Appendix 2 : Proposed grazing concession to Ben Ohau Station Ltd

DETAILS OF GRAZING CONCESSION

- 1. The proposed terms and conditions of the Grazing Concession are attached.
- 2. It is proposed that under the Grazing Concession, the Holder will graze sheep at a rate of 240 stock units (900 wethers or 720 breeding ewes) for a period of four months from 1 September to 31 January each year during the proposed term of the Grazing Concession.
- 3. The site of the Grazing Concession is defined in Schedule 1 of the attached Grazing Concession. The proposed status of the land is conservation area as defined in section 2 of the Conservation Act 1987.
- 4. The land is an extensive area of short tussock grassland that contains a diverse inter-tussock herb field. Grazing has traditionally been a component of this grassland. In order to maintain the grassland some limited form of grazing is desirable. In order to avoid, mitigate or remedy any adverse effect on the land during the term of the Grazing Concession, the Grazing Concession contains a number of conditions including, but not limited to, the following:
 - (a) a stock limit of 240 stock units for four months from 1 September to 31 January each year during the proposed term of the Grazing Concession;
 - (b) weed and wilding pine control, the costs to be borne by the Holder;
 - (c) rabbit operational control, the costs to be borne by the Holder;
 - (d) annual inspections to review weed and pest programs;
 - (e) the Director-General to set up a monitoring system to ascertain the effects of on-going grazing and this monitoring system will be reviewed every three years;
 - (f) the three yearly reviews outlined in paragraph 4(e) above to coincide with a review of the grazing sheep numbers and the Director-General reserves the right to adjust the stock numbers in order to meet conservation objectives.
- 5. The Grazing Concession is a licence under section 17Q of the Conservation Act and section 17ZD(1) of the Conservation Act applies to the granting of the Grazing Concession but sections 17Q(2), 17R-17Z and 17ZQJ of the Conservation Act do not apply to the granting of the Grazing Concession.
- 6. It is proposed that the term of the Grazing Concession will be 10 years with no right of renewal. The reason for the length of the term of the Grazing Concession is:
 - (a) to allow for some security of tenure for the Holder so that weed and pest control and sheep grazing is economic for the Holder; and
 - (b) to allow monitoring results to be of sufficient worth so that adjustments in sheep numbers can be made or the Grazing Concession can be terminated.
- 7. The Holder, being the lessee of the pastoral lease has grazed the land for a number of decades and the significant inherent values of the land have survived under the Holder's grazing regime. The Grazing Concession proposed is at a slightly lesser stocking rate as a

precautionary approach. The Holder has the ability to stock the area for conservation objectives, subject to the conditions of the Grazing Concession for the term of 10 years.

DATED DECEMBER 1999

Between

HER MAJESTY THE QUEEN

("the Grantor")

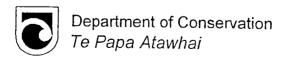
and

BEN OHAU STATION Limited

("the Concessionaire")

CONCESSION DOCUMENT (LICENCE)

DRAFT



PARTIES:

- 1. HER MAJESTY THE QUEEN ACTING BY AND THROUGH THE MINISTER OF CONSERVATION, ("the Grantor")
- 2. BEN OHAU STATION LIMITED ("the Concessionaire")

RECITALS

- A. The land described in this Document as the Site is a conservation area as defined in section 2(1) of the Conservation Act 1987.
- B. The Grantor has agreed to grant the Concessionaire a licence under the Conservation Act 1987.
- C. The Grantee has to the extent applicable satisfied the requirements of Part III B of the Conservation Act 1987

The Grantor <u>GRANTS</u> to the Concessionaire a licence under s.17Q of the Conservation Act 1987] to carry out the Concession Activity on the Site for the Term and at the Concession Fee (subject to review) specified in Schedule I on the terms and conditions set out in this Document.

