

29 August 2016

Mr Samuel Griffith
Principal Council Officer
Upper House Committees
Legislative Council
Parliament of New South Wales
Parliament House, Macquarie Street, Sydney, NSW, 2000

Dear Mr Griffith

Re: Crown Lands Inquiry – Information in relation to questions on notice.

Please find attached:

1. A pie graph and table entitled; *'Current Aboriginal Land Claim Statistics at 26 July 2016'*.
2. A series of bar graphs and a table entitled; *'Aboriginal Land Claim Statistics from 1983 – 2016 in five year periods'*.
3. A copy of the lease agreement for the Worimi Conservation Lands, and;
4. A copy of the lease agreement for the Gaagal Wanggaan (South Beach) National Park.

In my recent email to you I explained the context of the statistical information and lease agreements in relation to the questions on notice asked of me by the Committee.

In relation to the land claim statistics, I must offer a disclaimer that the numerical statistics underpinning the graphs are best viewed as indicative rather than specific. This is because of the nature of land claims and the differences in categories of outcomes.

I am confident that the numerical statistics provide useful and acceptable trends for the graphic information, however the specific numbers may require further analysis.

I note that I am currently reviewing the data and statistics for land claims to provide greater clarity across land claim databases.

I reiterate my comments in my email to you that the statistical variances do not adversely affect the registrar of land claims records in relation to individual land claims.

The lease agreements contain a wealth of information about the two outcomes to date pursuant to section 36A of the Aboriginal Land Rights Act 1983 (ALRA). This information includes the historical context of Aboriginal land claims pursuant to section 36 of the ALRA founding the establishment of the two significant areas of Aboriginal cultural and conservation lands.

Please don't hesitate to contact me on 9562 6305 or stephen.wright39@oralra.nsw.gov.au if you require further information or wish to discuss this matter.

Yours sincerely

Stephen Wright
Registrar
Aboriginal Land Rights Act 1983

Form: 07L
Release: 2.7
www.lpma.nsw.gov.au

LEASE

New South Wales
Real Property Act 1900

COPY

Leave this space clear. Affix additional
pages to the top left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORENS TITLE

Property leased

7310/1149441, 7311/1149441, 7312/1149441, 7314/1149441, 7315/1149441,
235/755539, 236/755539, 112/755539

(B) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Reference:

L

(C) LESSOR

Nambucca Heads Local Aboriginal Land Council (ABN: 62 231 792 803) and
Unkya Local Aboriginal Land Council (ABN: 84 528 010 863)

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

Minister for Climate Change and the Environment, as the Minister
administering the National Parks and Wildlife Act 1974

(F)

TENANCY:

- (G)** 1. **TERM** 30 Years
2. **COMMENCING DATE**
3. **TERMINATING DATE**
4. With an **OPTION TO RENEW** for a period of 30 years with no limit on number of options to renew
set out in clause 4.4 of Annexure A and s71AD, National Parks and Wildlife Act 1974
5. With an **OPTION TO PURCHASE** set out in clause N.A. of
6. Together with and reserving the **RIGHTS** set out in clause 11 of Annexure A
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.
8. Incorporates the provisions set out in with the Land and
Property Management Authority as No.
9. The **RENT** is set out in clause No. 15.2 of Annexure A

DATE _____

- (H) Certified correct for the purposes of the Real Property Act 1900 by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Corporation: See page 117 of Annexure A

Authority: _____

Signature of authorised person: _____

Signature of authorised person: _____

Name of authorised person: _____

Name of authorised person: _____

Office held: _____

Office held: _____

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness: _____

Signature of lessee: _____

Name of witness: _____

Address of witness: See page 116 of Annexure A

(I) STATUTORY DECLARATION *

I _____

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales
on _____ in the presence of—

