

Concession number: _____

DATED 21 MARCH 2003.

Between

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

and

**SUPPORTERS OF TIRITIRI MATANGI INC.
("the Concessionaire")**

**CONCESSION DOCUMENT
(LEASE)**



Department of Conservation
Te Papa Atawhai

THIS LEASE is made this 21 day of MARCH 2003

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Lessor")
2. **SUPPORTERS OF TIRITIRI MATANGI INCORPORATED** ("the Concessionaire")

BACKGROUND

- A. The Reserve described in Schedule 1 as the Land is vested in the Lessor;
- B. Section 59A of the Reserves Act 1977 authorises the Lessor, in accordance with Part IIIB of the Conservation Act 1987, to grant a Concession in respect of a Reserve vested in the Crown including a reserve vested in the Crown but controlled and managed by an administering body under any of sections 28, 29, 30, 35 and 36 of the Reserves Act 1977;
- 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 59A of the Reserves Act 1977 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, grants in lieu of rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable in relation to the Land, any structure or facility on the Land, or 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.
- 6.5 If, during the Term, the Site becomes rateable land, following any amendment to the Rating Powers Act 1988 or the introduction of a new Act in substitution for it and the Site's rateability is attributable to the Concession Activity, or if separate rates are levied under section 7 of the Rating Powers Act 1988 in respect of the Site and are attributable to the Concession Activity, the Concessionaire is to pay any rates which may be struck or levied and which are attributable to the Concession Activity.

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 Date will take place in accordance with the date 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 SUPPLY OF INFORMATION

9.1 At the Lessor's request the Concessionaire must supply the Lessor with a complete statement of audited financial accounts.

9.2 Information supplied to the Lessor under clause 9.1 is subject to an obligation of confidence; but the parties acknowledge that such information may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

10.0 COMPLIANCE

10.1 The Concessionaire will comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan as required by section 17W(7) of the Conservation Act 1987 pursuant to Part IIIA of the Conservation Act 1987 or Part IIA of the Reserves Act 1997 or any general policy statement or management plan under section 44 or 45 of the National Parks Act 1980, 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 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.

10.2 The Concessionaire must comply with all conditions imposed by the Lessor in granting this Document.

- 10.3
- (a) A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or general policy statement will be deemed to be a breach of this Document.
 - (b) A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

- 10.4 If the Legislation requires the 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.
- 10.5 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 32.
- 11.0 CONCESSIONAIRE'S STRUCTURES, FACILITIES AND LAND ALTERATIONS**
- 11.1 The Concessionaire must not erect or bring on to the Land any structure, install any facility or alter the Land in any way without the prior written consent of the Lessor.
- 11.2 In giving approval under clause 11.1 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.
- 11.3 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.
- 11.4 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.
- 11.5 The Concessionaire must not commence any work on the Land until the Lessor has given written approval.
- 11.6 When undertaking any work under this clause the Concessionaire must comply with all statutory requirements including obtaining building consents and code compliance certificates under the Building Act 1991.
- 11.7 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.

12.0 LESSOR'S STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 12.1 The Concessionaire is to keep and maintain in good and substantial repair and condition the Lessor's structures, facilities and land alterations.
- 12.2 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.
- 12.3 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.
- 12.4 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.

13.0 INSURANCE OF STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 13.1 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.
- 13.2 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.

14.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS

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

15.0 PROTECTION OF THE ENVIRONMENT

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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.

- 15.5 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.
- 15.6 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.
- 15.7 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.

15.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under clause 15.

15.9 The Concessionaire must immediately report to the Lessor any act in contravention of clause 15 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.

16.0 ADVERTISING

16.1 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.

16.2 Where required by the Lessor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Lessor on land administered by the Department.

16.3 If required by the Lessor in writing the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the land and the surrounding area.

16.4 In preparing such information the Concessionaire must obtain information from and have regard to the views of tangata whenua.

17.0 EMPLOYMENT OF STAFF

17.1 The Concessionaire must ensure that the Concession Activity is conducted at all times by a person or persons suitably trained and qualified to carry out the Concession Activity.

