



Department of Conservation
Te Papa Atawhai

File Ref : COC 0350

21 March, 2001

David J Yorke
Manawatu District Council
Private Bag 10-001
Feilding

Dear David

Subject: Pukepuke Lagoon Easement.

Jeff Mitchell-Anyon, Community Relations Manager Wanganui has now signed the easement documents. Enclosed is a copy for your records. I note there are a number of actions that now have to be completed under Schedule 3 Special Conditions. You should contact Dave Smith, Area Manager, Palmerston North about those matters. Dave will be your contact over the easement now that it has been signed.

Yours sincerely

Dave Westcott
Community Relations Officer (Concessions)
For Conservator

LETTER No.		39899	
FILE No.		H/0704	
DIVISION		ACTION	
GM			
AST	✓		

RECEIVED

23 MAR 2001

Manawatu District Council

BSE

Wanganui Conservancy

Private Bag 3016, Ingestre Chambers, 74 Ingestre Street, Wanganui, New Zealand
Telephone 06-345 2402, Fax 06-345 8712

DATED 16 March 2001

Between

MINISTER OF CONSERVATION
("the Grantor")

and

Manawatu District Council
("the Concessionaire")

CONCESSION DOCUMENT
(Easement in Gross)



Department of Conservation
Te Papa Atawhai

THIS DOCUMENT is made this ^{16th} day of March 2001

PARTIES:

1. **MINISTER OF CONSERVATION**, ("the Grantor")
2. **MANAWATU DISTRICT COUNCIL** ("the Concessionaire")

BACKGROUND

- A. The Grantor manages the Conservation Area described in Item 1 of Schedule 1 as the Land.
- B. Section 17Q(1) of the Conservation Act 1987 authorises the Grantor to grant a Concession in respect of an Activity in a Conservation Area.
- C. The Concessionaire wishes to carry out the Concession Activity on the Easement Area subject to the terms and conditions of this Document.
- D. The Grantor has agreed to grant the Concessionaire an Easement in gross over that part of the Land specified as the Easement Area in Item 2 of Schedule 1.
- E. The Grantor is satisfied that the requirements of Part III B of the Conservation Act 1987 have been met.

OPERATIVE PARTS

TERMS AND CONDITIONS

1.0 DEFINITIONS AND INTERPRETATION

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

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

"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 Item 3 of Schedule 1.

"Concession Fee" means the amount charged by the Grantor for the Concessionaire's right to carry out the Concession Activity on the Land.

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

"Conservation Area" has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

"Co-Site" means the use of the Easement Area or the Concessionaire's facilities on the Easement Area by a third party for a purpose permitted by the Grantor; and **"Co-Sitee"** and **"Co-Siting"** have corresponding meanings.

"Department" means the Department of Conservation established by section 5 of the Conservation Act 1987.

"Director-General" means the Director-General of Conservation.

"Document" means this Easement and any subsequent amendments and all schedules, annexures, and plans attached to it.

"Easement" means the Easement in gross granted under this Document by the Grantor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977, or section 49 of the National Parks Act 1980.

"Easement Area" means the area of the Land specified in Item 2 of Schedule 1.

"Final Expiry Date" means the date specified in Item 6 of Schedule 1.

"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.

"Park" means a national park constituted under the National Parks Act 1980.

"Penalty Interest Rate" means the rate specified in Item 7 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 4 of Schedule 1 during which this Document operates.

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

1.2 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's successors in title;
- (b) schedules and annexures form part of this Document and have effect accordingly;
- (c) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (d) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (e) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (f) words in a singular number include the plural and vice versa;
- (g) words importing a gender include all other genders;
- (h) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (i) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

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

2.0 GRANT OF EASEMENT IN GROSS

2.1 In exercise of the Grantor's powers under section 17Q of the Conservation Act 1987 the Grantor **GRANTS** to the Concessionaire an **EASEMENT IN GROSS** to carry out the Concession Activity on the Easement Area subject to the terms and conditions contained in this Document.

3.0 TERM

- 3.1 The Easement is for the Term specified in Item 4 of Schedule 1.
- 3.2 There is no automatic right of renewal of the Term.
- 3.3 The Term ends on the Final Expiry Date specified in Item 6 of Schedule 1.

4.0 SURRENDER OF DOCUMENT

- 4.1 If the Concessionaire wishes to terminate this Document before the expiry of the Term the Concessionaire must give the Grantor 3 months' notice in writing.
- 4.2 The Grantor must accept the Concessionaire's notice of termination but in doing so may impose whatever terms and conditions the Grantor considers appropriate, including the matters referred to in clause 6.2.