Signature of witness: _____

Signature of lessor: _____

Full name of witness: _____

Address of witness: _____

Qualification of witness: *[tick one]*

☐ Justice of the Peace

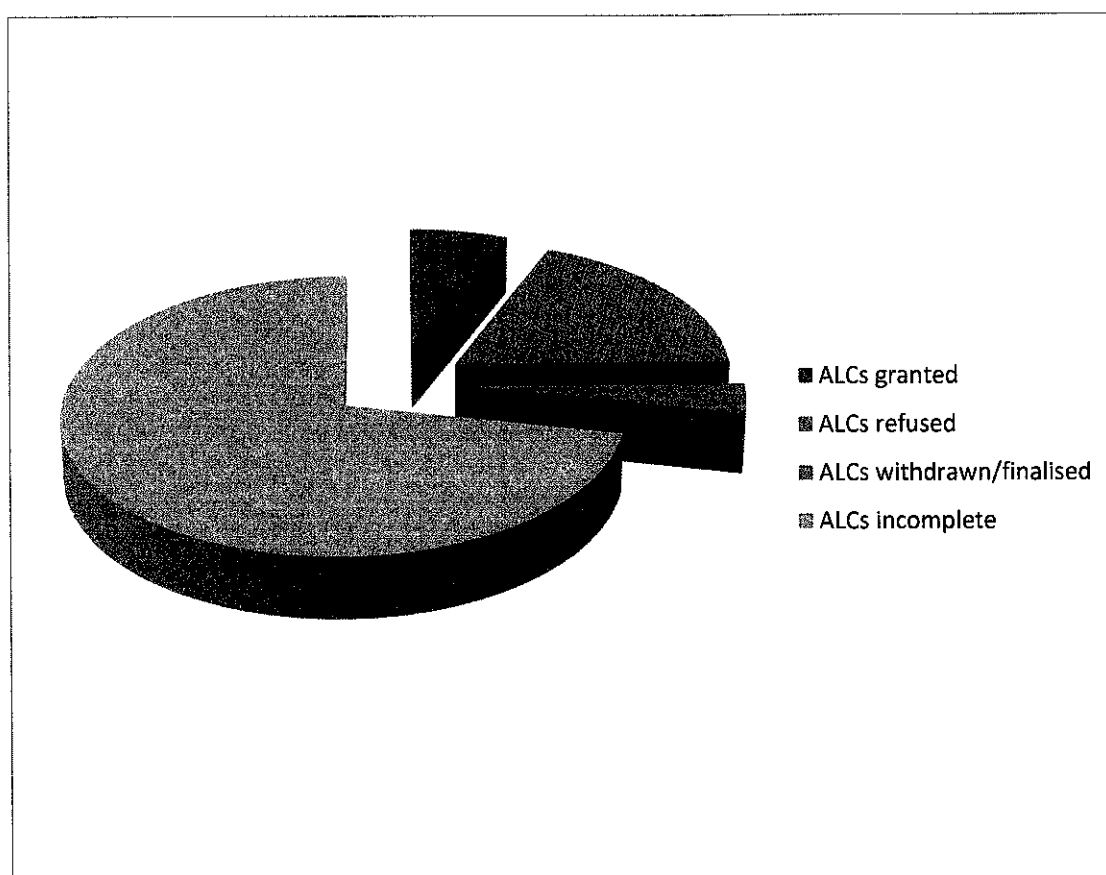
☐ Practising Solicitor

☐ Other qualified witness *[specify]* _____

* As the Land and Property Management Authority may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment.