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

17.3 The Concessionaire must comply with all statutes relating to employment of staff.

18.0 HEALTH AND SAFETY

18.1 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.

18.2 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.

18.3 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.

18.4 Before commencing the Concession Activity the Concessionaire must, if required by the Lessor, prepare a safety plan and have it audited by a suitably qualified person approved by the Lessor.

18.5 The Concessionaire must not commence the Concession Activity until:

- (a) the person appointed to audit the safety plan has certified the safety plan is suitable for the Concession Activity; and
- (b) the Concessionaire supplies the Lessor with a copy of the safety plan certified under clause 18.5(a).

18.6 Receipt of the certified safety plan by the Lessor is not in any way to limit the obligations of the Concessionaire under clause 18 and is not to be construed as implying any responsibility or liability on the part of the Lessor.

19.0 TEMPORARY SUSPENSION

- 19.1 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.
- 19.2 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.
- 19.3 The Lessor may suspend this Concession while the Lessor investigates any of the circumstances contemplated in clauses 19.1 and 19.2 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.
- 19.4 The word "investigates" in clause 19.3 includes the laying of charges and awaiting the decision of the Court.
- 19.5 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.
- 19.6 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.

20.0 ASSIGNMENT

- 20.1 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.
- 20.2 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.

- 20.3 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, sublessee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 20.4 The Concessionaire must pay the costs reasonably incurred by the Lessor incidental to any application for consent, whether or not such consent is granted.
- 20.5 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.

21.0 DAMAGE OR DESTRUCTION OF LESSOR'S STRUCTURES OR FACILITIES

- 21.1 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.
- 21.2 Any termination under clause 21.1 is to be without prejudice to the rights of either party against the other.
- 21.3 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 21.1,
- 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.

- 21.4 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.
- 21.5 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.
- 21.6 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.

22.0 TERMINATION

- 22.1 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.

22.2 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.

22.3 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.

23.0 LESSOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

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

23.2 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.

24.0 DISTRAINT

24.1 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.

25.0 QUIET ENJOYMENT

25.1 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.

26.0 LESSOR'S DIRECTIONS

26.1 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.

27.0 POWERS, RIGHTS AND AUTHORITIES

27.1 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.

28.0 INDEMNITIES AND INSURANCE

28.1 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.

28.2 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.

28.3 Without prejudice to or in any way limiting its liability under clause 27.1 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.

- 28.4 With respect to clause 28.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.
- 28.5 (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.
- 28.6 (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 28.6(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.
- 28.7 Notwithstanding anything else in clause 28 the Lessor is not liable for any indirect or consequential loss howsoever caused.

29.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

- 29.1 The Concessionaire must, during the Term, if the Lessor so requests in writing, design in consultation with the Lessor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's occupation of and activities on the Land.
- 29.2 Subject to any conditions imposed by the Lessor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Land to its condition at the commencement of the Term and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

30.0 EXPIRY OF LEASE

- 30.1 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.
- 30.2 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.
- 30.3 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.
- 30.4 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.

31.0 FORCE MAJEURE

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

32.0 DISPUTE RESOLUTION AND ARBITRATION

- 32.1 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.

- 32.2 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.
- 32.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.
- 32.4 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.
- 32.5 The arbitrator must include in the arbitration award reasons for the determination.

33.0 NOTICES

- 33.1 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.
- 33.2 A notice given in accordance with clause 33.1 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.

34.0 COSTS

- 34.1 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.
- 34.2 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.

35.0 RELATIONSHIP OF PARTIES

35.1 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.

36.0 OFFENCES

36.1 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.

37.0 SEVERABILITY

37.1 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.

38.0 ENTIRE UNDERSTANDING

38.1 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.

39.0 REGISTRATION

- 39.1 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.
- 39.2 Nevertheless, in the event that the Concessionaire wishes to register this Document under the Land Transfer Act 1952, the Lessor must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which this Document may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Lessor in enabling such an issue of title and in having this Lease re-executed by the parties in a form suitable for registration.