5.0 WAIVER OF CONCESSION FEE

- 5.1 In accordance with section 17X(f)(iii) of the Conservation Act 1987 the Grantor waives the requirement for a concession fee.

6.0 OTHER CHARGES

- 6.1 The Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Grantor:
 - (a) 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 Easement Area, any structure or facility on the Easement Area, 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 Grantor;
 - (c) all costs incurred by the Grantor 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 Grantor's on the Easement Area in order to obtain a new building warrant of fitness, the Grantor is to pay the cost of the work subject to the Concessionaire's obligations under clause 9.

- 6.2 If the Concessionaire surrenders this Document with the consent of the Grantor, the Concessionaire will continue to be liable for and must pay to the Grantor on demand in respect of its occupation of and activity on the Easement Area 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 Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor determines as specified in Schedule 2.
- 6.4 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Easement Area. The Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

7.0 CONCESSION ACTIVITY

- 7.1 The Concessionaire is not to use the Easement Area for any purpose other than the Concession Activity.
- 7.2 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 (collectively "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.
- 7.3 The rights and powers conferred on the Concessionaire by the provisions set out in Item 3 of Schedule 1 are subject to the terms and conditions of this Document. In the event of a conflict between the provisions of Item 3 and the terms and conditions of this Document, the latter is to prevail.

8.0 SUPPLY OF INFORMATION

- 8.1 At the Grantor's request the Concessionaire must supply the Grantor with a complete statement of audited financial accounts.
- 8.2 Information supplied to the Grantor under clause 8.1 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.

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 Easement Area, 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 Easement Area or affecting or relating to the Concession Activity.

9.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document whether expressed or implied.

- 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 Easement Area 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 Grantor to spend money on its own structures, facilities or land alterations on the Easement Area, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.

9.5 If the Legislation requires the Grantor to spend an amount on structures, facilities or land alterations on the Easement Area which the Grantor considers unreasonable, the Grantor may determine this Easement and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 28.

10.0 STRUCTURES, FACILITIES AND LAND ALTERATIONS

10.1 The Concessionaire must not erect or bring on to the Easement Area any structure, install any facility or alter the Easement Area in any way without the prior written consent of the Grantor.

10.2 In giving approval under clause 10.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also

decline the grant of such approval after consideration of the relevant conservation and environmental issues.

- 10.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 10.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Easement Area;
 - (b) bringing any structure on to the Easement Area;
 - (c) installing any facilities on the Easement Area; or
 - (d) altering the Easement Area in any way.
- 10.5 The Concessionaire must not commence any work on the Easement Area until the Grantor has given its 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 Easement Area in good repair.

11.0 INSURANCE OF STRUCTURES, FACILITIES AND LAND ALTERATIONS

- 11.1 Except in relation to the Department of Conservation's structures (bridges) the Concessionaire must insure and keep insured with an insurer approved by the Grantor all structures, facilities and land alterations on the Easement Area in the joint names of the Grantor 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 Easement Area.
- 11.2 The Concessionaire must provide the Grantor 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.

12.0 CONCESSIONAIRE'S FURTHER OBLIGATIONS

- 12.1 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 Easement Area or any structure or facility on the Easement Area, and if required by the Grantor, engage a pest exterminator approved by the Grantor;
- (b) comply strictly with the provisions of the Biosecurity Act 1993;
- (c) comply with all requirements of any competent authority regarding sanitation and with all relevant bylaws and fire safety requirements;
- (d) at all times display a copy of the relevant current building warrant of fitness under the Building Act 1991 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Easement Area to which users of the building have ready access;
- (e) keep and maintain all building systems and any structure on the Easement Area 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 Easement Area under the Building Act 1991 a copy of the compliance schedule together with the written reports relating to compliance with the compliance schedule over the previous two year period.