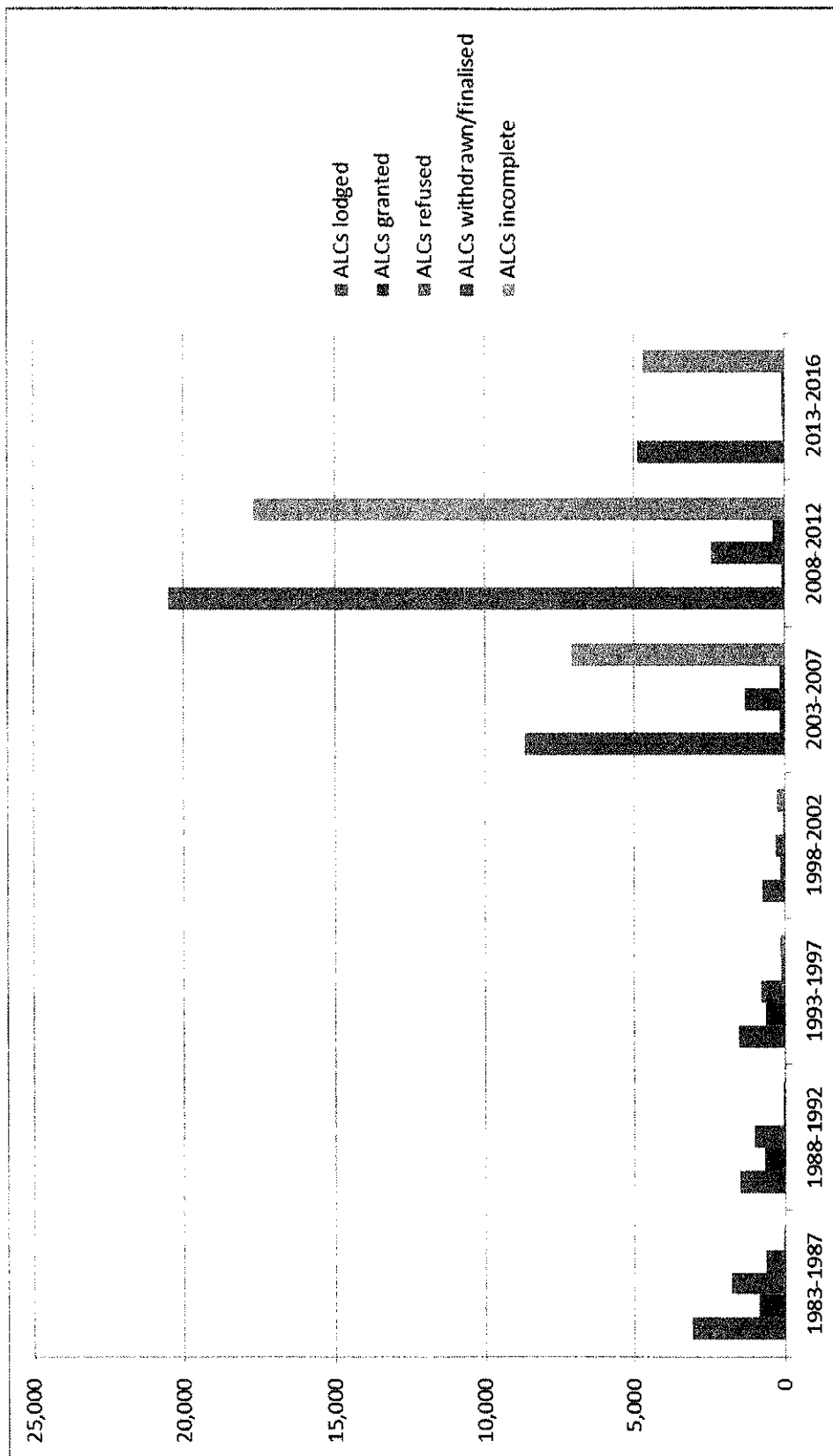
ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

Current Aboriginal Land Claim Statistics at 26 July 2016



Totals at 26/07/2016	ALCs lodged	ALCs granted	ALCs refused	ALCs withdrawn/finalised	ALCs incomplete
	40,938	2598	7,732	1454	29,870

Aboriginal Land Claim Statistics from 1983- 2016 in five year periods



5 year period	ALCs lodged	ALCs granted	ALCs refused	ALCs withdrawn/finalised	ALCs incomplete
1983-1987	3,108	869	1,789	637	4
1988-1992	1,509	679	1,027	39	6
1993-1997	1,531	636	798	103	143
1998-2002	735	176	318	43	279
2003-2007	8,651	164	1,307	161	7,062
2008-2012	20,524	67	2,424	381	17,671
2013-2016	4,880	7	69	90	4,705

