase-out period (unless retained by the Department for public use). Concerns were raised about how and when this would apply to both existing authorised and unauthorised private accommodation.

Most other submissions essentially stem from this policy direction. An overview of the submissions related to this provision is provided in Table 1 for each CMS (see Attachment 1, pages 8-12), along with other relevant information regarding all known private accommodation on public conservation lands and waters in Canterbury, Otago and Southland.

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<sup>1</sup> Where a lease and public notification is required under section 17T(4) Conservation Act 1987.

<sup>2</sup> Ibid.

<sup>3</sup> Use of the word 'will' in CGP 10(h) is not considered to fetter the decision making powers of the Minister as the Minister is able to decide what the phase-out conditions may entail (which could be to allow continued private use for up to 30 years).

<sup>4</sup> Policy 3.9.2 in the draft Canterbury and Otago CMSs, and Policy 3.10.2 in the draft Southland Murihiku CMS.

2. There were 3 submissions on Policy 3.9.5 in the draft Canterbury CMS relating to the renewal of authorisations for the Loch Katrine huts. These submissions state that the existing Loch Katrine Association concession was specifically issued without a right of renewal.
3. Some submissions came from those who held concessions for club huts, and they were concerned that the private accommodation provisions applied to them.

### **Discussion and response to issues raised in submissions**

1. The national policy paper for private accommodation took into account the differing status and history of private buildings on public conservation lands and waters around the country. This assessment is deemed to meet the requirements of section 17D(8) of the Conservation Act 1987 (CA87), which requires the Director-General of Conservation to have regard to any relevant concessions in force when drafting the CMS.

Some of the private accommodation identified in Table 1 for Southland (see page 12) are within Fiordland National Park. None of the structures in this table have been authorised as accommodation within national parks (as provided by section 50 NPA80 and section 5(3) of the National Parks Amendment Act 1996).

There was no change to the national policy for private accommodation as a result of submissions received on the draft Northland, Auckland and Waikato CMS; and despite the submissions received on the three South Island CMS, there is no compelling reason to change the national policy direction (which needs to be consistent with CGP). As such, the private accommodation provisions in the CMS will remain as is, subject to some minor revisions to provide consistency and better clarity, as set out on pages 5-7 of this report<sup>5</sup>.

The key issue is how the policies will be applied to existing authorised and unauthorised private accommodation. This is discussed below:

#### ***Existing authorised private accommodation***

A concession (lease and/or licence) granted under the CA87 is broadly termed an authorisation for the purposes of the CMS. Many of the structures associated with existing private accommodation are authorised by a concession. However, the concessions are subject to a variety of different terms and conditions. In addition, section 17W(7) CA87 states that the holder of an existing concession must act in accordance with every current and relevant CMS, despite a CMS being approved after the date on which the concession became effective, with one exception (see below). This is reflected in a standard (compliance) condition of recently granted concessions, or is considered a deemed condition in older concessions if it isn't explicitly stated in the concession document.

The exception to the application of section 17W CA87 is for any private accommodation that was on public conservation lands and waters administered by the Department as at 13 March 1996 and was previously lawfully established or authorised on these areas on or before 1 April 1987 (in accordance with section 7(2) of the Conservation Amendment Act 1996, section 11(4) of the Reserves Amendment Act 1996, or section 5(3) of the National

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<sup>5</sup> Some of these changes will not be relevant to all three CMSs.

Parks Amendment Act 1996)<sup>6</sup>. Under these provisions the Minister could grant a concession for previously authorised private accommodation, located on areas that were public conservation lands and waters as at 13 March 1996, even where that accommodation is not consistent with a CMS (i.e. section 17W CA87) provided that the extent of the activity is no greater than previously authorised.

This means that, in the first instance, consideration needs to be given as to whether this exception applies and whether an existing concession for private accommodation will be subject to all or some of the policies in the CMS when it is approved. Depending on the circumstances, such concessions may or may not follow some or all of the paths set out below.

Where existing authorised private accommodation does need to comply with section 17W CA87 then its status should (subject to the decision-making powers of the Minister) follow one of the following paths during the term of the new approved CMS:

- a) *Concession expires after the term of this CMS (~2025) but before 2035* – there is no requirement to phase-in public use<sup>7</sup> (unless there is mutual agreement between DOC and the concessionaire) during the term of the CMS, but it may be subject to the phase-out clause (see Policy 3.11.4b), page 6) if the person named on the concession dies during the term of the CMS. This correlates with a standard (assignment) condition of recently granted concessions. The existing concession will also be subject to the other CMS policies, such as the floor area and footprint of all buildings not increasing.