40.0 VARIATIONS

- 40.1 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.
- 40.2 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.
- 40.3 The Concessionaire is to be bound by every such variation.

41.0 CO-SITING

- 41.1 (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.

41.2 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.

41.3 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

9(2)(a)

ROBERT DOUGAL MCCALLUM
for and on behalf of
the Minister of Conservation
pursuant to a written delegation
in the presence of :

9(2)(a)

Signed on behalf of :

9(2)(a)

SUPPORTERS OF TIRITIRI MATANGI INC
as Conces
in the pres

9(2)(a)

Witness :
Occupatio
Address :

SCHEDULE 1

1. **Land:** *(see definition of Land in clause 1.1)*
Part Tiritiri Matangi Island, as more particularly outlined in red on the plan attached as Schedule IV
2. **Concession Activity:** *(see definition of Concession Activity in clause 1.1.)*
Construction and operation of a visitor centre, including information, retailing and nursery activities
3. **Term:** 6 years commencing on 1 July 2002 *(see clause 3.1)*
4. **Renewal:** 2 terms of 6 years *(see clause 3.2)*
5. **Final Expiry Date:** 30 June 2020 *(see clause 3.3)*
6. **Concession Fee:** [REDACTED] 9(2)(b) *(see clause 5.1)*
7. **Concession Fee Instalments:** [REDACTED] 9(2)(b) *(see clause 5.1)*
8. **Concession Fee Payment Date:** [REDACTED] 9(2)(b) *(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:** 1 July 2005 and every 3 years thereafter
11. **Public Liability General Indemnity Cover:** *(see clause 28.3)*
[REDACTED] 9(2)(b)
12. **Public Liability Forest & Rural Fire Act Extension:** *(see clause 28.3)*
[REDACTED] 9(2)(b)
13. **Statutory Liability** *(see clause 28.3)*
[REDACTED] 9(2)(b)
- 14(a) **Other Types of Insurance:** Replacement Cost *(see clauses 13 & 28.3)*
- 14(b) **Amounts Insured for Other Types of Insurances:** *(see clauses 13 & 28.3)*
for the Current Value of the Assets
16. **Address for Notices:** *(see clause 33)*
 - (a) Lessor: Private Bag 68-908, Newton, Auckland
 - (b) Concessionaire: PO Box 34-229, Birkenhead, Auckland 10

SCHEDULE 2

Community Service Contribution

Not applicable

SCHEDULE 3

Special Conditions

Concession Fee:

1.

9(2)(b)



Construction of buildings:

2. The Lessee shall be permitted to construct in a proper and workmanlike manner a visitor centre, toilet block, propagation shed and glasshouse on the Site, together with any pathways, courtyards, and shade structures, as generally depicted in accordance with the location and design as described in the plans attached as Schedule V. The Lessor reserves the right to, at its sole discretion, approve or require any alteration or amendment to the plans. The construction of the toilet block may be deferred until such later date as agreed between the Parties.
3. The Lessee shall be permitted to demolish any buildings and structures existing on the Site as necessary to clear the Site for construction.
4. Detailed design plans for all new buildings and structures shall be submitted to the Lessor for its approval in accordance with clause 11.4 of this Lease, and shall not be considered complete or accepted by the Lessor until they are approved pursuant to this Lease. The detailed plans shall include the proposed paint or cladding for all buildings, which shall in an appropriate colour scheme approved by the Lessor
5. All construction shall be in accordance with any resource consent or building consent granted by the relevant local authorities, and in compliance with any other statutory requirements that may apply, including health and safety obligations. A health and safety plan for the period of construction shall be prepared and independently audited, and submitted to the Lessor. No work shall commence on the Site until an audited health and safety plan has been submitted to the Lessor.

