



Concession Document (Guiding Permit)

THIS CONCESSION is made this _____ day of _____ 2009

PARTIES:

1. **Minister of Conservation** (the Grantor)
2. **Te Ruapekapeka Pa Management Trust** (the Concessionaire)

BACKGROUND

- A.** The Department of Conservation *Te Papa Atawhai* has responsibility for protecting and promoting New Zealand's biodiversity and managing the use of New Zealand's historic and natural resources. Its goal is to be recognised as a world leader in the provision of responsive and cost effective conservation services.
- B.** The Department's mission is "*To conserve New Zealand's natural and historic heritage for all to enjoy, now and in the future.*" Its vision is: "*New Zealand's natural and historic heritage is protected; people enjoy it and are involved with the Department in its conservation.*"
- C.** In order to achieve its mission, vision and goals, and to carry out its functions, the Grantor from time to time grants concessions to carry out activities in Conservation Areas, National Parks, and Reserves.
- D.** The Reserve described in Schedule 1 as the Land is vested in the Grantor;
- E.** Section 59A of the Reserves Act 1977 authorises the Grantor, 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;
- F.** The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Document.
- G.** The parties wish to record the terms and conditions of the Concession in this Document and its Schedules.

OPERATIVE PARTS

- 1.1 In exercise of the Grantor's powers under section 59A of the Reserves Act 1977 the Grantor **GRANTS** to the Concessionaire a **GUIDING PERMIT** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Document and its Schedules.

SIGNED on behalf of the Minister of Conservation by:
Jonathan Miles **Area Manager, Whangarei** (acting)

_____ acting under delegated authority
in the presence of:

Witness Signature: _____

Witness Name: _____

Witness Occupation: _____

Witness Address: _____

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

SIGNED on behalf of **Te Ruapekapeka Pa Management Trust** by:

_____ Chairman

_____ Secretary

SCHEDULE 1

1.	Land <i>(Schedule 4)</i>	Common Name: Ruapekapeka Historic Reserve
2.	Concession Activity <i>(clause 1)</i>	Guided short walks on the Land. The activity sites within the Land include the Pa site, the British Advanced base and Main Camp and the car park. The location of the sites are shown on map in Schedule 4.
3.	Term <i>(clause 2)</i>	Five years commencing on 1 January 2010.
4.	Renewal(s) <i>(clause 2)</i>	None
5.	Final Expiry Date <i>(clause 2)</i>	31 December 2014
6.	Concession Fee <i>(clause 3)</i>	Acting under delegated authority the Whangarei Area Manager has waived the payment of a Concession Fee.
7.	Concession Fee Instalment(s) <i>(clause 3)</i>	n/a
8.	Concession Fee Payment Date(s) <i>(clause 3)</i>	n/a
9.	Penalty Interest Rate <i>(clause 3)</i>	n/a
10.	Concession Fee Review Date(s) <i>(clause 4)</i>	n/a
11.	Health and Safety/Notification of Hazards <i>(clauses 15-16)</i>	<p>(i) Audited Safety Plan: required</p> <p>(ii) Known hazards on the Land</p> <p>Underground bunkers, tunnels and pits. These are not fenced so as to be in keeping with the natural aspect of the Land.</p> <p>(iii) Details of any staff of the Department or other people in the vicinity of the Land where there is potential for some contact between the Concessionaire and such people: Ranger staff of the Department of Conservation, members of the general public.</p> <p>(iv) Details of any other services being carried out by such people, which might affect the Concessionaire or the Activity: Nil</p>
12.	Concessionaire Identification <i>(Clause 26)</i>	Required
13.	Insurance <i>(To be obtained by Concessionaire)</i> <i>(clause 14)</i>	<p>A. <u>Types and amounts:</u></p> <p>(i) Public Liability Insurance for:</p> <p>(a) general indemnity for an amount no less than \$1,000,000.00; and</p> <p>(b) Forest and Rural Fires Act extension for an amount no less than \$250,000.00.; and</p>

		<p>B. <u>Other Policies and amounts</u> nil</p> <p>C. <u>Details of all policies:</u></p> <p>(i) Insurance Company:</p> <p>(ii) Policy number(s):</p> <p>(iii) Date insurance effected:</p> <p>(iv) Date insurance expires:</p> <p>Certificates of Insurance Received: No</p>
14.	Addresses for Notices <i>(clause 23)</i>	<p>The Grantor's address is:</p> <p>Conservator Department of Conservation 149 Bank St Whangarei Phone:09 470 3300 Fax:09 470 3301</p>
		<p>The Concessionaire's address is:</p> <p>Te Ruapekapeka Pa Management Trust c/- Department of Conservation 8 A Kaka St Whangarei Phone:09 470 3304 Fax:09 470 3361</p>
15.	Special Conditions <i>(clause 28)</i>	See Schedule 3.