Whether or not there is a right of renewal then the following needs to be considered:

- i) *No right of renewal* – if there is no change to the national policy and the next CMS (~2025) contains similar policies, then the phase-out clause, with respect to removal of the building or retention by DOC for public use within 20 years of approval of this CMS (2035), will apply regardless of the term of the concession.
  - ii) *There is a right of renewal* – the concession could be granted for another term (in accordance with Policy 3.11.5, page 6) but it should only be for the term specified in the current authorisation, and in no event for longer than 20 years from approval of this CMS (2035).
- b) *Concession expires after 2035* – either the building is removed or public use will need to have been phased in by 2035, or the building may be retained by DOC; unless there is a specific contractual provision associated with land transferred to DOC that provides for private use beyond 2035 (for example, the St James homesteads).
  - c) *Concession expires during the term of the CMS and there is no right of renewal* – there are two potential paths:
    - i) Before the concession expires and by mutual agreement, either the building is removed and the land remediated by the concessionaire, or public use is phased-in, or the building is transferred to DOC.

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<sup>6</sup> See Attachment 2

<sup>7</sup> Make the building available for use by the public in accordance with Policy 3.11.4a) on page 6.

- ii) When the concession expires the building is removed and the land remediated by the concessionaire, or it is transferred to DOC for public use. The concession will also be subject to the other CMS policies for the remainder of its term as in a) above.
- d) *Concession expires during the term of the CMS and there is a right of renewal* – a new concession may be granted for a term that expires on or earlier than 2035 (unless provided for by the terms of the current authorisation renewal or other statutory provisions), and it will likely include conditions that set out whether public use will be phased-in, or whether the building will be removed or retained by DOC at the end of the term.

An additional concern is how the policy for phasing in public use will be applied. Such mechanisms are not specified in the CGP or CMS as there are a number of ways of achieving this. In all cases, any cost to the public should be reasonable e.g. comparable to local DOC hut fees. Examples include:

- Forming an incorporated group/club with open public membership e.g. mountaineering or hunting clubs.
- Providing an open public booking system with a minimum number of days that the building is made available to the public.

#### ***Existing unauthorised private accommodation***

Policy 3.11.2 (page 6) will apply. This means that the Minister will need to decide, in the first instance, whether or not to grant a concession. In addition to the CMS provisions, this decision will also take into account other legislation, relevant current management planning documents, (such as the Loch Katrine Recreation Reserve Management Plan 1999), and relevant previous management planning documents. If a concession is not granted then the buildings will be on public conservation land in breach of policies and DOC may pursue their removal or their use as public buildings. If a concession is granted, then it will likely include conditions that address the phase-in public use, removal or retention by DOC for public use provisions. The terms and conditions of these concessions could take a variety of approaches but will be informed by the policies in the CMS (subject to the decision-making powers of the Minister and any legislative provisions).

Regardless of the path taken above, any authorisation for private accommodation will also need to have regard to Policies 10(c)-10(e) in CGP.

2. The up to ten authorised Loch Katrine huts provide for public use. Therefore, they are not considered private accommodation and are not subject to the private accommodation policies in Part Three. No change is required to the provisions.
3. Club huts would only be considered as private accommodation where they fell under the definition of 'private accommodation' as per CGP (see 1<sup>st</sup> paragraph of this report). A genuine club hut is considered to be one where:
  - a) membership of the club by the general public is unrestricted and readily open (e.g. there is no limit on the number of people who can become a member);

- b) access to the hut itself is not restricted (i.e. all members of the club have equal opportunities to use the hut for periods of time); and
- c) the hut is used for short, temporary stays (the hut cannot be used for permanent or long-term occupation).

This does not prevent club huts from being locked for security reasons, but all club members should have ready access, and signage on doors should indicate the availability of the hut to the general public by way of membership or payment of a reasonable fee. Examples of club huts include those managed by the New Zealand Alpine Club, Federated Mountain Clubs of New Zealand, New Zealand Deerstalkers' Association and a number of ski clubs.

Club huts that are available to the general public on an open basis are not considered to be private accommodation, for the purposes of the Part Three policies in the CMS. Therefore the private accommodation policies do not apply in these situations and no change is required to the provisions.