COPY

WORIMI CONSERVATION LANDS

LEASE AGREEMENT BETWEEN

ROBERT JOHN DEBUS, MINISTER FOR THE ENVIRONMENT
IN HIS CAPACITY AS THE MINISTER ADMINISTERING THE
NATIONAL PARKS AND WILDLIFE ACT 1974

AND

Dr ANTHONY IAN FLEMING, ACTING DIRECTOR-GENERAL OF THE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

AND

WORIMI LOCAL ABORIGINAL LAND COUNCIL

FOR WORIMI NATIONAL PARK,
WORIMI REGIONAL PARK AND
WORIMI STATE CONSERVATION AREA

Table of contents

PREAMBLE.....	4
RECITALS.....	7
1. PREAMBLE, RECITALS, HEADINGS AND EXPLANATORY NOTES NOT PART OF THE LEASE	11
2. THE WORIMI CONSERVATION LANDS AND OTHER LAND.....	11
3. LEASE ISSUES.....	17
4. NATIVE TITLE.....	19
5. ACKNOWLEDGMENT OF PRINCIPLES	19
6. COMMENCEMENT, TERM, REVIEWING AND RENEWING THE LEASE	22
7. MINISTER ENTITLED TO QUIET ENJOYMENT	26
8. RENT	26
9. ESTABLISHMENT AND MANAGEMENT OF ACCOUNTS	29
10. INITIAL AND ONGOING RECURRENT AND ASSET ACQUISITION FUNDS	32
11. BUDGETS AND EXPENDITURE	33
12. ESTABLISHMENT AND ROLE OF BOARD.....	35
13. MEETINGS, DECISIONS AND REPORTING OF THE BOARD	41
14. IMPLEMENTING BOARD DECISIONS	46
15. PLANS AND LAND USE PLANNING	50
16. OBSERVANCE OF CULTURAL PRACTICES AND TRANSFER OF ABORIGINAL CULTURAL ITEMS.....	52
17. EMPLOYMENT, CONTRACTING AND TRAINING.....	53
18. LAND MANAGEMENT AND OTHER STATUTORY FUNCTIONS.....	60
19. FEES, LICENCES AND PERMITS	69
20. HOLDING OF PROPERTY AND ACCEPTANCE OF GIFTS.....	75
21. INTELLECTUAL PROPERTY.....	76
22. CHANGES TO LEGISLATION.....	77
23. WORLD HERITAGE, NATIONAL HERITAGE LIST AND WILDERNESS DECLARATIONS ISSUES	79
24. DISPUTE RESOLUTION	80
25. INSURANCE, INDEMNITIES AND FUTURE TAX LIABILITIES.....	82
26. DEFINITIONS AND PROCEDURAL MATTERS.....	86
27. LIST OF SCHEDULES ATTACHED TO THIS LEASE.....	97

PREAMBLE

The Worimi people have always been and remain today the traditional custodians of a large area of land, “the Worimi Nation”. The Worimi Nation was generally bounded by the four rivers, Hunter River to the south, Manning River to the north and the Allyn and Patterson Rivers to the west, and the east coast. This area consisted of 18 clans or “nurras”¹. “Worimi” is traditionally pronounced “Wor-ee-mee”.

There has been a great deal of research into Aboriginal people across Australia and the Worimi people are no exception. Early European observers left some descriptions of early lifestyles. One observer wrote that the Port Stephens Aborigines were more prone to laughter than tears seemingly regarding life as great fun to be enjoyed to the utmost.

Worimi people are proud of their culture and heritage, and they are proud of their “Totems”. The Worimi Nation, the 18 clans, and men and women each had particular totems. A clan located in the Port Stephens area has a “kalan-gulang” (tiny bat) as the man’s totem and the woman’s totem is a “dilmun” (what we call the White-throated Treecreeper). These totems differed amongst the clans. The Worimi language is a dialect of the Kattang (Kutthung) language.