Note: The clause references are to the Department of Conservation's Standard Terms and Conditions for Guiding Permits set out in Schedule 2.

SCHEDULE 2

STANDARD CONDITIONS

Concession Activity

1. The Concessionaire is not to use the Land for any purpose other than the Concession Activity.

Term

2. The Concession is for the Term specified in Item 3 of Schedule 1 with the Final Expiry Date as specified in Item 5 of Schedule 1. If there is a right of renewal then the Grantor at the Concessionaire's cost will renew the Term for a further period specified in Item 4 of Schedule 1 provided the Concessionaire observes the terms and conditions contained in this Concession and has given the Grantor written notice of the Concessionaire's intention to renew this Concession at least three months before the end of the Term which notice is to be irrevocable. The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further terms shall expire on or before the Final Expiry Date.

Concession Fee

3. The Concessionaire must pay to the Grantor in advance and in the manner directed by the Grantor the Concession Fee plus GST in the instalments and on the Concession Fee Payment Dates specified in Items 6, 7 and 8 of Schedule 1. If payment is not made within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 9 of Schedule 1.

Concession Fee Review

4. The Concession Fee may be reviewed by the Grantor on the Concession Fee Review Date specified in Item 10 of Schedule 1 and will be the market value of the activity carried out on the Land having regard to the matters set out in section 17Y(2) of the Conservation Act 1987. Both parties are to agree on the new fee within 30 working days of the Grantor giving the Concessionaire written notice of the review. If the parties cannot so agree then each party is to appoint a Registered Valuer who must meet and agree on the new fee. If the Registered Valuers fail to reach agreement the new fee is to be determined by an umpire appointed by the two Registered Valuers. Each party is to bear that party's own costs and half the costs of the umpire (if any).

Assignment

5. (a) The Concessionaire is not to transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document or any part of it (which includes the Concessionaire entering into a contract whereby the Concession Activity would be carried out by a person other than the Concessionaire) without the prior written consent

of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.

- (b) Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- (c) 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, sub licensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- (d) The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- (e) 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.

Protection of Environment

- 6. The Concessionaire will not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.

Structures

- 7. For purposes of this Permit, "Structures" means chattels of any description.
- 8. The Concessionaire will not place any Structures on the Land without the prior written consent of the Grantor.
- 9. The Concessionaire will keep all Structures, buildings, fences, gates, drains and other improvement now or hereafter upon the Land, in good order, condition and repair.

Codes

- 10. The Concessionaire will ensure that all employees, clients and guides adhere to the New Zealand Environmental Care Code and Water Care Code at all times.

Surrender

- 11. If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

Indemnities and Insurance

- 12. The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's

employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.

13. The Concessionaire will keep the Grantor indemnified against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable in respect of:-
 - (a) the neglect or careless use or misuse by the Concessionaire or persons under the control of the Concessionaire of the Land or arising out of any faulty fixture or fitting of the Concessionaire;
 - (b) any accident or damage to property or any person arising from any occurrence in or near the Land wholly or in part by reason of any act or omission by the Concessionaire or persons under the control of the Concessionaire.

14. Without prejudice to or in any way limiting its liability under clause 13 the Concessionaire at the Concessionaire's expense must effect and keep current in respect of the Land and the Concessionaire's use of the Land a policy of public risk insurance for an amount not less than the sum specified in Item 13 of Schedule 1; and a public liability forest and rural fire insurance for an amount not less than the sum specified in Item 13 of Schedule 1; and any other insurance specified in Item 13 of Schedule 1 with a substantial and reputable insurer.

Health and Safety

15. The Concessionaire will exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession.

16. Before commencing the Concession Activity the Concessionaire must prepare a safety plan, have it audited and certified by a suitably qualified person approved by the Grantor that the safety plan is suitable for the Concession Activity and forward a copy of the auditor's certificate to the Grantor. The Concessionaire must within 2 working days of being so requested by the Grantor forward a copy of the certified plan to the Grantor. Receipt of the certified safety plan by the Grantor does not in any way limit the obligations of the Concessionaire under Clause 15 and is not to be construed as implying any responsibility or liability on the part of the Grantor. The Concessionaire must comply with the safety plan and any authorised amendments to it.