## Revisions

### *Part Three text and policies*

#### **Private accommodation and related facilities**

Existing structures on public conservation lands and waters include some private accommodation and related facilities that are not available for use by the general public. Some of these structures have been authorised, but several many have been erected and used unlawfully (see Table 3.11.1). Under the Conservation General Policy 2005, the use of private accommodation and related facilities, including encampments, solely for private purposes, is to be phased out, except where specifically provided for or allowed in legislation.

[Add local description if needed]

Table 3.11.1. Authorised and unauthorised private accommodation and related facilities in [CMS area]

[see tables on pages 8-12, but note that the CMS and supports/opposes provision columns and the 'General' row will be deleted]

#### **Policies**

- 3.11.1 Should not authorise~~allow~~ new private accommodation and related facilities, including encampments, on public conservation lands and waters.
- 3.11.2 Should phase out all existing private accommodation and related facilities, including encampments, on public conservation lands and waters that are~~is~~ not otherwise

~~authorised under~~ covered by section 50 of the National Parks Act 1980<sup>8</sup> or specifically provided for or allowed or provided for in legislation<sup>9</sup> by either:

- a) phasing in public use of the building(s) (refer Policy 3.11.4a); or
- b) removing the building(s) at the end of the phase-out period (refer Policy 3.11.4b), unless retained by the Department for public use.

3.11.3 Should consult the [xxx] Conservation Board and the concession applicant when assessing a concession application for existing private accommodation and related facilities, including encampments, to determine whether ~~a concession~~<sup>it may</sup> should be granted and, if so and where relevant, which of the two phase-out methods (Policies 3.11.2a or 3.11.2b) should be applied~~is most appropriate for each individual circumstance~~.

3.11.4 Should specify the following concession conditions ~~if private accommodation and related facilities, including encampments, are~~ to be authorised in accordance with Policy 3.11.2, ~~concession conditions should specify that:~~

- a) in the case of Policy 3.11.2a, the building(s) are to be made available, ~~where appropriate~~, for use by the public—with specific conditions~~details~~ on how this requirement will be phased in over time stated in each individual concession, including the requirement that any costs charged to the public are reasonable ~~(if option 3.10a is chosen)~~; or
- b) in the case of Policy 3.11.2b, the building(s) are to be removed<sup>10</sup> within 18 months of~~on~~ the death of the person named on the authorisation as at 26 June 2013 ~~[date that the CMS was publicly notified]~~, or within 20 years of approval~~CMS of this CMS~~, whichever occurs first ~~(if option 3.X.2b is chosen)~~; and
- c) the style and character of all buildings are to remain essentially~~largely~~ unmodified; and
- d) the floor area and footprint of all building(s) are~~is~~ not to increase beyond that existing at the time of CMS approval; and
- e) all buildings must comply with the Building Act 2004 ~~and all relevant~~ local authority requirements; and
- f) transfer/assignment of the concession to another party should not be authorised ~~(i.e. the building(s) cannot be sold or transferred to anyone else)~~; and
- g) an indemnity to protect the Department is given by the concessionaire and the concessionaire holds adequate insurance (e.g. general public liability insurance, statutory liability insurance and for the removal of buildings) to cover this indemnity.

3.11.5 ~~Should only~~, where an existing authorisation contains a right of renewal, grant the renewal<sup>11</sup> of authorisations for private accommodation and related facilities,

<sup>8</sup> The exception in section 50 of the National Parks Act 1980 relates to accommodation in a public sense. The only private accommodation it deals with is for staff quarters.

<sup>9</sup> Such as section 7(2) of the Conservation Amendment Act 1996, section 11(4) of the Reserves Amendment Act 1996, or section 5(3) of the National Parks Amendment Act 1996.

<sup>10</sup> Unless retained by the Department for public use / active management of historic and cultural heritage values.

<sup>11</sup> Where the existing/previous ~~authorisation~~<sup>concession</sup> does not contain a right of renewal and is due to expire (or has expired) and the authorisation holder applies for a new concession, the application should be considered against the other policies in this section and the relevant general policy.

including encampments, on public conservation lands and waters only to the existing authorisation holder<sup>12</sup>, if:

- a) ~~the existing authorisation contains a right of renewal; and~~
- b) ~~the right of renewal is exercised by the authorisation holder before the existing authority expires<sup>13</sup>; and~~
- eb) (subject to the terms of the authorisation) the person holding the authorisation has complied with all of the terms and conditions of the authorisation; and
- d) ~~any new authorisation is granted before the existing authorisation expires.~~

3.11.6 Should not ~~authorise~~allow the substantial repair or replacement of private accommodation and related facilities, including encampments, if:

- a) a building falls into substantial~~such a state of~~ disrepair, so that it needs work requiring a building consent under the Building Act 2004<sup>14</sup> ~~(note, minor repair and maintenance using comparable materials does not require building consent under this Act); or~~
- b) a building is ~~are~~ destroyed or so damaged by an event (e.g. fire, flood) as to render it~~them~~ untenable.

