

## Appendix F: Willows Area Concession Conditions

### WAIHI NORTH PROJECT - WILLOWS AREA CONCESSION CONDITIONS

#### SCHEDULE 1

|    |                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | <b>Land</b><br>(clause 2)                                | <p>As marked “Willows Concession Area” on the attached map in Schedule 4 being:</p> <p>Physical Description/Common Name: Part Coromandel State Forest Park; Part Mataura Stream – Marginal Strip</p> <p>Land Status:</p> <p>Part Coromandel State Forest Park – Conservation Park, held under section 19 of the Conservation Act</p> <p>Part Mataura Stream – Marginal Strip, held under section 24 of the Conservation Act</p> <p>Area:</p> <p>Part Coromandel State Forest Park – Wharekirauponga catchment</p> <p>Part Mataura Stream – Marginal Strip – Mataura catchment</p> <p>Map Reference: As per map in Schedule 4</p> |
| 2. | <b>Concession Activity</b><br>(clause 2)                 | Rehabilitation planting with continued access for planting maintenance including pest control                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 3. | <b>Term</b><br>(clause 3)                                | 10 years commencing from the date of commencement in accordance with Schedule 6, clause 12 of the Fast Track Approvals Act 2024.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4. | <b>Renewal(s)</b><br>(clause 3)                          | None                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 5. | <b>Final Expiry Date</b><br>(clause 3)                   | 10 years from the date of commencement in accordance with Schedule 6, clause 12 of the Fast Track Approvals Act 2024.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 6. | <b>Concession Fee</b><br>(clause 4)                      | Not Required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 7. | <b>Annual Environmental Monitoring Fee</b><br>(clause 9) | Not Required                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



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| 8.  | <b>Community Services Contribution</b><br>(clause 6)                  | Not Required                                                                                                                                                                                                                                                                                                                                                  |
| 9.  | <b>Total payment to be made per annum</b><br>(clause 4)               | Not Required                                                                                                                                                                                                                                                                                                                                                  |
| 10. | <b>Concession Fee Payment Date(s)</b><br>(clause 4)                   | Not Required                                                                                                                                                                                                                                                                                                                                                  |
| 11. | <b>Penalty Interest Rate</b><br>(clause 4)                            | Double the current Official Cash Rate (OCR).                                                                                                                                                                                                                                                                                                                  |
| 12. | <b>Concession Review Date(s)</b><br>(clause 5)                        | None                                                                                                                                                                                                                                                                                                                                                          |
| 13. | <b>Health and Safety</b><br>(clause 13)                               | Audited Safety Plan: Not required                                                                                                                                                                                                                                                                                                                             |
| 14. | <b>Insurance</b><br>(To be obtained by Concessionaire)<br>(clause 12) | <p>Types and amounts:</p> <p>Public Liability Insurance for:</p> <p>(a) General indemnity for an amount no less than \$1,000,000.00; and</p> <p>(b) Third party vehicle liability for an amount no less than \$500,000.00.</p> <p>Subject to review on each Concession Fee Review Date</p>                                                                    |
| 15. | <b>Addresses for Notices</b><br>(clause 24)                           | <p>The Minister's address is:</p> <p>Hauraki District Office, 3/366 Ngati Maru Highway (SH25)</p> <p>Thames 3500 (physical); PO Box 343, Thames 3540 (postal);</p> <p>Phone: <a href="tel:0800275362">0800 275 362</a>;</p> <p>Email: <a href="mailto:thames@doc.govt.nz">thames@doc.govt.nz</a></p> <p>Postal Address:</p> <p>Department of Conservation</p> |

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|     |                                          |                                                                                                                                                                                                                                         |
|-----|------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                          | Attn: National Transaction Centre<br>PO Box 5244<br>Dunedin 9054<br>Phone: (03) 477 0677<br>Email: transactioncentre@doc.govt.nz                                                                                                        |
|     |                                          | The Concessionaire's address in New Zealand is:<br>Physical: 22 Maclaggan Street, Dunedin 9016<br>Postal: PO Box 5442 Dunedin 9054<br>Phone: 03 479 2922<br>Email: <a href="mailto:NZ.Legal@oceanagold.com">NZ.Legal@oceanagold.com</a> |
| 16. | <b>Guarantee</b><br>(clause 29)          | Not required                                                                                                                                                                                                                            |
| 17. | <b>Special Conditions</b><br>(clause 34) | See Schedule 3                                                                                                                                                                                                                          |
| 18. | <b>Processing Fee</b><br>(clause 4)      | As set out in any invoice.                                                                                                                                                                                                              |

Note: The clause references are to the Minister's Standard Terms and Conditions of Permit set out in Schedule 2.