Mr James Ridgeway, a tall and wise traditional Worimi man was one of the men who initiated the Worimi boys at what is now known as Soldiers Point. The last known Aboriginal boys to be initiated within the Worimi traditional area were James Feeney and William Ridgeway.

Traditionally, the Worimi people used the beach area to travel between the northern and southern parts of the land. We know these areas today as Nelson Bay to the north and Stockton Bight to the south. The entire area contains hundreds of sites that are significant to Worimi people. Within the traditional land and waters of the Worimi people is an important strip of land known today as Stockton Bight. Stockton Bight has a special cultural significance to the Worimi people because it contains a large amount of cultural history. The land and waters have been used for many thousands of years for living, the gathering of foods and the continuation of cultural activities. Aboriginal cultural connections have always been strong in this area and it continues today, as it is still a well-utilised fishing and recreational area by today’s Worimi people.

¹ (Nurras were local groups within tribes, each occupying a definite locality within the tribal territory). Location of these tribal territories is not known accurately because of extensive de-tribalisation that occurred after European settlement. (Narelle Marr, 1997).

In an effort to secure these traditional lands for the Worimi people and for the entire community of the future, the Worimi Local Aboriginal Land Council (the Land Council), headed by (the then CEO) Mr Len Anderson (Lennie), made many land claims in accordance with the *NSW Aboriginal Lands Rights Act 1983* (the Land Rights Act). One particular group of land claims was placed on the Stockton Bight area in the late 1990's. In 1995 the NSW Government expressed a desire to add the lands at Stockton to the national park reserve system. The Land Council wrote to the NSW Minister for the Environment with a co-management proposal that would enable the land to be included in the national park reserve system, protect the broader community's interests and could provide for recognition, title and benefits to the local Aboriginal community.

In 2001 representatives of the NSW Government sat down with Lennie and Uncle Les Ridgeway (Chair of the Worimi Traditional Elders Group Inc.), to discuss the Stockton Bight land claims. In these discussions, Lennie and Uncle Les successfully negotiated a significant agreement with the NSW Government. The agreement is set out in a Memorandum of Understanding (MoU) which was signed in 2001 by representatives of the (then) NSW National Parks and Wildlife Service, the (then) Department of Land and Water Conservation, the Land Council and the Worimi Traditional Elders Group. A Copy of the MoU is attached as Schedule 1 to this Lease.

The MoU meant that the land claims have been settled in accordance with section 36A of the Land Rights Act and Part 4A of the *NSW National Parks and Wildlife Act 1974* (the Act). In summary, this has meant that before the grant of some of the lands to the Land Council, the Land Council has negotiated with an Aboriginal Negotiating Panel (ANP) and the NSW Minister for the Environment for a lease of the lands to the Minister for inclusion of the land in the national park reserve system of New South Wales.

The ANP was appointed in 2004 by the (then) NSW Minister for Aboriginal Affairs Dr Andrew Refshauge. Members of this panel included the following Traditional Owners:

- *Uncle Les Ridgeway*
- *Aunty Gwen Russell*
- *Uncle John (Noel) Ridgeway*
- *Aunty Val Merrick*
- *Lennie Anderson*
- *Anthony Anderson*
- *Kelvin Dates*

- **Dave Feeney**
- **Warren Mayers**
- **Steve Larkins**

In order to ensure the panel members were informed on legislation, up to date with correspondence and meetings were organised thoroughly, the ANP employed **Jackie Henderson** as the Stockton Bight ANP Co-ordinator. The Stockton Bight ANP received legal advice from Barrister **Adam McLean** and accurate and timely minutes of all negotiation meetings were provided by **Rebecca Francis**. The meetings were capably and impartially facilitated by **Michael Williams**. Vital to negotiations was the valuation of the Stockton Bight lands. This report was prepared for the Stockton Bight ANP by **Chris Torr**.

The Land Council was a vital party to negotiations. Representing all the Land Council members in negotiations were **Janice MacAskill** from the community and **Peter Hillig** as the Administrator of the Land Council under 14 October 2006. After appointment as General Manager of the Land Council on 6th February 2006, **Andrew Smith** also joined negotiations.