6. The Lessee shall make all necessary effort to minimise the extent of ground disturbance, and to minimise disturbance to the public, during construction. Noise shall be kept to reasonable levels, particularly during main visiting hours for the public, which is defined as the period between the arrival and departure of the regular ferry service. Whenever possible, activities that cause noise at a level reasonably considered to be discomforting shall be undertaken outside the main visiting hours.
7. The Site shall be securely fenced by the Lessee to prevent access by protected ground birds such as takahe during demolition and construction. The Lessee shall regularly inspect the surrounding grounds outside the fence to ensure no debris is left on the ground to which ground birds may have access. No construction materials or implements are to be left unsecured in the open where they may cause harm to wildlife, and all materials and implements must be covered and secured at night. The Lessee shall ensure that construction personnel do not feed wildlife or leave food unsecured in the open.
8. All materials for construction, and demolition materials being removed from the Island, shall be transported by the existing road, using vehicles that have been approved for use on the Island by the Lessor pursuant to clause 51.
9. The Lessee shall ensure that all its members, agents, and invitees, contractors and sub-contractors are required to follow any procedures set out in the Pest & Weed Control Plan, which is to be prepared and approved under clause 46 prior to the commencement of any works on the Site.
10. The Lessee shall ensure that any spillages of glues, paints or other toxic products are immediately contained and cleared to the satisfaction of the Lessor. The Lessee shall immediately notify the Lessor of all spillages, excluding minor instances.

Construction finance:

11. Prior to the commencement of any works on the Site pursuant to clauses 2 and 3 of this Schedule, the Lessee shall provide a written guarantee that it holds sufficient finance to meet the full costs of all approved works on the Site. Such guarantee shall not expire and shall remain effective for the term of the Concession or until such time as the works are completed to the satisfaction of the Lessor.

Accommodation during construction:

12. Subject to the availability of space, the Lessee may be permitted to use part of the Bunkhouse located on the Island for the accommodation of its members, contractors and sub-contractors during the construction period. The Lessee shall pay to the Lessor, if demanded, those fees that apply for use of the Bunkhouse accommodation. The Lessee shall ensure that its members, contractors and sub-contractors maintain the Bunkhouse in a neat and tidy condition to the satisfaction of the Lessor.

Historic place:

13. The Lessee shall obtain the consent of the Historic Places Trust to modify the Site before commencing any works on the Site, and supply a copy of the consent to the Lessor.
14. If required by the Lessor or the Historic Places Trust, the Lessee shall arrange for an archaeologist approved by the Lessor to inspect all sites of proposed disturbance to the ground surface or soils prior to, and if deemed necessary during, any activity authorised by the Lessor under this Lease.
15. If archaeological materials are unearthed during construction or any other activities involving disturbance to the ground surface or soils, work shall be immediately halted in the immediate vicinity of the materials, and the Historic Places Trust, the Lessor, contacted. No work shall re-commence until the consent of both the Historic Places Trust and the Lessor has been given.

Operation of visitor centre:

16. The Lessee shall be permitted to construct and operate a visitor centre on the Site, providing interpretation and retail services and facilities for its members, invitees and the public, as generally depicted in accordance with the location and design as described in the plans attached as Schedule V. The Lessee shall be fully responsible for the promotion and organisation of any services that it provides within the Site. The provision of interpretation and retailing shall be subject to clauses 35 to 42 of this Schedule.
17. The Lessee shall make available the visitor centre facilities for use by its members, invitees and the public on the following basis, provided however that the Lessor reserves the right to review this provision on the occasion of each and every request for a right of renewal of this Lease:
 - all facilities to be open each day of the week between 1 December and 31 March, for a minimum period of the hours of 10.00am to 4.00pm each day;
 - outside the above months, all facilities to be open each day of the week on which a scheduled ferry service is due, for a minimum period of the hours of 10.00pm to 4.00pm of each day
 - at all other times, the retail facilities may be closed but the interpretation facilities must be open during daylight hours.
18. The Lessee shall immediately notify the Lessor of any serious incidents or accidents as defined in clause 53 of this Schedule.