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### **SCHEDULE 2**

#### **STANDARD TERMS AND CONDITIONS OF PERMIT**

##### **1. Interpretation**

- 1.1 In this Concession unless the context otherwise requires “Structures” means chattels of any description.
- 1.2 Where the Minister’s consent or approval is expressly required under a provision of this Concession, the Concessionaire must seek the consent or approval of the Minister for each separate occasion it is required notwithstanding that the Minister has granted consent or approval for a like purpose on a prior occasion.
- 1.3 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.
- 1.4 Where this Concession requires the Minister to exercise a discretion or give any approval or provides for any other actions by the Minister, then the Minister must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.
- 1.5 Where this Concession provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 24 is to apply.

##### **2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.
- 2.2 The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care and diligence normally practised by suitably qualified and experienced people in carrying out such activities.
- 2.3 The Concessionaire must provide the Minister with evidence of the competency and qualifications of its employees and contractors if the Minister so requests.
- 2.4 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Minister, as if it were a notice to be given under this Concession.

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### **3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

### **4. What are the fees and when are they to be paid?**

- 4.1 The Concessionaire must pay the Processing Fee (Item 18 of Schedule 1) to the Minister in the manner directed by the Minister. The concession may be cancelled if the relevant fees are not paid upon invoice.
- 4.2 The Concessionaire must pay to the Minister in the manner directed by the Minister the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10 of Schedule 1.
- 4.3 If the Concessionaire fails to make payment 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 11 of Schedule 1.

### **5. When can the fee be reviewed?**

- 5.1 The Minister is to review the Concession Fee on the Concession Fee Review Dates in the following manner:
- a. The Minister must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.
  - b. Subject to clause 5.1(e) the notice must specify the Concession Fee which the Minister considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
  - c. If, within 28 days of receipt of the Minister's notice, the Concessionaire gives notice to the Minister that the Concessionaire disputes the proposed new Concession Fee, the new Concession Fee is to be determined in accordance with clause 5.2(a) or (b).
  - d. If the Concessionaire does not give notice to the Minister under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Minister's notice.

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- e. Notwithstanding clause 5.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
  - f. Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Minister's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Minister or by the Concessionaire, whichever is applicable.
- 5.2 Immediately after the Concessionaire gives notice to the Minister under clause 5.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:
- a. By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 22) or, if the parties agree,
  - b. By registered valuers acting as experts and not as arbitrators as follows:
    - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
    - (ii) If the party receiving a notice does not appoint a valuer within the 14-day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
    - (iii) Before commencing their determination, the respective valuers must appoint an umpire who need not be a registered valuer.
    - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
    - (v) In determining the Concession Fee, the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.

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- (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- c. The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- d.
  - (i) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
  - (ii) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 5.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
  - (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1.

### 6. Are there any other charges?

- 6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 6.2 The Minister is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 6.3 Where the Minister has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Minister pay such sum to the Minister within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 11 of Schedule 1.

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- 6.4 Where the Minister 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 Minister the amount specified in Item 8 of Schedule 1 as part of the Total Payment specified in Item 9 of Schedule 1 on the Concession Fee Payment Dates specified in Item 10 of Schedule 1.

### **7. When can the Concession be assigned?**

- 7.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Minister.
- 7.2 The Minister may in the Minister's discretion decline any application for consent under clause 7.1.
- 7.3 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 Minister, in the Minister's discretion, decides otherwise.
- 7.4 If the Minister gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Minister incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Minister.

### **8. What are the obligations to protect the environment?**

- 8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land unless as otherwise provided for by any approvals held by the Concessionaire in relation to the Waihi North Project; or light any fire on the Land without the prior consent of the Minister.
- 8.2 The Concessionaire must at its cost keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.