3.11.7 Remove unauthorised buildings from xxxxx [*public conservation land and/or waters*], in accordance with the xxxxx Management Plan, notwithstanding Policies 3.11.2 to 3.11.6. [*This is an optional policy for places such as National Parks and Loch Katrine Reserve and can be reworded as required to fit local circumstances.*]

~~3.X.8 Remove buildings not authorised in accordance with policy 3.X.2 from public conservation lands and waters no later than 5 years after approval of this strategy.~~

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<sup>12</sup> I.e. should not grant transfers/assignments to other parties.

<sup>13</sup> In accordance with section 17ZAA of the Conservation Amendment Act 1996.

<sup>14</sup> Minor repair and maintenance using comparable materials does not generally require building consent under this Act.

## Attachment 1

**Table 1. Overview of private accommodation, including submissions on phase-in public use or remove policy.**

CMS	Location	No. of buildings	Supports provision	Opposes provision	Authorised	Exception applies <sup>15</sup>	Right of renewal	Notes
Canterbury	St James Conservation Area	2			Yes – expire 2043	No	Yes – till 2073	The St James conservation are purchase agreement (2008) allowed the previous landowners to retain two existing private homesteads, and to build a third, at the Ada homestead site.
	Loch Katrine Recreation Reserve	50+ <sup>16</sup>	5	13	No	No	No	To be removed in accordance with the provisions of the Loch Katrine Recreation Reserve Management Plan 1999, now transferred to CMS Policies 2.6.9-2.6.12.
	Lake Sumner Forest Park and/or Loch Katrine Marginal Strip	3			No	No	No	At northern loch edge.
	Lake Pearson Conservation Area	3			No	No	No	Adjoining SH73.
	Hamilton Peak Club (Craigieburn Forest Park)	10	1	2	Yes – expire 2022	Yes	No	Authorised by lease until 2022, but uncertainties remain around public membership of the club and public availability of the lodges.
	Ski Touring Club (Craigieburn Forest Park)	5			Yes – expired 2014	Yes	No	Authorised by lease until January 2014, but uncertainties remain around public membership of the club and public availability of the lodges.
	Lower Selwyn Huts Conservation Area	58			Yes - expire 2019	Yes	Yes – till 2024	Authorised by specific leases since the settlement was established in the 1920s, and now in accordance with Te Waihora Joint Management Plan 2005.

<sup>15</sup> Section 7(2) Conservation Amendment Act 1996, section 11(4) Reserves Amendment Act 1996 or section 5(3) National Parks Amendment Act 1996.

<sup>16</sup> In addition, there are three authorised huts that provide for public use and are therefore not subject to the private accommodation policies.

	Lake Heron Nature Reserve	9(?)			No	No	No	Unclear land status, refer 2.7 High-Country Basins Place.
	Pareora Huts (Pareora Riverbed Conservation Area)	8			No	No	No	Occupation of flood plain means a proposed reserving of the land and vesting it in the Waimate District Council is unlikely.
	The Kaik Huts-Waitaki River Mouth, Kaik Fishing Reserve	50+			Yes	Yes	N/A	Historic authorisations consequent upon land status.
	Otamatapaio Recreation Reserve	1			No	No	No	
	Round Bush Recreation Reserve (Lake Ohau)	1			No	No	No	
	North Bank Rangitata River	3(?)			No	No	No	Status unclear.
	Ruataniwha Conservation Area	3			No	No	No	
	General		1	1				

CMS	Location	No. of buildings	Supports provision	Opposes provision	Authorised	Exception applies <sup>17</sup>	Right of renewal	Notes
Otago	Bruce Rocks, Brighton	1			Yes – expires on the death of the Licensee	Yes	Yes	Issued 1948 over Crown Land.
	Quarantine (St Martins) Island	1			Yes – expires 21/12/2036	No	No	
	Spit Houses, Aramoana	4			No	No	No	
	Otago Central Rail Trail, Hyde	1			Yes – no actual expiry date	No	No	Term of lease: “One year from and inclusive of the commencement date of the Lease unless

<sup>17</sup> Section 7(2) Conservation Amendment Act 1996, section 11(4) Reserves Amendment Act 1996 or section 5(3) National Parks Amendment Act 1996.