Termination

17. If the Concessionaire breaches any of the conditions of this Concession, or if the whole or any portion of the Land is required for use by the Grantor, the Grantor may terminate this Concession at any time in respect of the whole or any portion of the land upon the Grantor giving to the Concessionaire one calendar month's notice in writing or such other time period as the sole opinion of the Grantor appears reasonable and necessary of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor may adjust the Concession Fee payable or refund any Concession Fee paid in advance at the

Grantor's sole discretion.

18. The Grantor may choose to remedy at any time without notice any default by the Concessionaire under this Concession. Where that occurs the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default.
19. Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.
20. Upon the expiration or sooner termination of this Concession, either as to the whole or any part of the Land, the Concessionaire is not entitled to compensation for any Structure or other improvement erected or carried out by the Concessionaire, but the Concessionaire may within such time as the Grantor determines, remove all such Structures or other improvements making good at the Concessionaire's expense any damage caused by such removal and leaving the Land in a clean and tidy condition.

Public Access and Closure

21. The Concessionaire acknowledges that the Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard or for reasons of public safety or emergency.

Dispute Resolution

22.
 - (a) If a dispute arises between the parties in connection with this Concession the parties will, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
 - (b) 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.
 - (c) 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.
 - (d) The arbitrator must include in the arbitration award reasons for the determination.

Notices

23. Any notice to be given under this document is to be in writing and made by personal delivery, fax or by pre paid post to the receiving party at the address or fax number specified in Item 14 of Schedule 1. Any such notice will be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of fax, on the date of dispatch;
 - (c) in the case of post, on the 3rd working day after posting.

Costs

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

Identification Card

26. Before commencing the Concession Activity the Concessionaire must, if required by the Grantor in Item 12 of Schedule 1, obtain Concessionaire Identification cards from the Grantor. The Grantor will supply such cards to the Concessionaire on at nil cost. The Concessionaire, its employees and any person acting under the authority of the Concession must carry and display a Concession Identification card when carrying out the Concession Activity. The Concessionaire must obtain sufficient cards to ensure all its guides acting under the authority of the concession can carry and display such cards when undertaking the Concession activity.

Compliance

27. The Concessionaire will comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1997, or any general policy statement made under the Conservation Act 1987, or any general policy statement made under the Conservation Act 1987; Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
 - (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and

Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and

- (c) with all notices and requisitions of any competent authority affecting or relating to the land or affecting or relating to the conduct of the Concession Activity.

27.1 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.

27.2 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 27.1(a) general policy statement will be deemed to be a breach of this Document.

27.3 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.

Special Conditions

28. Special conditions, if any, are specified in Schedule 3.

SCHEDULE 3

SPECIAL CONDITIONS

1. Clause 3 of the Standard Conditions in Schedule 2 is deleted as no Concession Fee is payable.
2. Clause 4 of the Standard Conditions in Schedule 2 is deleted as no Concession Fee is payable.
3. In recognition of the role of the Concessionaire as both Concessionaire; and as Guardian of the Land in partnership with the Grantor, that Clause 17 of the Standard Conditions in Schedule 2 be replaced with the following replacement condition:

Termination;

The Grantor may terminate this Concession

- i) Immediately if there is in the opinion of the Grantor a permanent risk to public safety or to natural and historic resources whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, landslip volcanic activity flood or arising in any other way. Enactment of this provision to be discussed by both the Grantor and Te Ruapekapeka Pa Management Trust prior to implementation.
4. That the Concessionaire and the Grantor jointly undertake an archaeological monitoring programme to ascertain the effects (if any) of the Concession Activity on the Land. Detail and extent of such a programme to be discussed by the Programme Manager – Visitor and Historic Assets , Department of Conservation, Whangarei Area Office and Te Ruapekapeka Pa Management Trust .
5. Suspension:
 - i) The Grantor may suspend this Concession if there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity , flood , or from effects of the Concession Activity on the Land. Enactment of this provision to be discussed by both the Grantor and Te Ruapekapeka Pa Management Trust prior to its implementation and which is to include whether the circumstances mentioned can be avoided , remedied or mitigated to an extent satisfactory to the Grantor and Te Ruapekapeka Pa Management Trust.
 - ii) That the extent and nature of any works that are necessary so as to avoid, remedy , or mitigate the circumstances mentioned are to be discussed and agreed upon by the Grantor and Te Ruapekapeka Pa Management Trust .
 6. That the Concessionaire supply details of numbers of clients guided on the Land during the previous twelve month period ended 30 June. Such details to be provided to the Programme Manager - Visitor and Historic Assets, Department of Conservation, Whangarei Area Office by 15 July each year.
 7. That the Concessionaire ensures that clients are advised that access into the pits and trench features on the Pa is not permitted.

SCHEDULE 4

Map of Land attached