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- 8.3 If directed by the Minister, the Concessionaire must take all steps necessary to control, or, at the Minister's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if directed by the Minister, engage a pest exterminator approved by the Minister.
- 8.4 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if directed by the Minister and for the disposal of all refuse material and is to comply with the reasonable directions of the Minister in regard to these matters.
- 8.5 The Concessionaire must keep all Structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably directed by the Minister, the Concessionaire must paint all Structures and facilities in colours approved by the Minister and with paints of a type approved by the Minister.
- 8.6 If, during the Term, the Concessionaire removes a Structure or facility from the Land the Concessionaire must, unless the Minister directs otherwise, repair and make good at its own expense all damage which may have been done by the removal and must leave the Land in a clean and tidy condition.
- 8.7 The Concessionaire must ensure that it adheres to the international "Leave No Trace" Principles at all times ([www.leavenotrace.org.nz](http://www.leavenotrace.org.nz)).
- 8.8 The Concessionaire must not bury:
- a. Any toilet waste within 50 metres of a water source on the Land; or
  - b. Any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

### 9. What about Environmental Monitoring?

- 9.1 The Concessionaire must, during the Term, if the Minister so directs, design in consultation with the Minister and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.
- 9.2 If the Minister does not issue a direction under clause 9.1 the Concessionaire must, during the Term, pay to the Minister the annual Environmental Monitoring Fee specified in Item 7 of Schedule 1 to enable the Minister to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

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### **10. When can new Structures be erected, or land alterations occur?**

- 10.1 The Concessionaire must not erect, alter or bring on to the Land any Structure not authorised in Schedule 3 nor alter the Land in any way without the prior approval of the Minister.
- 10.2 In giving approval under clause 10.1 the Minister may, in the Minister's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Minister 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 Minister 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 Minister, submit written engineering or building plans and details to the Minister for approval before:
  - a. erecting new Structure or altering any Structure on the Land
  - b. altering the Land in any way.

### **11. What about advertising?**

- 11.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior approval of the Minister. 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.
- 11.2 If directed by the Minister, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Minister on land administered by the Department.
- 11.3 If directed by the Minister, the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.
- 11.4 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

### **12. What are the liabilities and who insures?**

- 12.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Minister and the Minister's employees and agents from all

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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.

- 12.2 The Concessionaire must indemnify the Minister against all claims, actions, losses and expenses of any nature which the Minister may suffer or incur or for which the Minister may become liable arising from the Concessionaire's performance of the Concession Activity.
- 12.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 12.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Minister, or any contractor or supplier to the Minister, or any employee or agent of the Minister.
- 12.5 Despite anything else in clause 12 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 12.6 The Minister is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 12.7, such damage or interference is caused by any wilful act or omission of the Minister, the Minister's employees, agents or contractors.
- 12.7 Where the Minister is found to be liable in accordance with clause 12.6, the total extent of the Minister's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 12.8 Despite anything else in clause 12 the Minister is not liable for any indirect or consequential damage or loss howsoever caused.
- 12.9 Without prejudice to or in any way limiting its liability under this clause 12 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 15 of Schedule 1 with a substantial and reputable insurer.
- 12.10 After every three-year period of the Term the Minister may, on giving 10 working days' notice to the Concessionaire, alter the amounts of insurance required under clause 12.9. On receiving such notice, the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.

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- 12.11 The Concessionaire must provide to the Minister within 5 working days of the Minister so requesting:
- a. details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - b. a copy of the current certificate of such policies.

### 13. What about Health and Safety?

- 13.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 13 of Schedule 1), and with any safety directions of the Minister.
- 13.2 Before commencing the Concession Activity, the Concessionaire must, where the Concessionaire has *Qualmark* or *Outdoorsmark* certification, provide the Minister with a copy of that certification.
- 13.3 If the Concessionaire does not hold *Qualmark* or *Outdoorsmark* certification then before commencing the Concession Activity the Concessionaire must, if required by Item 11 of Schedule 1:
- a. prepare a safety plan;
  - b. have it audited by a suitably qualified person approved by the Minister; and forward to the Minister a certificate from the auditor certifying that the safety plan is suitable for the Concession Activity; and
  - c. the Concessionaire must obtain from the auditor details as to when the safety plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Minister within 5 working days of the certificate being issued.
- 13.4 Receipt of the safety plan/auditor certificate by the Minister is not in any way to limit the obligations of the Concessionaire under clause 13 and is not to be construed as implying any responsibility or liability on the part of the Minister.
- 13.5 The Concessionaire must:
- a. notify the Minister of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;

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- b. take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
- c. take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;
- d. record and report to the Minister all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
- e. ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 13;
- f. be satisfied that facilities or equipment provided by the Minister to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
- g. not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