13.0 PROTECTION OF THE ENVIRONMENT

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

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

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

- 13.3 The Concessionaire must make adequate provision for suitable sanitary facilities for the Easement Area if required by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.
- 13.4 The Concessionaire will keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably required by the Grantor the Concessionaire will paint all structures and facilities in colours specified in writing by the Grantor and with paints of a type approved in writing by the Grantor.
- 13.5 If, during the Term, the Concessionaire removes a structure or facility from the Easement Area the Concessionaire will, unless the Grantor indicates otherwise in writing, repair and make good at its own expense all damage which may have been done by the removal and will leave the Easement Area in a clean and tidy condition.
- 13.6 Should the Concessionaire fail to repair and restore the damage within 6 months of the removal of a structure or facility or such further time as the Grantor may approve in writing, the Grantor may undertake whatever works and operations are necessary to effect the same and may recover from the Concessionaire any costs and expenses incurred in doing it as a debt due by the Concessionaire to the Grantor.
- 13.7 The Concessionaire must:
- (a) take all reasonable precautions to ensure no fire hazards arise from its carrying out of the Concession Activity or from any act or neglect of its employees, contractors, invitees or agents;
 - (b) not light or permit to be lit any fire on the Easement Area.
 - (c) not store or permit to be stored fuels or other combustible materials on the Easement Area without the written permission of the Grantor. In that event storage of fuels and combustible materials must be in accordance with the provisions of the Dangerous Goods Act 1974;
 - (d) comply with the Grantor's requirements for fire warning and safety equipment and for fire fighting equipment to be kept on the Easement Area at all times.
- 13.8 The Concessionaire must ensure that its employees, clients and invitees do not carry out any acts prohibited under this clause.
- 13.9 The Concessionaire must immediately report to the Grantor any act in contravention of this clause and wherever possible the names and addresses of any person carrying out such acts; and must provide the Grantor with details of the circumstances surrounding such incidents.

14.0 ADVERTISING



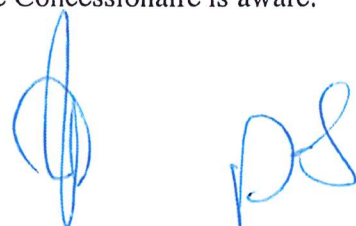
- 14.1 The Concessionaire must not erect or display any signs or advertising on the Easement Area without the prior written approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 14.2 If required by the Grantor, the Concessionaire must ensure that all its signs and advertising material specify that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.

15.0 EMPLOYMENT OF STAFF

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

16.0 HEALTH AND SAFETY

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

Two blue ink signatures are present at the bottom right of the page. The first signature is a stylized, circular loop with a vertical line through it. The second signature is a more complex, flowing script that appears to be 'PS' followed by a flourish.

17.0 TEMPORARY SUSPENSION

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

18.0 ASSIGNMENT

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

- 18.5 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

19.0 CO-SITING

- 19.1 (a) The Concessionaire will not allow Co-Siting on the Easement Area.
- 19.2 The Concessionaire must, if required by the Grantor, allow Co-Siting on the Easement Area except where the Concessionaire demonstrates to the reasonable satisfaction of the Grantor that such Co-Siting by the third party would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement Area; or
 - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority.
- 19.3 The Grantor will be entitled to require the Concessionaire to obtain a report prepared by an independent consultant acceptable to the Grantor, confirming the presence of either of the matters referred to in clause 19.2. The cost of the report is to be borne by the Concessionaire.
- 19.4 For the avoidance of doubt a Co-Sitee permitted on the Easement Area must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Easement Area. This separate agreement must not contain provisions which conflict with the Concessionaire's rights and obligations in relation to the Easement Area.

20.0 TERMINATION

- 20.1 The Grantor may terminate this Concession by 7 days notice in writing to the Concessionaire if:
- (a) the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b)
 - (i) the Concessionaire breaches any terms of this Document; and
 - (ii) the Grantor has notified the Concessionaire in writing of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or

- (c) the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the services provided by the Concessionaire are manifestly inadequate; or
- (d) the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act; or the Health and Safety in Employment Act 1982; or the Building Act 1991; or the Resource Management Act 1991; or the Biosecurity Act 1993; or
- (e) the Concessionaire 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 Concessionaire ceases to function or operate; or
- (f) there is, in the opinion of the Grantor, a permanent risk to public safety or the environment whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.

20.2 If the Grantor terminates the Concession under this clause all rights of the Concessionaire are to cease absolutely; but the Concessionaire is not to be released from any liability to pay the Concession Fee or other monies up to the date of termination or for any breach of any term up to the date of termination.

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

20.4 Immediately on termination, the Concessionaire must execute a surrender of this Document if the Grantor so requires it.

21.0 GRANTOR MAY REMEDY CONCESSIONAIRE'S DEFAULT

21.1 The Grantor 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 Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default.