								sooner determined under the provisions contained in Schedules B and C hereof and so on from year to year unless or until determined under any of the said provisions.”
	Otago Central Rail Trail, Omakau	1			No	No	No	Previously concessioned, now expired.
	Otago Central Rail Trail, Ranfurly	1			Yes – expires 5/3/2017	No	No	
	Otago Central Rail Trail, Waipiata	1			Yes – no actual expiry date	No	No	Term of lease: “One year from and inclusive of the commencement date of the Lease unless sooner determined under the provisions contained in Schedules B and C hereof and so on from year to year unless or until determined under any of the said provisions.”
	Gemmells Crossing, Reidston	26			Yes – expire 16/10/2041 (1) 31/12/2041 (25)	No	No	
	Kakanui River bed	1			No	No	No	Previously concessioned, now expired.
	Town of Moeraki	3			Yes – expire 2059	No	No	
	Hunter Valley, Lake Hawea	2			No	No	No	
	Dublin Bay, Wanaka	2			No	No	No	
	Sainsbury Cottage, Mt Aurum	1			Yes – expires 31/12/2026	No	No	Right of renewal already completed.
	Kinloch Foreshore, Queenstown	1			Yes – expires 30/6/2015	No	No	
	Glen Nevis, Remarkables CA	1		1	No	No	No	
	General		1	1				

Released under the Official Information Act 1982

<b>CMS</b>	<b>Location</b>	<b>No. of buildings</b>	<b>Supports provision</b>	<b>Opposes provision</b>	<b>Authorised</b>	<b>Exception applies<sup>18</sup></b>	<b>Right of renewal</b>	<b>Notes</b>
Southland	Big Bay, Pyke Forest Conservation Area	8	1 (conditional)	25	Yes – 7 expire 2027 and one expires 2022	No	No	
	Waituna Lagoon, Waituna Wetlands Scientific Reserve & Seaward Moss Conservation Area	22		13	No	No	No	
	Fiordland National Park (Barlow's Hut)	2			No	No	No	To be removed in accordance with FNPMP07
	Fiordland National Park (Rabbit Flat, Wairaurahiri River)	1			No	No	No	To be removed in accordance with FNPMP07
	Fiordland National Park (Kaipo Airstrip)	1			No	No	No	Derelict, to be allowed to rust into the ground or removed in accordance with FNPMP07
	Fiordland National Park (Lake Hakapoua)	1			No	No	No	To be removed in accordance with FNPMP07
	Dean Forest Conservation Area	1			No	No	No	
	Pyke Airstrip, Pyke Forest Conservation Area	1			No	No	No	
	Blue Mountains Conservation Area	2			No	No	No	
	Monowai River marginal strip	1			No	No	No	
	General		3	1				

<sup>18</sup> Section 7(2) Conservation Amendment Act 1996, section 11(4) Reserves Amendment Act 1996 or section 5(3) National Parks Amendment Act 1996.

## **Attachment 2**

### **Section 7(2) Conservation Amendment Act 1996**

Where any person lawfully occupied any conservation area at the commencement of this Act in accordance with any right lawfully granted on or before 1 April 1987 under any Act or any contract made on or before 1 April 1987 then, notwithstanding sections 17U or 17W of the principal Act, as inserted by subsection (1) of this section, the Minister may grant a concession to that occupant for the area lawfully authorised by any such concession shall be no greater than was lawfully exercised by the occupant.

### **Section 11(2) Reserves Amendment Act 1996**

Where any person lawfully occupied any reserve, other than a reserve vested in an administering body, at the commencement of this Act in accordance with any right lawfully granted on or before 1 April 1987 under any Act or any contract made on or before 1 April 1987 then, notwithstanding sections 17U or 17W of the Conservation Act 1987, as inserted by section 7 of the Conservation Amendment Act 1996, the Minister may grant a concession to that occupant for the area lawfully occupied by that occupant, but the extent of the activities authorised by any such concession shall be no greater than was lawfully exercised by the occupant.

### **Section 5(3) National Parks Amendment Act 1996**

Where any person lawfully occupied any park at the commencement of this Act in accordance with any right lawfully granted on or before 1 April 1987 under any Act or any contract made on or before 1 April 1987 then, notwithstanding sections 17U or 17W of the Conservation Act 1987, as inserted by section 7 of the Conservation Amendment Act 1996, the Minister may grant a concession to that occupant for the area lawfully occupied by that occupant, but the extent of the activities authorised by any such concession shall be no greater than was lawfully exercised by the occupant.

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