### **14. What are the compliance obligations of the Concessionaire?**

#### **14.1 The Concessionaire must comply where relevant:**

- a. with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987, or any general policy statement made under the Conservation Act 1987, or Wildlife Act 1953, 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 Concession takes effect; and
- b. with the Conservation Act 1987, 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; 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; and
- d. with all Department signs and notices placed on or affecting the Land; and

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- e. with all reasonable notices and directions of the Minister concerning the Concession Activity on the Land.
- 14.2 The Concessionaire must comply with this Concession.
- 14.3 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 14.1.(a) is deemed to be a breach of this Concession.
- 14.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

### **15. What are the Minister's rights to remedy defaults?**

- 15.1 The Minister may elect to remedy at any time, after giving notice, if practicable, any default by the Concessionaire under this Concession. Before electing to so remedy in accordance with this clause, the Minister must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.
- 15.2 The Concessionaire must pay to the Minister forthwith on demand all reasonable costs and expenses incurred by the Minister, including legal costs and expenses as between solicitor and client, in remedying such default. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 14 days of the Minister's demand from the date of the demand until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.

### **16. When can the Concession be suspended?**

- 16.1 If, in the Minister's opinion, 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 arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Minister may suspend this Concession.
- 16.2 If, in the Minister's opinion, the activities of the Concessionaire are having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Minister considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Minister, then the Minister may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Minister's satisfaction.
- 16.3 The Minister may suspend the Concession for such period as the Minister determines where the Concessionaire has breached any terms of this Concession.

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- 16.4 The Minister may suspend this Concession while the Minister investigates any of the circumstances contemplated in clauses 16.1 and 16.2 and also while the Minister investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act.
- 16.5 The word “investigates” in clause 16.4 includes the laying of charges and awaiting the decision of the Court.
- 16.6 During any period of temporary suspension arising under clauses 16.1 or 16.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 16.7 The Minister 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 16 including loss of profits.

### 17. When can the Concession be terminated?

- 17.1 The Minister may terminate this Concession either in whole or in part:
- a. By 14 days’ notice to the Concessionaire if the Concession Fee or any other money payable to the Minister under this Concession 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. By 14 days’ notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Minister if;
    - (i) The Concessionaire breaches any terms of this Concession and in the Minister’s sole opinion the breach is able to be rectified; and
    - (ii) The Minister has notified the Concessionaire of the breach; and
    - (iii) The Concessionaire does not rectify the breach within 7 days of receiving notification; or such earlier time as specified by the Minister; or
  - c. By notice in writing to the Concessionaire where the Concessionaire breaches any terms of this Concession and in the sole opinion of the Minister the breach is not capable of being rectified; or
  - d. Immediately by notice in writing to the Concessionaire where the Concessionaire breaches clauses 12.9 and 13; or

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- e. By notice in writing to the Concessionaire if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Minister, the conduct of the Concession Activity is manifestly inadequate; or
  - f. By notice in writing to the Concessionaire if 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 any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Minister's sole opinion affects or relates to the Concession Activity; or
  - g. By notice in writing to the Concessionaire if the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
  - h. Immediately if there is, in the opinion of the Minister, a permanent risk to public safety or to the natural and historic resources of the Land 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 Concession on the part of the Concessionaire.
- 17.2 The Minister may exercise its power to terminate under 17.1(h) without giving notice.
- 17.3 The Minister may exercise the Minister's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Minister or any indulgence granted by the Minister for any matter or default.
- 17.4 Termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

### **18. What happens on termination or expiry of the Concession?**

- 18.1 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any Structures or other improvements placed or carried out by the Concessionaire on the Land.
- 18.2 The Concessionaire may, with the Minister's written consent, remove any specified Structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Minister and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.

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- 18.3 The Concessionaire must, if the Minister gives written notice, remove any specified Structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Minister and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Land then the Minister cannot require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement cannot be required until the expiry or termination of the new concession.

### **19. When is the Minister's consent required?**

- 19.1 Where the Minister'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 Minister 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 Minister considers appropriate.

### **20. Are there limitations on public access and closure?**

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

### **21. What about other concessions?**

- 21.1 Nothing expressed or implied in this Concession is to be construed as preventing the Minister from granting other concessions, whether similar or not, to other persons provided that the Minister must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

### **22. How will disputes be resolved?**

- 22.1 If a dispute arises between the parties in connection with this Concession the parties must, 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.
- 22.2 If the dispute cannot be resolved 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

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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.