22.0 GRANTOR'S DIRECTIONS

- 22.1 The Concessionaire must comply with all reasonable notices and directions of the Grantor concerning the activities conducted by the Concessionaire on the Easement Area or the conduct of any person on the Easement Area under the authority of this Document.

23.0 POWERS, RIGHTS AND AUTHORITIES

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

24.0 INDEMNITIES AND INSURANCE

- 24.1 The Concessionaire will indemnify and keep indemnified the Grantor against all claims made by any person in respect of any injury, loss, or damage, including fire, caused or suffered as a result of or arising out of any acts or omissions of the Concessionaire, its employees, agents, contractors, clients or invitees or otherwise caused as a consequence of its occupation of the Easement Area or as a result of its conduct of the Concession Activity on the Easement Area.
- 24.2 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.
- 24.3 Without prejudice to or in any way limiting its liability under clause 24.1 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 Easement Area or its conduct of the Concession Activity on the Easement Area and covering:
 - (i) general indemnity for a sum not less than the amount specified in Item 8 of Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Item 9 of Schedule 1; and
 - (b) statutory liability for the matters and amount specified in Item 10 of Schedule 1; and
 - (c) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Item 11 of Schedule 1, including those matters specified in clause 11.
- 24.4 With respect to clause 24.3 the Concessionaire must provide copy certificates of currency for the policies of insurance before commencing the Concession Activity and on each renewal of them.

- 24.5 (a) Without prejudice to any other provision of this Document the Concessionaire will indemnify the Grantor against all damage or loss resulting from any act or omission on the part of the Concessionaire or the Concessionaire's employees, agents, contractors, clients, or invitees;
- (b) The Concessionaire is to recompense the Grantor for all expenses incurred by the Grantor in making good any damage to the Land or the property of the Grantor resulting from such act or omission.
- 24.6 (a) The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Concession Activity or to the structures or facilities on the Easement Area or any other indirect or consequential damage due to any natural disaster, vandalism, sabotage, fire or exposure to the elements except where, subject to clause 24.6(b), such damage or interference is caused by any wilful act or omission of the Grantor, its employees, agents or contractors;
- (b) Where the Grantor is found to be liable due to a wilful act or omission, the total extent of its liability is limited to \$1,000,000 in respect of the Concessionaire's structures and facilities.
- 24.7 Notwithstanding anything else in this clause the Grantor is not liable for any indirect or consequential loss howsoever caused.

25.0 ENVIRONMENTAL MONITORING AND LAND REHABILITATION

- 25.1 The Concessionaire must, during the Term, if the Grantor so requests in writing, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of and activities on the Easement Area.
- 25.2 If the Grantor does not make a request under clause 25.1 the Concessionaire must, during the Term, pay to the Grantor the annual environmental monitoring contribution specified in Item 12 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of and activities on the Easement Area.
- 25.3 Subject to any conditions imposed by the Grantor and set out in Schedule 3, at the expiry, surrender or termination of this Document, the Concessionaire must reinstate the Easement Area to its condition at the commencement of the Term and replant the Easement Area with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

26.0 EXPIRY OF EASEMENT

- 26.1 If, on expiry of the Term, the future use of, or any operation on, the Easement Area is not authorised by the Grantor, the Concessionaire accepts that the Grantor will have no

liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.

- 26.2 Subject to any conditions set out in Schedule 3, at the expiry, surrender or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Site unless the Grantor approves otherwise in writing.
- 26.3 If the Concessionaire does not remove the structures and facilities as required by clause 26.2, or as otherwise approved by the Grantor, the structures or facilities remaining on the Easement Area at the expiry, surrender or termination of this Document, will be deemed to be fixtures and property in them will vest absolutely in the Grantor.
- 26.4 In that case the Grantor will not be liable to pay compensation to the Concessionaire for the structures and facilities and may, at its 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 Grantor.

27.0 FORCE MAJEURE

- 27.1 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.
- 27.2 If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice in writing.

28.0 DISPUTE RESOLUTION AND ARBITRATION

- 28.1 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.
- 28.2 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.
- 28.3 All arbitration proceedings are to take place in New Zealand and to be governed by New Zealand law.

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28.4 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.

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

29.0 NOTICES

29.1 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 13 of Schedule 1.

29.2 A notice given in accordance with clause 29.1 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.

30.0 COSTS

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

30.2 The Concessionaire must also pay the costs of the Grantor in enforcing or attempting to enforce its rights and powers under this Document if the Concessionaire is in default.