19. The Lessee shall be solely responsible for security arrangements for any chattels, merchandise, equipment and personal belongings placed within any part of the Site during the term of this Lease.
20. The Lessee shall be solely responsible for controlling noise generated from any members of the public using its facilities or generated from any Activity conducted on the Site under this Lease at a reasonable level.

Operation of nursery facilities:

21. The Lessee shall be permitted to construct and use a shed and glass house for plant propagation, and use an existing shadehouse and the existing propagation beds within the Site, as generally depicted in accordance with the location and design as described in the plans attached as Schedule V.

Public right of access:

22. The public shall have a general right of access to the Site however the Lessee shall be entitled to the exclusive possession and use of that part of the Site which includes the footprints and curtilage of all buildings that may be present on the Site, and any area enclosing the nursery facilities, but with the exception of the toilets.

Maintenance of buildings and surrounds:

23. The Concessionaire shall ensure that all buildings, facilities and structures on the Site, including any fences, pathways and plantings, are kept in good and substantial repair and condition, and shall meet all costs arising from this obligation.
24. The maintenance of all buildings, facilities and outdoor areas on the Site shall be subject to a Site Maintenance Plan, which shall be submitted to the Lessor for its approval within 6 months of the new buildings and facilities being opened to the public. The Site Maintenance Plan shall be kept under continuous review by the Concessionaire throughout the term of this Lease.
25. The Lessee shall be solely responsible for maintaining the land within the Site in good order and condition at all times, and shall meet all costs arising from this clause.
26. The Lessee may undertake planting on the Site for the purpose of screening buildings or other landscaping purposes, provided that a landscaping and planting plan has been prepared and provided to the Lessor, and that the prior written consent of the Lessor has been obtained.

Fire control:

27. The Lessee shall at all times keep an operative and well maintained fire extinguishers, and external hose reels, on the Site, and any other fire equipment deemed essential by the Lessor during the term of this Lease, or as may be required by the Forest and Rural Fires Act 1977 and the Rural Fire Management Code of Practice. The Lessor shall determine the number and location of all such equipment.
28. The Lessee shall arrange for those of its members that will staff the building to seek and receive basic fire training within one year of the commencement of this Lease, shall undertake regular training during the term of this Lease, and be familiar with the Lessor's operative Fire Plan.

Provision of utilities:

29. The Lessee shall be responsible for maintaining the electric power supply system within the Site, and the provision of any back-up power generation systems within the Site that may be used on a temporary basis, and shall meet all costs arising from this clause.
30. The Lessee may at its discretion install a separate electricity power meter to record the amount of electric power supplied by the Lessor to the Site. The Lessee shall pay to the Lessor, if demanded by the Lessor, an amount that meets the reasonable cost of supplying the electric power used by the Lessee on the Site. The Lessor does not guarantee that electricity will be supplied at all times, and the electricity supply system will operate at the Lessor's discretion.
31. The Lessee shall be responsible for maintaining the water supply, wastewater and sewerage disposal systems within the Site, in compliance with any resource consent that may be granted. The Lessee shall meet all costs arising from this clause including any annual inspection costs and the costs of any future upgrading or replacement of the systems. The Lessee shall pay to the Lessor, if demanded by the Lessor, an amount that meets the reasonable cost of supplying water to the Site.
32. The Lessor shall have no obligation or liability for any loss or damage, costs or expenses incurred by the Lessee arising from the failure of the water supply system. The Lessee shall indemnify the Lessor from and against any loss or damage occasioned by the Lessee's neglect or failure to properly maintain the water supply system within the Site, or the water supply line leading to the Site.
33. The Lessee shall be responsible for the servicing, cleaning and maintenance of the toilet block from the date that it is constructed pursuant to clause 2 of this Schedule. The Lessee shall ensure compliance with all operative public health standards for the provision of public toilets and sewerage disposal. This requirement shall include any related sewerage disposal system if the disposal system is separate to the sewerage

disposal system serving the Lessor's buildings at the commencement of this lease. The toilet block shall be available for public use throughout the year.