TERMS AND CONDITIONS

1.00 DEFINITIONS AND INTERPRETATION

1.01 In this Document unless the context otherwise requires:

"Concession Activity" means the Concession Activity specified in Item 2 of

Schedule I

"Conservation Management Plan" has the meaning ascribed to this term in section 2(1) of the

Conservation Act 1987

"Conservation Management Strategy" has the meaning ascribed to this term in section 2(1) of the

Conservation Act 1987

"Department" means the Department of Conservation

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

"Site" means the site specified in Item 1 of Schedule I

- 1.02 In this Document unless the context otherwise requires:
 - a. any reference to any of the parties by their defined terms includes that party's successors in title;
 - b. schedules and annexures form part of this Document and have effect accordingly;
 - c. whenever words appear in this Document that also appear in Schedule I, then those words shall mean and include the details appearing after them in that Schedule;
 - d. any provision of this Document to be performed by two or more persons shall bind those persons jointly and severally;
 - e. reference to a person includes individuals, bodies corporate, associations (whether corporate or not) and trusts;
 - f. words importing the singular shall import the plural and vice versa;

- g. words importing one gender shall import other genders;
- h. references to a statute or statutory provision, or order or regulation made under it, includes that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time; and
- i. where the consent or approval of the Grantor is required under any provision of this Document, such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for like purpose on a prior occasion.

2.00 CONCESSION FEE

- 2.01 The Concessionaire shall pay the Concession Fee plus Goods and Services Tax in advance to the Grantor in the instalments and on Concession Fee Payment Dates specified in Schedule I in the manner directed by the Grantor.
- 2.02 If the Concessionaire is in default in payment of the Concession Fee for fourteen (14) days after a Concession Fee Payment Date, then the Concessionaire shall pay interest on the unpaid fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate.
- 2.03 The Concessionaire shall upon request supply the Grantor with a complete statement of audited financial accounts and any other information relevant to the Concession Activity. The parties acknowledge that any information supplied by the Concessionaire to the Grantor may be subject to the provisions of the Official Information Act 1982 and the Privacy Act 1993.

3.00 OTHER CHARGES

- In addition to the Concession Fee, the Concessionaire shall pay to the Grantor on demand and in the manner directed by the Grantor all rates, levies, taxes, duties, assessments, charges, and other outgoings ("Other Charges") which may be charged, levied or reasonably assessed, or which become payable in relation to the Site or the Concessionaire's occupation or Concession activity on the Site.
- 3.02 In the event that this Concession is surrendered by the Concessionaire with the consent of the Grantor, the Concessionaire shall continue to be liable for and shall pay upon demand to the Grantor all Other Charges in respect of its occupation of and Concession activity on the Site which may be due for the current payment period notwithstanding that such period may not expire until after the date of surrender.
- 3.03 Where the Minister or Director-General has provided any community service, benefit or facility for the benefit of the Concessionaire, the Concessionaire shall pay the Grantor a contribution assessed in accordance with Schedule II.

4.00 CONCESSION ACTIVITY

- 4.01 The Concessionaire shall not use the Site for any purpose other than the Concession Activity.
- 4.02 The Concessionaire shall take out and maintain and pay all fees for all licences, permits, authorisations, consents, and renewals as may be necessary for the proper conduct of the Concession Activity. The Concessionaire shall not do or suffer to be done any act whereby any such licence, permit or authorisation may be forfeited or suspended or the renewal refused.

5.00 COMPLIANCE WITH STATUTES

5.01 The Concessionaire shall at all times comply with all statutes, ordinances, regulations, by-laws or other enactments affecting or relating to the Site or affecting or relating to the Concession Activity.

6.0 INDEMNITY

- 6.01 The Concessionaire shall indemnify and keep indemnified the Grantor against all claims by any person in respect of any injury, loss or damage (including fire damage) caused or suffered or any other liability arising as a result of or out of any acts or omissions of the Concessionaire whether by itself or by its servants, agents, contractors, clients or invitees, or otherwise caused as a consequence of its occupation of the Site or as a result of the conduct of the Concession Activity. This indemnity shall continue after the expiration or other determination of this Concession in respect of any such acts or omissions occurring or arising before its expiration or determination.
- Without in any way limiting the liability of the Concessionaire under Clause 6.01, the Concessionaire shall take out and keep in force during the term of the Concession (including any renewal) a policy or policies of insurance with an insurer approved by the Grantor against any liability (including statutory liability) that may arise out of the Concessionaire's occupation of the Site and conduct of the Concession Activity. The policy or policies of insurance shall be for a sum not less than the amount specified in Item 11 of Schedule I. The Concessionaire shall provide the Grantor with a copy of a certificate of currency for the policy or policies of insurance before commencing the Concession Activity and on each renewal of the policy or policies of insurance.
- 6.03 The Concessionaire shall if required by the Grantor prior to taking occupation of the Site or at any time during the term of this Concession provide as surety a trading bank, insurance company or bond guarantor who shall be approved by the Grantor and who shall execute (in the case of two or more jointly and severally) in favour of the Grantor a guarantee or bond in such amount as the Grantor may reasonably require having regard to the type or scale of the operations of the Concessionaire on the Site. Such guarantee or bond shall not expire and shall remain effective until such time as all conditions of this Concession have been complied with.