31.0 PENALTY INTEREST RATE

31.1 If the Concessionaire defaults in payment of any money owed under this Document for 14 days after which the money owed became due, the Concessionaire is to pay interest on the unpaid money from the date it became due until the date that it is paid at the Penalty Interest Rate specified in Item 10 of Schedule 1.

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) conferring on the Concessionaire any right of exclusive occupation or use of the Easement Area;
- (c) preventing the Grantor from granting similar concessions to other persons;
- (d) derogating from the rights of the Grantor and the public to have access across the Easement Area.

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 Grantor under this Document is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising its remedies under this Document; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising its 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 VARIATION

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

36.2 As provided by section 17ZC(3) of the Conservation Act 1987, the Grantor may vary any of the conditions of this Document if the variation is necessary:

Two blue ink signatures are present at the bottom right of the page. The first signature is a stylized, cursive 'A' followed by a vertical line. The second signature is a cursive 'DS'.

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

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

37.0 REGISTRATION

37.1 The Grantor may register this Easement, at the expense of the Concessionaire, as provided by section 17ZA of the Conservation Act 1987.

Signed by : Jeff Mitchell Anyon

for an on behalf of
the Minister of Conservation
pursuant to a written delegation
in the presence of :

Witness : D Westcott
Occupation : Community Relations Officer
Address : 3 No 2 Lane Wanganui

Signed by : Rodney James Titcombe, General Manager

for and on behalf of the Manawatu District Council
as Concessionaire

in the presence of :

Witness : ELIZABETH SIGNAL
Occupation : EXECUTIVE OFFICER
Address : PO Box 136, FEILDING

SCHEDULE 1

1. **Land:** 1.1 ha , Section 798 Town of Carnarvon Block IX Te Kawau Survey District.
(see definition of Land in clause 1.1)

2. **Easement Area:** The area shown on the attached plan 'A'
(see definition of Easement Area in clause 1.1)

3. **Concession Activity:**

An easement to drain stormwater along the Easement Area on the following terms conditions and those set out in this Easement. The Concessionaire shall have the right for the Term of this Easement for itself, its employees, agents, contractors and invitees with or without vehicles, implements, machinery and materials from time to time:

- a. to carry, convey, lead, drain or discharge stormwater in a free and unimpeded flow and in any quantity across the Easement Area;
- b. to use, maintain and repair, the existing weir at a height of 6.32 m.a.s.l. (Moturiki Datum and Iron Tube in weir being 6.595), and;
- c. to construct, use and maintain a spillway as outlined in the attached plan numbered 6219.

AND for the above purposes the Concessionaire shall have the right:

- d. to enter and re-enter the Easement Area on foot or by any reasonable mode of transport;
- e. to carry out on or in the Easement Area such works as are necessary for the exercise of the powers and authorities granted by this Easement, and;
- f. to remove as necessary natural vegetation affecting the Concessionaire's use of the Easement.

AND the parties agree that the following agreements, covenants, conditions and restrictions apply in respect of this Easement:

- g. The Concessionaire must not erect any building, construction or fence or do anything that could obstruct the Easement Area without the consent of the Grantor;
- h. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor and will promptly repair any such damage;
- i. All works and installations on or in the Easement Area must remain at all times under the proper supervision and control of the Concessionaire.
- j. The Concessionaire has and is free to exercise in connection with this Easement all authority, power, rights and remedies vested in it by law with regard to the Concessionaire's use of the Easement Area and any works and installations in the Easement Area.
- k. The cost of all work and installations as the Grantor may require in the Easement Area shall be borne by the Concessionaire.

1. If the Concessionaire is required to open up the surface of the land comprising the Easement Area it shall immediately upon completion of any works restore the surface of the land as nearly as possible to its former condition.
- m. Nothing contained or implied in this Easement shall be deemed to compel the Grantor or the Concessionaire to construct a spillway or drain stormwater. (*see definition of Concession Activity in clause 1.1.*)
4. **Term:** 30 years commencing on 1 December 2000 (*see clause 3.1*)
5. **Renewal:** None (*see clause 3.2*)
6. **Final Expiry Date:** 30 November 2030 (*see clause 3.3*)
7. **Penalty Interest Rate:** double the Grantor's bank's then current highest 90-day bank bill buy rate. (*see clause 31*)
8. **Public Liability General Indemnity Cover:** (*see clause 24.3*)
for \$1,000,000
9. **Public Liability Forest & Rural Fire Act Extension:** (*see clause 24.3*)
for \$1,000,000
10. **Statutory Liability** (*see clause 24.3*)
for \$250,000
- 11(a) **Other Types of Insurance:** (*see clauses 11 & 24.3*)
for \$N/A
- 11(b) **Amounts Insured for Other Types of Insurances:** (*see clauses 11 & 24.3*)
for \$N/A
12. **Environmental Monitoring Contribution:** \$N/A (*see clause 25.2*)
13. **Address for Notices:** (*see clause 29*)