34. The Lessee shall pay the cost of any telephone or related service if installed, either to the Lessor or directly to the service provider as directed by the Lessor.

Information and retailing:

35. The Lessee may publish information about its services and facilities, either solely or jointly with the Lessor as may be agreed from time to time, subject to clauses 36 and 37 of this Schedule.
36. The Lessee is to ensure that all information provided in published material that refers to the Site is submitted to and approved as accurate and to an acceptable standard by the Lessor, prior to publication or use.
37. The Lessee shall not include any reference to any matters of cultural significance to iwi who claim mana whenua over the Site, in any interpretation presentation whether written or oral, until such time that the Lessee has endeavoured to consult and obtain the support of those iwi.
38. The Lessee shall be permitted to undertake retailing within the retail area existing at the commencement of this Lease, until such time as that building is demolished.
39. The Lessee shall at the request of the Lessor provide for sale or distribution to the public any written material published by the Lessor. The Lessee shall comply with the normal arrangements that apply at the time for the sale of material that the Lessor enters into with retail outlets, including the purchase of those items for which a charge is payable if that is part of the normal arrangements.
40. All signage established within the Site shall comply with the Lessor's standards for signs that apply at the time, including the Lessor's "Outdoor Sign Manual" which applies at the commencement of this lease.

Interpretation & Retailing Plan:

41. The Lessee and the Lessor shall jointly prepare an Interpretation & Retailing Plan for the Site, to be implemented once construction of the new visitor center is completed. The Plan shall identify the nature, content and design of any printed and visual interpretation provided within the Site, and the nature of any verbal interpretation provided within the Site. The Plan shall also specify the allocation of costs and responsibilities between the parties for the preparation, installation, maintenance and replacement of all interpretation provided on the site, and training for visitor centre staff. The Interpretation Plan shall comply with any national interpretation and other relevant strategies or standards prepared by the Lessor. No printed or visual interpretation may be installed within the Site unless it complies with the approved Interpretation Plan. The

parties shall comply with clause 37 of this Schedule when considering the development of any interpretation for sites or matters of significance to Maori.

42. The Interpretation & Retailing Plan shall specify the nature of the product range provided for retail by the Lessee within the site, and the location and design of the retail area within the visitor centre building. The Interpretation & Retailing Plan shall comply with any national retailing and other relevant strategies or standards prepared by the Lessor. No retailing may be undertaken within the new visitor centre unless it complies with the approved Interpretation & Retailing Plan. Retailing undertaken pursuant to clause 38 is exempted from this requirement.

Chattels:

43. The Lessee shall at its own expense remove any personal chattels located within the Site on termination of this Lease and shall leave the Site in a neat and tidy condition. The Lessor shall not be liable for compensating the Lessee for any stock, plant or fittings left within the Site.

Rubbish disposal:

44. The Lessee shall comply with the provisions of the Litter Act 1979, and shall be responsible for ensuring that all rubbish generated by its members, agents, contractors, or invitees is disposed of in accordance with the Departments "Pack in Pack out" policy, including the provision of rubbish bags to clients if necessary, which shall be removed from the Site in accordance with clause 45 of this Schedule.
45. The Lessee will ensure that all inorganic rubbish on the Site is collected and disposed of in the following manner:
- (i) All recyclable materials shall be separated at source.
 - (ii) All rubbish shall be held in a rubbish transfer area identified by the Lessor and placed in areas set aside for domestic rubbish and recyclable materials.
 - (iii) The Lessee shall be responsible for disposal of the said rubbish at an authorised site on the mainland.

Pest and weed control:

46. The Lessee shall prepare a Pest & Weed Prevention Plan prior to the commencement of the Activity, which shall be consistent with the Lessor's current pest and weed prevention policies including the "Auckland Conservancy Island Protection Plan" that applies at the commencement of the term. The Pest & Weed Prevention Plan shall be kept under regular review by the Lessee, and shall be reviewed on the occasion of any request by the Lessor. The plan shall include prevention measures applicable during the construction of the new buildings, and ongoing operation of the visitor centre and

nursery. The plan shall include specific measures aimed at prevention of the introduction or spread of rodents, Argentine ants, and weeds. The Concessionaire shall submit the plan to the Grantor for its approval, and shall ensure that all its members, agents, and invitees, contractors and sub-contractors are required to follow any procedures set out in the plan.