- 22.3 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.
- 22.4 The arbitrator must include in the arbitration award reasons for the determination.
- 22.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

### 23. What about prosecution for offences?

- 23.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Resource Management Act 1991, 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 Minister under this Concession is to preclude the Minister from prosecuting the Concessionaire; and
  - b. no failure by the Minister to prosecute the Concessionaire is to preclude the Minister from exercising the Minister's remedies under this Concession; and
  - c. any action of the Minister in prosecuting the Concessionaire is not to preclude the Minister from exercising the Minister's remedies under this Concession.

### 24. How are notices sent and when are they received?

- 24.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, by pre-paid post or email to the receiving party at the address, or email address specified in Item 16 of Schedule 1. Any such notice is to be deemed to have been received:
- a. In the case of personal delivery, on the date of delivery;
  - b. In the case of post, on the 3<sup>rd</sup> working day after posting;
  - c. In the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 24.2 If any party's details specified in Item 16 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

## **Appendix F: Willows Area Concession Conditions**

### **25. What is the scope of the Concession?**

- 25.1 Except as provided by legislation, this Concession and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Concession 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 Concession.

### **26. Can provisions be severed?**

- 26.1 Any illegality, or invalidity or unenforceability of any provision in this Concession is not to affect the legality, validity or enforceability of any other provisions.

### **27. What about the payment of costs?**

- 27.1 The Concessionaire must pay the Minister's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.
- 27.2 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 Minister) arising out of and associated with steps taken by the Minister to enforce or attempt to enforce the Minister's rights and powers under this Concession including the right to recover outstanding money owed to the Minister.

### **28. What is the relationship of parties?**

- 28.1 Nothing expressed or implied in this Concession is to 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 Land;
  - c. Granting any exclusive estate or interest in the Land to the Concessionaire;
  - d. Affecting the rights of the Minister and the public to have access across the Land.

### **29. What about a Guarantee?**

- 29.1 Where the Minister has in Item 17 of Schedule 1 required this Concession to be guaranteed by a third party the following clauses are to apply.
- 29.2 In consideration of the Minister entering into this Concession at the Guarantor's request the Guarantor:
- a. Guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Concession; and

## Appendix F: Willows Area Concession Conditions

- b. Indemnifies the Minister against any loss the Minister might suffer should the Concession be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.

29.3 The Guarantor covenants with the Minister that:

- a. No release, delay, or other indulgence given by the Minister to the Concessionaire, to the Concessionaire's successors or assigns, or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
- b. As between the Guarantor and Minister the Guarantor may, for all purposes, be treated as the Concessionaire and the Minister is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
- c. The guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
- d. Any assignment of this Concession and any Concession Fee Review in accordance with this Concession are not to release the Guarantor from liability;
- e. Should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

### 30. What about Co-Siting?

- 30.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 30.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Minister.
- 30.3 The Minister's consent must not be unreasonably withheld but is at the Minister's sole discretion and subject to such reasonable terms and conditions as the Minister thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Minister of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.
- 30.4 In addition, the Minister must withhold consent if:
  - a. The Co-Siting would result in a substantial change to the Concession Activity on the Land;or

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- b. The Minister considers the change to be detrimental to the environment of the Land.
- 30.5 Subject to clause 30.4 the Concessionaire must, if required by the Minister, allow Co- Siting on the Land.
- 30.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:
  - a. Detrimentally interfere physically or technically with the use by the Concessionaire of the Land; 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; or
  - c. Obstruct or impair the Concessionaire's ability effectively to operate from the Land; or
  - d. Interfere with or prevent future forecast works of the Concessionaire,

The Minister, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Minister confirming or rejecting the presence of the matters specified in this clause 30.6. The Minister must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 30.6.
- 30.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 22 of Schedule 2.
- 30.8 Where the Concessionaire is required under clause 30.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 30.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Minister having regard to, but not limited to, the following matters:
  - a. Any written comments or submissions of the Concessionaire and third party;
  - b. Market value for the concession activity proposed by the third-party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - c. Any other matters the Minister considers relevant.
- 30.9 If the Concessionaire does not accept the Minister's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 22 of Schedule 2.