(a) Grantor:
Conservator
Department of Conservation
74 Ingestre Street
WANGANUI
FAX 06 345 8712

b) Concessionaire:
General Manager
Manawatu District Council
Private Bag 10 001
FEILDING

SCHEDULE 2

Community Service Contribution

Handwritten signature and initials in blue ink. The signature is a stylized 'A' or 'G' shape, and the initials are 'DS'.

SCHEDULE 3

Special Conditions

SPRAYING

- a. Spraying of Raupo by the Concessionaire on the Easement Area may be undertaken annually between 1 January and 31 March.
- b. Spraying may only be with chemicals approved by both the Grantor and the Manawatu Wanganui Regional Council.
- c. Spraying may only be undertaken within the present inlet and outlet channels in the Easement Area.
- d. The Concessionaire must notify the Grantor 28 days before any spraying commences so that the Grantor may co-ordinate the spraying with any other operations being undertaken at the same time.

VEGETATION CLEARANCE

- e. The Concessionaire may mechanically clear vegetation from the channels in the Easement Area only during the period beginning 1 January and ending 31 March and only once every five years or more frequently with the prior written approval of the Grantor. The first mechanical clearance may take place in 2001. Decisions by the Grantor as to whether to allow more frequent mechanical clearance may involve an assessment of the following factors:
 - The rate and extent of Raupo growth.
 - Whether Raupo growth has prohibited water movement through the lagoon, to the extent that water flow over the spillway is impeded.
 - Whether Raupo growth is such that annual chemical spraying is unlikely to achieve the desired result.
- f. The Concessionaire must advise the Grantor of any intended mechanical clearing of the channels at least 28 days before it is to commence.
- g. Mechanical clearing of vegetation from the channels must be undertaken with a weed bucket. The Concessionaire will ensure that no material is deposited on any tracks. A joint inspection by the Grantor and the Concessionaire will be undertaken after any mechanical clearing has been completed to ensure compliance with this provision. If material has been deposited on any tracks the Concessionaire will, at its own expense, remove it from the track.
- h. During mechanical clearing the channels are not to be widened past the present width of the weir (6 metres). The measurement is to be taken when the water level is 6.32 m.a.s.l. The channels are not to be deepened during mechanical clearing.

USE OF MACHINERY

- i. The Concessionaire is to ensure that any vehicles it uses complies with the loading limits stipulated on any bridge on the Land.

- j. All machinery and hydraulic equipment must be checked and maintained prior to being brought on to the Land.
- k. All refuelling of machinery and equipment must be undertaken outside the Land.

EXISTING WEIR

- l. The existing weir on the Easement Area is to be maintained by the Concessionaire so it is not likely to fail nor to allow water to seep through it during the months of January, February and March. It is accepted that water will naturally percolate through the ground strata at that time.
- m. If the existing weir fails the Concessionaire must, at its sole expense, immediately replace it or dam the channel to ensure the lagoon is not drained.
- n. Upon commencement of this Concession the design of the present fish passes are to be evaluated by the Grantor. If they are considered by the Grantor to be deficient they will be repaired by the Grantor. Thereafter they must be maintained by the Concessionaire, at its sole expense.