47. The Lessee shall nominate from time to time suitably qualified persons to monitor implementation of the Pest & Weed Prevention Plan, who shall be approved by the Lessor. The appointed persons shall be responsible for ensuring compliance with the provisions of the plan. Every activity by the Lessee involving the transport of people or goods to or from the island shall be monitored by the appointed persons, including any machinery, equipment, and materials transported to and from the island during the construction period pursuant to clauses 2 to 10 of this Schedule.
48. The Lessee shall not take onto the island any plants, seeds, or animals, without the prior consent of the Lessor. The Lessee shall not bring on to the Site any plants grown anywhere other than on Tiritiri Matangi Island.
49. The Lessee shall ensure that sterile potting and seed raising mix is brought on to the Site and used at all times, which before transport to the Site must be stored in such manner to prevent contamination from soil and seeds from other plants.
50. The Lessee shall take every precaution to prevent the introduction of rats, other pests or weeds to the island as a result of the Activity, and shall report any sightings of rats, other pests or weeds to the Lessor as soon as practically possible.

Vehicles:

51. The Lessee shall be permitted to use vehicles that have been approved by the Lessor within the Site for the purposes of personal transport, or the transport of equipment or goods. The Lessee shall also be entitled to have reasonable access to take its vehicles on any roads within the Tiritiri Matangi Island Scientific Reserve for its members and visitors, provided that such access does not disturb or otherwise interfere with the normal operations of the Lessor. Any vehicles used by the Lessee within the Site or on either Reserve shall comply with all statutory requirements for the carriage of passengers and goods.

Activity monitoring:

52. The Lessee shall submit to the Lessor completed Record of Activity forms that detail its activities for each quarter ending 31 March, 30 June, 30 September and 31 December, within one month of the end of each quarter. Even if no activity is undertaken a Record of Activity form should be submitted quarterly showing nil activity.

53. Each Record of Activity form should be accompanied by a report on any incidents or accidents that have occurred during the previous quarter. In this context an incident means any event involving the Concession Activity and any member of the public that might reasonably be expected to cause distress to the member of the public involved, or any verbal or written complaint by any member of the public concerning the operation of the Concession Activity.
54. The Lessee shall at the request of the Grantor implement any reasonable measures that may be required to monitor the performance of the Lessee, which may include the maintenance of a visitor comments register, visitor surveys or any other measure.
55. The Lessee shall, at the request of the Lessor, meet with the Lessor to discuss any issues arising from the operation of the Concession Activity, and shall agree to implement any reasonable proposals which are developed to improve the Lessee's service to the public, resolve any complaints that may have been received, or address any matters that otherwise arise during the term.

Miscellaneous:

56. The Lessee shall be responsible for the compliance of its members, agents and invitees with the conditions of this Document.
57. The Lessee shall keep a copy of this Document available for inspection by any representative of the Lessor at all times during the Activity, and shall present it if so requested.
58. The Lessee shall promote and comply with the New Zealand Environmental Care Code as attached as Schedule VI at all times.
59. The Parties agree that the Lessor retains the right to consider and grant any applications for concessions within the Reserve received under Part IIIB Conservation Act 1987 from any other party for activities that are complementary to the Concession Activity, provided that such applications are considered in compliance with the requirements of the Commerce Act 1988.