7.00 LAND MANAGEMENT

- As required by Section 17W(7) of the Conservation Act 1987 the Concessionaire shall act in accordance with every relevant Conservation Management Strategy and Conservation Management Plan for the time being in force, including any amendments to such Strategy or Plan, whether the Strategy or Plan or amendment was approved before, on or after the date on which the Concession became effective. Any breach or contravention by the Concessionaire of any relevant Conservation Management Strategy or Conservation Management Plan, or both shall be deemed to be a breach of this Concession.
- 7.02 The Concessionaire shall comply with all conditions imposed by the Grantor in granting the Concession including those expressed or implied in this Document and those specified in Schedule III.

8.00 STRUCTURES & SITE ALTERATIONS

- 8.01 The Concessionaire shall not erect or bring on to the Site any structure, install any facility, nor alter the Site in any way without the prior written consent of the Grantor.
- 8.02 The Grantor may in its sole and absolute discretion impose any reasonable terms and conditions (including a review of the Concession Fee) as it considers appropriate to any approval given under this clause and may also decline granting any such approval.
- 8.03 The Concessionaire shall 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.

9.00 PROTECTION OF THE ENVIRONMENT

9.01 The Concessionaire shall not, unless authorised in writing by the Grantor, whether by act or omission:

- a. interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Site; or
- b. bring any plants or animals onto the Site; or
- c. deposit debris, rubbish, or other dangerous, or unsightly matter, nor contaminate any water body.
- 9.02 The Concessionaire shall ensure that its clients and invitees do not carry out any acts prohibited under this clause.
- 9.03 The Concessionaire shall immediately report to the Grantor any act in contravention of Clauses 8.01 and 8.02 and wherever possible the names and addresses of any persons carrying out such acts and shall provide the Grantor with details of the circumstances surrounding any such incidents.
- 9.04 The Concessionaire shall, at its expense:
 - (a) Take all steps necessary to control any pest, insect or rodent infestation occurring in or emanating from the land or any structure on the land, and if required by the Grantor engage a pest exterminator approved by the Grantor:
 - (b) Clear and keep the land clear from all noxious plants and comply strictly with the provisions of the Biosecurity Act 1993.
- 9.05 The Concessionaire shall, during the term of this Concession, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's occupation of and the activities upon the site.
- 10.00 FIRES
- 10.01 The Concessionaire shall not light any fire in the Open Air without the specific written permission from the Grantor.
- 10.02 For the purpose of clause 10.01 "Open Air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977.
- 11.00 SAFETY
- 11.01 The Concessionaire shall operate the Concession Activity in a safe and reliable manner and shall comply with all statutes, bylaws and regulations, and all notices and requisitions of any competent authority relating to the conduct of the Concession Activity.
- The Concessionaire shall notify the Grantor of any natural events or activities on the Site or in the surrounding area which may endanger the public or the environment.

12.00 TEMPORARY SUSPENSION

12.01 The Grantor may temporarily suspend this Concession 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 arising from natural events such as earthquake, landslip, volcanic activity, or flood, or from fire danger, or whether arising in any other way including the activities of the Concessionaire, its clients or invitees.

- 12.02 If in the opinion of the Grantor the activities of the Concessionaire, its 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, then the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 12.03 The Grantor may suspend this Concession while it investigates any of the circumstances contemplated in clauses 12.01 and 12.02 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 Schedule I of that Act.
- 12.04 During any period of temporary suspension the Concession Fee payable by the Concessionaire shall abate in fair proportion to the loss of use by the Concessionaire of the Site.
- 12.05 The Grantor shall not be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of suspension of the Concession under this clause.

13.00 ASSIGNMENT

- 13.01 The Concessionaire shall not transfer, sublicense, assign, mortgage, or otherwise dispose of the Concessionaire's interest under this Concession or any part thereof without the prior written consent of the Grantor. The Grantor may in its discretion decline any application for consent under this clause.
- 13.02 If the Grantor gives consent under this clause, the Concessionaire shall remain liable to observe and perform the terms and conditions of the Concession throughout the term including any renewals and shall procure from the transferee, sublicensee or assignee a covenant to be bound by the conditions of this Document.
- 13.03 The Concessionaire shall pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 13.04 Any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire shall be deemed to be an assignment and shall require the consent of the Grantor.