SPILLWAY

- o. The Concessionaire is permitted to construct a spillway on the Easement Area as noted in Item 3c of Schedule 1. The spillway is to be constructed of concrete to a height of 6.34 m.a.s.l. This height is to be raised to 6.41 m.a.s.l by either embedding stainless steel bolts into the upstream side of the spillway and having wooden boards bolted to the structure or an alternative method. The height of the spillway may be raised to 6.41 m.a.s.l. by an alternative method to be devised by the Concessionaire provided the prior written approval of the Grantor has been obtained.
- p. The Concessionaire must, at its own cost, carry out baseline monitoring before construction of the spillway commences and thereafter during the Term, at regular intervals, so as to ascertain:
 - Whether aggressive weed plants and weeds colonise the zone receiving less inundation.
 - Whether the nesting numbers of dabchick and swan within the reserve are adversely affected by the spillway.
 - Whether the eel population within the reserve is adversely affected by the clearance of channel vegetation.
- q. The monitoring referred to in Item p ("the Environmental Monitoring") will entail the following:
 - In relation to weeds, the Concessionaire will photograph the margin of the lake between the two drains and the margins of the small lake annually to monitor weed colonisation. The location for the photo points and the annual recording date is to be agreed with the Grantor.
 - In relation to eels, the Concessionaire will contact Naka Taiaaroa, the Kaitiaki for Pukepuke Lagoon, on an annual basis to identify trends in eel numbers, in particular; the quantities caught; the ease by which they are caught, and; estimations about whether numbers are increasing or decreasing.
 - In relation to swans, the Concessionaire will obtain annual survey information on swan numbers for the lagoon from the relevant Fish and Game Council.
 - No specific monitoring of dabchicks will be undertaken.

The Concessionaire must ensure that the data collected as a result of the Environmental Monitoring is made available to the Grantor annually, as soon after its collection as it practicable.

- r. Five years after the construction of the spillway has been completed, the Grantor will conduct a review of the spillways height. This review will be based primarily on the Environmental Monitoring data collected by the Concessionaire during that period. So long as both the Grantor and Concessionaire agree, trials reflecting different spillway heights may be undertaken. Any costs associated with such trials varying the height of the spillway will be the responsibility of the Concessionaire. Any changes to the Document resulting from either the review or further trials will be undertaken at the cost of the initiating party.
- s. The spillway must be designed and built to function as a fish pass. It must have a textured surface that has been approved in advance by the Grantor.
- t. Construction work which could result in increased sediment must not be undertaken between May 1 and September 1 in any given year.
- u. Access for machinery to undertake the construction of the spillway may only be via the easement through the adjacent Landcorp Farming Limited property.
- v. All machinery taken into the lagoon for construction of the spillway must be steam cleaned prior to its being brought onto the Land to ensure foreign seed is not introduced.
- w. Any spoil taken out of the channels during construction of the spillway is to be disposed of outside the Land at the Concessionaire's cost.
- x. If at any time the Grantor considers weed colonisation noted in Item p above to be problematic the Concessionaire must pay for any new weed control measures that the Grantor deems necessary for controlling such weeds.
- y. If at any time the Grantor considers dabchick or swan nesting numbers have reduced as a result of the new water regime, changes to the spillway height may be required by the Grantor. The Concessionaire must implement such changes as soon as is practicable and at its sole expense.
- z. If at any time the Grantor considers Raupo clearing within the Easement Area is having an undue effect on the eel population then changes to the Concessionaire's Raupo clearing operation may be required by the Grantor. The Concessionaire must implement such changes as soon as is practicable and at its sole expense.