SCHEDULE 4

PLAN OF THE SITE

**Schedule IV:
Plan of lease area-
Tiritiri Matangi visitor centre**

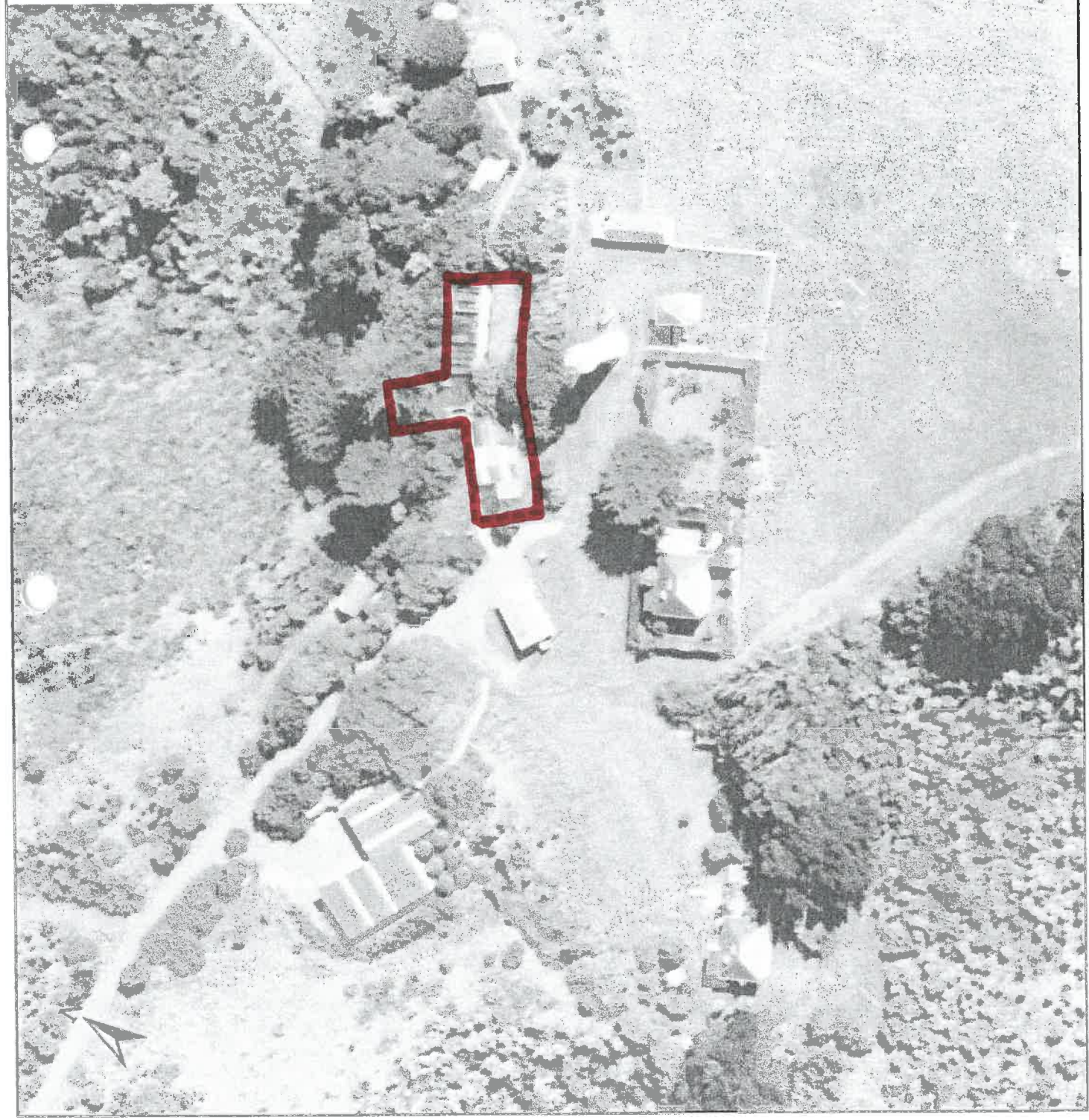
Scale: 0 50m

Photo: NZ Aerial Mapping

SN 50081c run 7 Jan 2002



Department of Conservation
He Kaitiaki Take Kōwhiri



SCHEDULE 5 –

PLANS OF THE BUILDING