## **Appendix F: Willows Area Concession Conditions**

- 30.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Minister in terms of which the Co-Sitee may be required to pay to the Minister a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.
- 30.11 The Minister must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

### **31. What about Identification cards and the Minister's Approved Label?**

- 31.1 Before commencing the Concession Activity the Concessionaire must, if required by the Minister in Item 14 of Schedule 1, obtain Concessionaire Identification cards from the Minister. The Minister is to supply such cards to the Concessionaire on a cost recovery basis.
- 31.2 The Concessionaire and any person acting under the authority of the Concession must carry and display a Concession Identification card when carrying out the Concession Activity.
- 31.3 The Concessionaire must obtain sufficient cards to ensure all people acting under the authority of the Concession can carry and display such cards when undertaking the Concession Activity.
- 31.4 The Concessionaire may also access, use and/or display the Minister's "Approved Label". This right only exists once the Concessionaire agrees to comply with the Minister's Approved Label terms and conditions and while the Concession remains operative. When the Concessionaire so requests the Minister is to forward the Concessionaire an electronic link to the Approved Label. This electronic link is to contain the Approved Label terms and conditions.
- 31.5 The right under this clause 31.4 does not affect the obligation in this clause 31 to carry and display a Concession Identification card.

### **32. Which clauses survive termination?**

- 32.1 Clauses 12 and 24 survive the termination of this Concession.

### **33. When can the conditions of the Concession be varied?**

- 33.1 The Minister may on each Concession Fee Review Date, after first consulting with the Concessionaire, vary any condition of this Concession to make the condition more effective in addressing adverse effects resulting from the Concession Activity.
- 33.2 Nothing in clause 33.1 otherwise affects the Minister's rights to vary the Concession under section 17ZC of the Conservation Act 1987.

## **Appendix F: Willows Area Concession Conditions**

### **34. Are there any Special Conditions?**

34.1 Special conditions are specified in Schedule 3.

### **35. The Law**

35.1 This Concession is to be governed by and interpreted in accordance with the laws of New Zealand.

## **Appendix F: Willows Area Concession Conditions**

### **SCHEDULE 3**

#### **Special Conditions**

##### **General**

- 1 The Concessionaire must conduct the Activity in accordance with the application dated 8 April 2025.

##### **Exclusions Conditions**

- 2 The Concessionaire must not undertake the following activities on the Land:
  - a. Disturb or hinder public use, access or enjoyment of the Land otherwise unaffected by the authorised Activities under this Concession;
  - b. Use permanent paint on vegetation or rock for marking purposes;
  - c. Construct any new tracks involving vegetation clearance without prior approval.

##### **Historic and Cultural Sites**

- 3 The Concessionaire must operate in accordance with any Archaeological Authority for the Land.
- 4 The Concessionaire must comply with Condition C29 of the Combined HDC and WRC Consent regarding the discovery of any unidentified archaeological site.

##### **Kauri Dieback**

- 5 All Activities authorised by this Concession must be undertaken in accordance with a Coromandel Forest Park Kauri Dieback Management Plan required by Conditions C5 and C5AA of the Combined HDC and WRC Consent.

##### **Planting**

- 6 All planting must comply with Conditions 197 and 198 of the Hauraki District Council landuse consent and use plants which will not visually obscure heritage features of sites T13/961 and T13/962.

##### **Expectations of the Public**

- 7 While undertaking the Activity the Concessionaire must not exclude or impede the public from accessing any sites, tracks or facilities.
- 8 If approached by members of the public while carrying out the Activity, the Concessionaire shall provide an explanation of why the Activity is taking place.