WATERLEVEL MONITORING

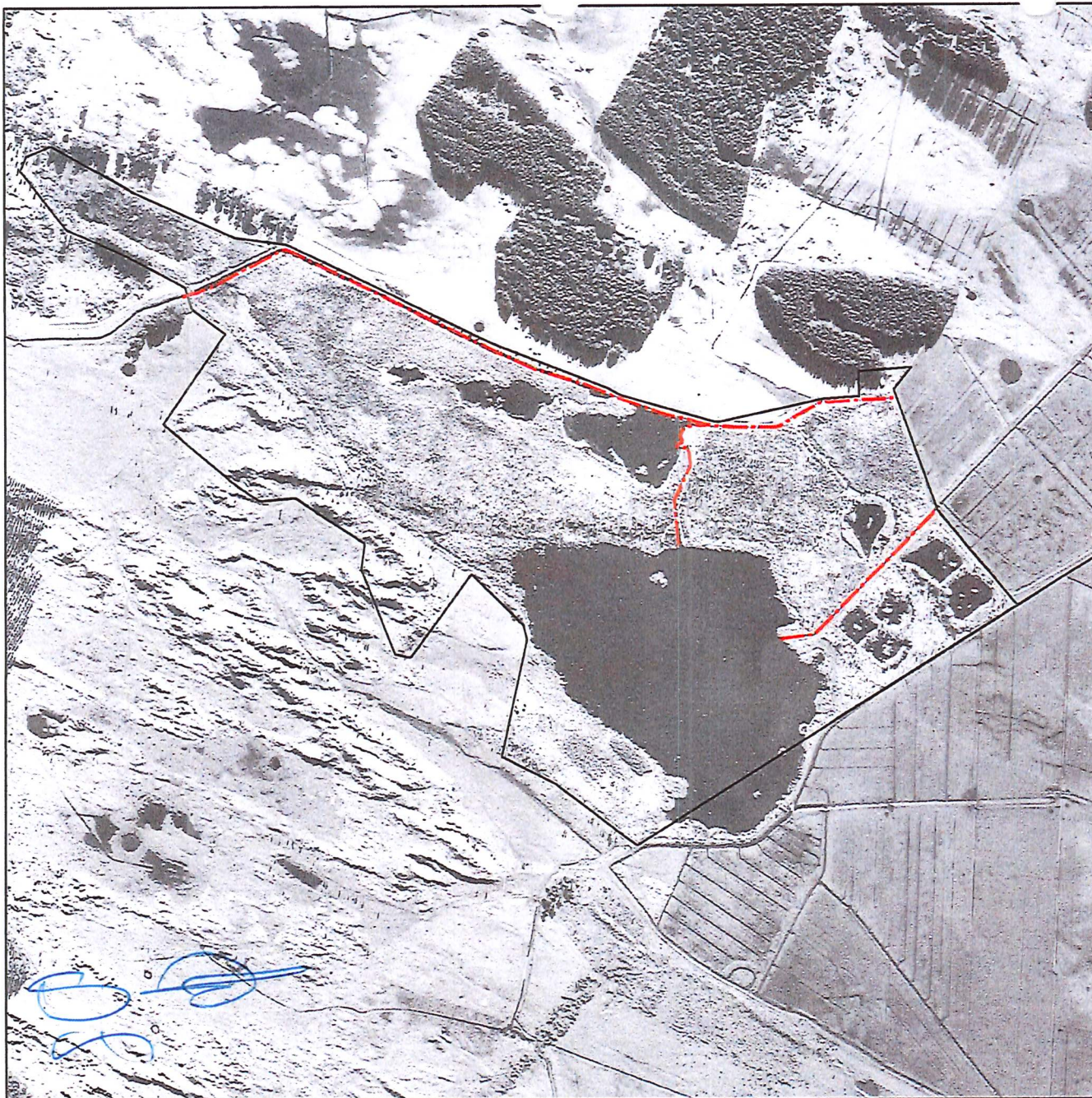
- aa. The Concessionaire, must during the Term and at its cost, carry out water level monitoring ("the Water Monitoring") to establish the levels of water in the lagoon and at the weir. The Concessionaire must also note when flooding (ponding) occurs on the adjacent Landcorp Farming Limited property. The Concessionaire will arrange for Landcorp Farming Limited to record periods of inundation by taking photos at set photo points and reading the gauges at the time of inundation.
- bb. The Water Monitoring will entail the reading and recording of the results from two staff gauges in the Easement Area on a casual basis whenever the Concessionaire's staff are in the area. In any event the gauges are to be read a minimum of five times annually. The Concessionaire will forward the results of the Water Monitoring to the Grantor annually.
- cc. The existing staff gauge adjacent to the interconnecting drain between the two lakes must be maintained and monitored by the Concessionaire. The Concessionaire will, at its own

cost, install an additional staff gauge upstream of the existing vehicle bridge, adjacent to the road.

INSPECTION COSTS

- dd. The Concessionaire must reimburse the Grantor for the actual and reasonable costs involved in inspections undertaken to ensure compliance with this Document. The Grantor will attempt to minimise the number of inspections undertaken, preferably to a maximum of two per year.

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Easement - Plan A

Name: Manawatu District Council

Term: 30 years

Expires: 30 November 2030

Area: 1.1ha

Legal Description: Section 798 Town of Carnarvon, Blk IX Te Kawau S.D.

Cons Unit Name: Pukepuke Lagoon C.A.

Cons Unit No: 70044

Local Authority: Manawatu District

Land District: Wellington

NZMS 260: S24

Scale: 1:10,000

Aerial photo: Number: 302812
Date: 23/06/1995

File Ref: Coc 0350
WA 0219

Easement is on alignment shown and of a width of the drain existing on 30 November 2000 (nominally 6m) including the new spillway built under Schedule 1 clause 3(c)



Department of Conservation
Te Papa Atawhai