14.00 TERMINATION

- 14.01 The Grantor may terminate this Concession by 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 fourteen (14) days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - b. the Concessionaire breaches any terms of this Document; 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
 - e. the Concessionaire 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
 - f. there is in the opinion of the Grantor a permanent risk to public safety or the environment whether arising from conduct of the Concession Activity or from natural causes such as

earthquake, landslip, 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.

- 14.02 If the Grantor terminates the Concession under this clause all rights of the Concessionaire shall absolutely cease but the Concessionaire shall not be released from any liability to pay the Concession Fee or other moneys up to the date of termination or for any breach of any term up to the date of termination.
- 14.03 The Grantor may exercise its 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.

15.00 GRANTOR'S DIRECTIONS

15.01 The Concessionaire shall comply with all reasonable notices and directions of the Grantor concerning the activities conducted by the Concessionaire on the Site or the conduct of any person on the Site under the authority of this Concession.

16.00 INFORMATION

- 16.01 The Concessionaire shall refer all requests it receives for official information as defined in the Official Information Act 1982 to the Department immediately upon receipt of the request and shall supply all information that may be required to satisfy any request for information under that Act.
- 16.02 The Concessionaire shall upon request supply the Grantor with information about the conduct of the Concession Activity. The Grantor shall treat information supplied under this clause as confidential subject to the Official Information Act 1982.

17.00 POWERS, RIGHTS & AUTHORITIES

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

18.00 NOTICES

- 18.01 Any notice to be given under this Concession by one party to the other shall 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 12 of Schedule I. A notice given in accordance with this clause shall 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; and
 - c. in the case of facsimile, on the date of dispatch.

19.00 COSTS

The Concessionaire shall 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 (including any stamp duty payable). The Concessionaire shall 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.

20.00 RELATIONSHIP OF PARTIES

- 20.01 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 Site;
 - c. granting any estate or interest in the land to the Concessionaire;
 - d. preventing the Grantor from granting similar concessions to other persons; or

e. derogating from the rights of the Grantor and the public to have access across the Site.

21.00 OFFENCES

- 21.01 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 shall preclude the Grantor from prosecuting the Concessionaire; and
 - b. no failure by the Grantor to prosecute the Concessionaire shall preclude the Grantor from exercising its remedies under this Document.
 - c. any action of the Grantor in prosecuting the Concessionaire shall not preclude the Grantor from exercising its remedies under this Document.

22.00 SEVERABILITY

22.01 Any illegality or invalidity or unenforceability of any provision in this Document shall not affect the legality, validity, or enforceability of any other provision.

23.00 ENTIRE UNDERSTANDING

23.01 Except as provided by legislation, this Document and any written variation agreed by the parties contains the entire agreement between the parties in relation to the Concession hereby granted.

24.00 DISPUTE RESOLUTION & ARBITRATION

- 24.01 If any dispute arises between the parties in connection with this Concession, the parties shall without prejudice to any other rights they may have under this Document, attempt to resolve the dispute by negotiation or other informal dispute resolution techniques agreed by the parties.
- 24.02 If the parties are unable to resolve the dispute by negotiation or other informal means within twenty-one (21) days of written notice by one party to the other of the dispute (or such further period as the parties agree in writing) either party may refer the dispute to arbitration in accordance with the Arbitration Act 1996.
- 24.03 It is agreed between the parties that all matters relating to this Concession shall be governed by New Zealand Law and any dispute between the parties shall be settled either by arbitration in New Zealand or in a New Zealand Court.

25.00 CONCESSION FEE REVIEW

- 25.01 The Grantor shall review the Concession Fee on the Concession Fee Review Dates in the following manner:
 - a. The Grantor shall commence the review by not earlier than three (3) months before a Concession Fee Review Date or at any time up to the next following Concession Fee Review Date giving written notice to the Concessionaire specifying the Concession Fee considered by the Grantor to be the market value for the Concession at the Concession Fee Review date having regard to the factors set out in section 17Y(2) of the Conservation Act 1987.
 - b. The Concessionaire may dispute the proposed new Concession Fee by giving notice in writing to the Grantor within twenty-eight (28) days after receipt of the Grantor's notice, time being of the essence. If the Concessionaire does not give notice to the Grantor under this clause then the Concessionaire shall be deemed to have accepted the new Concession Fee specified in the Grantor's notice.