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### Biosecurity Management

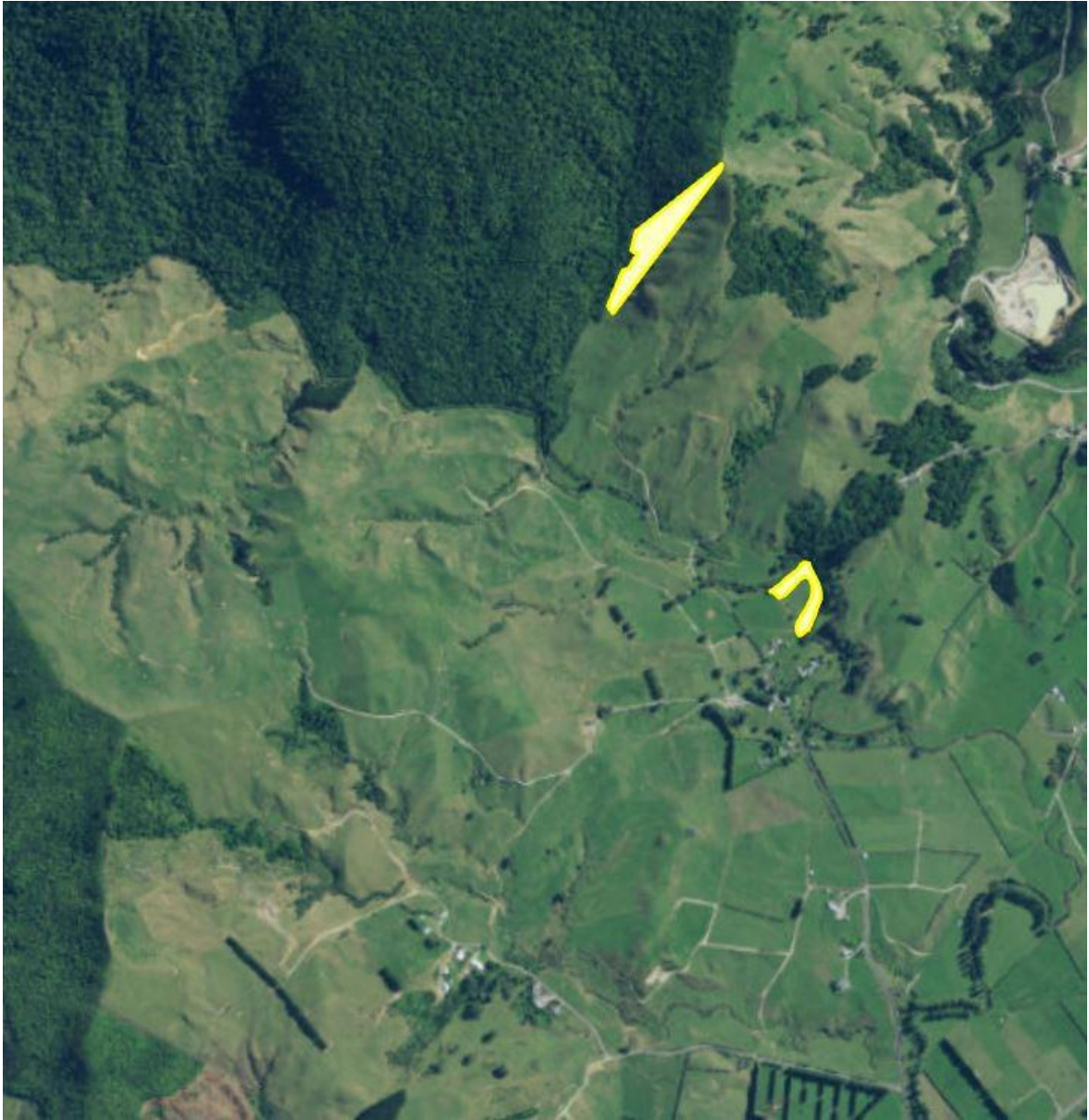
- 9 The Concessionaire must ensure that all equipment to be used for the Activities are clean and free of any exotic weed and seed material prior to entry onto public conservation lands.
- 10 The Concessionaire must know the plants that are affected by myrtle rust and what the rust symptoms look like. This serious fungal disease only affects plants in the myrtle (myrtaceae) family which includes pōhutukawa, mānuka, kānuka, and ramarama. See <https://myrtlerust.org.nz/>. If the Concessionaire encounters suspected symptoms of myrtle rust, the Concessionaire must not touch it and must take the following steps:
  - a. Follow the most up to date advice from Ministry for Primary Industries regarding exotic pest and disease protocols;
  - b. Take clear photos, including the whole plant, the whole affected leaf, and a close-up of the spores/affected areas of the plant;
  - c. Don't touch or try to collect samples as this may increase the spread of the disease;
  - d. If accidental contact with the affected plant or rust occurs, bag clothing and wash clothes, bags and shoes as soon as possible.
- 11 The Concessionaire must comply with the Ministry for Primary Industries' "Check, Clean, Dry" cleaning method to prevent the spread of didymo (*Didymosphenia geminata*) and other freshwater pests when moving between waterways. "Check, Clean, Dry" cleaning methods can be found at <http://www.biosecurity.govt.nz/cleaning>. The Concessionaire must regularly check this website and update their precautions accordingly.

### Records

- 12 All records of the Activity must be made available for inspection at reasonable times by officers of the Minister.

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### SCHEDULE 4



**Figure 1:** Willows Concession Area (yellow polygons)