On behalf of the NSW Government Department of Environment and Conservation (DEC), Regional Manager – **Robert Quirk**, Area Manager – **Rob Gibbs** and the Stockton Bight Co-management Co-ordinator **Adam Faulkner** became the third side to this negotiation triangle. Legal and policy consultation for the Government was given by **Lenore Fraser** and **Melinda Murray**.

During the process DEC also funded a number of projects. A Cultural Significance Report was prepared by **Nicola Roche** on behalf of ERM and a Scoping Study and Strategic Economic Development Plan Reports were prepared by **Paul Case** on behalf of MLCS.

All these people put in hours and days of work by attending meetings, reading documents, preparing reports and visiting another community to fully understand the depth of the negotiations in which they were participating. The ANP members gave their time voluntarily.

The completion of negotiations and the signing of this Lease have meant that these significant lands are protected for the entire community to continue to enjoy as part of the national park reserve system of New South Wales.

This Lease also secures a majority of Aboriginal Owners on the board of management, real training and employment opportunities for the local Aboriginal community and other benefits.

Worimi people remember the past and what happened to our ancestors on the missions and around the towns but we have learnt to work together for the future of our children and our Aboriginal community. We hope all who use the Worimi Conservation Lands remember those who came before, acknowledge the role of those who now govern and preserve the area for those who will come in the future.

The preamble sets out the background to the negotiations of the lease and the role of everyone involved in finalising the lease. It is not a legal part of the lease

RECITALS

- A) The Worimi LALC ("the Land Council") is a Local Aboriginal Land Council within the meaning of the *Aboriginal Land Rights Act 1983* ("the Land Rights Act"). The Land Council represents the interests and land acquisition aspirations of the Aboriginal people within the gazetted boundaries of the Land Council.
- B) The Minister is the Minister administering the *National Parks and Wildlife Act 1974* ("the Act") and is the Minister within the meaning of s. 36A(3) of the Land Rights Act.
- C) The Director-General is the Director-General of the Department of Environment and Conservation.

The claims to land

- D) At various times during the years 1995, 1996, 2001 and 2005 the Land Council made claims under s.36(3) of the Land Rights Act for land in its Local Aboriginal Land Council area. The claims have been distinguished and identified by the Lands Minister as claim numbers 5711, 5749, 5750, 6251, 6602, 6618, 6928 and 7283 ("the Land Claims"). The Lands Minister is the Crown Lands Minister within the meaning of s.36(1) of the Land Rights Act charged with the responsibility of investigating and determining the Land Claims for the purposes of s.36(1) of the Land Rights Act.
- E) The Land Claims are in respect of mostly contiguous parcels of land at Stockton Bight and surrounding foreshore area. The Land Claims are shown by red edges on the Land Claims Map. Some of the claimed lands will form part of the Worimi Conservation Lands referred to in this Lease, whilst others have been either lawfully refused or granted in freehold to the Land Council under the Land Rights Act.

The position of the NSW Government in respect of the Lands

- F) In 1995 the NSW Government expressed a desire to add lands at Stockton Bight, including the lands covered by the Land Claims, other crown lands and land held by the Minister under Part 11 of the Act ("the Part 11 Lands") to the national park reserve system for the purpose of preservation and conservation of the Lands.

The Memorandum of Understanding between the parties in respect of the Lands and the Land Claims