- c. Immediately following receipt by the Grantor of the Concessionaire's notice under subclause b., the parties shall endeavour to agree the new Concession Fee, but if they cannot agree within twenty-eight (28) days then the new Concession Fee shall be determined by an independent valuer (acting as an expert and not as arbitrator) to be agreed by the parties and failing agreement within a further fourteen (14) days then:
 - (1) Each party shall appoint a valuer and give written notice of the appointment to the other party within fourteen (14) days of the parties failing to agree upon a valuer.
 - (2) If the party receiving a notice fails to appoint a valuer within the fourteen (14) day period then the valuer appointed by the other party shall determine the new Concession Fee and such determination shall be binding on both parties.
 - (3) The valuers appointed before commencing their determination shall appoint an umpire who need not be a registered valuer.
 - (4) The valuers shall determine the current market Concession Fee of the Site and if they fail to agree then the Concession Fee shall be determined by the umpire.
 - (5) Each party shall be given the opportunity to make written or verbal representations to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe and they shall have regard to any such representations but not be bound thereby.

When the new Concession Fee has been determined the valuers shall give written notice thereof to the parties. The notice shall provide as to how the costs of the determination shall be borne and such provision shall be binding on the parties.

d. Until the new Concession Fee is determined, the Concession Fee payable by the Concessionaire from the review date shall be the Concession Fee specified in the Grantor's notice. Upon determination of the new Concession Fee, an adjustment shall be made and paid by the Grantor and Concessionaire, if applicable.

)
)
)
)

("the Grantor") in the presence of:)

*17[SIGNED on behalf of)
as Concessionaire by its Directors)
)
)
in the presence of:)
SIGNED by)
ns Concessionaire n the presence of:))
Witness:	
Occupation:	······
Addross	

SCHEDULE I

FURTHER DEFINITIONS

1. Site: PUKAKI FLATS 1400 hectares approximately being part run 336 Strachney SD.

As defined on the attached plan and marked in yellow.

2. Concession Activity: Grazing of 240 stock units (sheep only) between the 1st September and 31

January in each year of the term.

3. Term: 10 years commencing on the date on which the Surrender of pastoral lease

folio number 10F/1319 (Canterbury registry) becomes effective pursuant to the

Crown Pastoral Land Act 1998, being theday of200..

4. Final expiry date: [insert date]

5. Concession Fee: \$900 per annum plus GST

7. Concession Fee instalments: Annually in advance

8. Concession Fee Payment Dates: Upon surrender of the lease, 1st July 2001 and 1 July each year

thereafter.

9. Penalty Interest Rate: Current Westpac Banking Corporation Overdraft Rate Plus 2%

10. Concession Fee Review Dates: 1st July 2004, 1st July 2007

11. Address for Notices:

Grantor: Minister of Conservation

C/-Department Of Conservation

Private Bag

CHRISTCHURCH Ph (03) 379 9758

Concessionaire: Ben Ohau Station Limited

PO Box 95 TWIZEL

SCHEDULE II

COMMUNITY SERVICE CONTRIBUTION

(Clause 3.03)

NOT APPLICABLE

SCHEDULE III

SPECIAL CONDITIONS

(Clauses 7.02, 8.0)

- 1) Grazing will be based on 240 stock units (900 wethers or 720 breeding Ewes) for 4months from 1st September to 31 January each year. No grazing shall occur outside of this period.
- 2) It is acknowledged by the parties that while the Twizel Airport remains unfenced the total stock units including the Airport and the Site will be grazed by no more than 266 s.u. (1000 wethers or 800 breeding Ewes) for the 4month period from 1st September to 31 January each year.
- 3) That the Twizel Airport will be fenced as agreed to in the Crown Pastoral Land Act tenure review process
- 4) Weed control and wilding pine control costs will lie with the Concessionaire.
- Rabbit control costs will be operational control costs only and will be borne by the Concessionaire.
- 6) The Grantor will inspect at the beginning of the commencement of this licence for weeds and pests and review annually.
- 7) The Grantor will set up a monitoring programme to ascertain the ongoing affects of grazing on the vegetation on the site and this will be reviewed every 3 years.
- 8) The 3 yearly reviews outlined above will coincide with a review of the sheep grazing numbers and the Grantor reserves the right to adjust the stock numbers in order to meet Conservation objectives.