- G) In 1995 the Land Council wrote to the Minister seeking a co-management arrangement for the Lands that would provide recognition, land title and benefits to the Aboriginal community, enable the land to be included in the national park reserve system and to protect the broader community's interests in respect of the use and management of the crown lands at Stockton Bight.
- H) During the course of 1995 to 2001 the Land Council joined the Worimi Traditional Owners and Elders Group in negotiating with the NSW Government a Memorandum of Understanding ("MoU") for the future land ownership and management of the crown lands and Part 11 Lands at Stockton Bight. The MoU was signed on 13 February 2001 by representatives of the (then) National Parks and Wildlife Service (now part of DEC), the (then) Department of Land and Water Conservation, the Land Council and the Worimi Traditional Owners and Elders Group. The MoU sets out an agreement for the granting of lands subject to the Land Claims to the Land Council under the Land Rights Act and to negotiate a lease to the Minister for the co-management of those lands at Stockton Bight in accordance with Part 4A of the Act. The MoU also provides for additional lands to be included in the co-management lease to the Minister and other crown lands claimed by the Land Council to be granted in freehold to the Land Council under the Land Rights Act. The Minister and the Lands Minister subsequently confirmed the terms of the MoU in letters to each other and to the Land Council.

Implementing the MoU - The Lands Minister's determination of the Land Claims

- I) Consistent with the MoU, in May 2001 the Lands Minister determined Land Claims 5711, 5749, 5750 and 6251 variously as follows:
- (a) Firstly, parts of the Land Claims were refused variously as being either:
- (i) lawfully used and occupied as at the date of claim;

- (ii) Crown public roads not able to be lawfully sold or leased under the Crown Lands Act; or
- (iii) needed for the essential public purposes of protection from sand drift and nature conservation;

and therefore the lands subject to those parts of the Land Claims were not "*claimable Crown land*" within the meaning of s. 36 of the Land Rights Act.

- (b) Secondly, the parts of the Land Claims determined as needed for the essential public purpose of nature conservation were determined to be available for grant under s.36A of the Land Rights Act contingent on the Land Council entering into a lease with the Minister negotiated in accordance with Part 4A of the Act ("Part 4A Lease").
- (c) Thirdly, parts of the Land Claims were granted in freehold to the Land Council under s.36 of the Land Rights Act.

Implementing the MoU – Lease Negotiations under Part 4A of the Act

- J) In accordance with the MoU, on 6 June 2001 the Land Council formally notified the Lands Minister of its consent to resolve those Land Claims refused for the essential public purpose of nature conservation through grant and transfer under s.36A of the Land Rights Act and the entering into the Part 4A Lease with the Minister for the management of the Lands as reserved lands under the Act.
- K) During 2001 and 2005, the Land Council also lodged additional Land Claims 6602, 6618, 6928 and 7283.
- L) On 8 June 2004 the Minister for Aboriginal Affairs appointed the Stockton Bight Aboriginal Negotiating Panel in accordance with s.71G of the Act in respect of the lands proposed for the Worimi Conservation Lands to be created under this Agreement.
- M) On 22 February 2005 the Minister, the Land Council and the Aboriginal Negotiating Panel commenced negotiations to settle the terms of the Part 4A Lease to implement the terms of the MoU. These negotiations were finalised in late 2006.
- N) Now as a result of the negotiations for the resolution of all of the Land Claims, the Part 4A Lease and for the implementation of the MOU, the parties have agreed it is desirable for the Worimi Conservations Lands to be established through the resolution of the undetermined Land Claims and the inclusion of other lands as follows:

- (a) that in respect of various parts of the lands covered by the Land Claims ("the Part 4A Lands") as shown in purple colour on the Land Claims Map:
 - (i) those lands would be granted and transferred to the Land Council under s.36A (2) and (3) of the Land Rights Act;
 - (ii) the Land Council and the Minister will enter into the Part 4A Lease negotiated with the Aboriginal Negotiating Panel in respect of those lands;
 - (iii) those lands would be simultaneously reserved under the Act;
 - (iv) the Land Council would hold those lands as reserved lands in accordance with Part 4A of the Act; and
 - (v) those lands would be managed in accordance with the Act, in particular the requirements of Part 4A of the Act.
 - (b) that in respect of the remaining parts of the undetermined Land Claims the Land Council, having considered the matter and for the purpose of achieving this Agreement whilst making no admission as to the claimability or otherwise of the lands under the Land Rights Act, has agreed to abandon those Land Claims by withdrawing them over those parts of the lands claimed to allow for the creation of the Worimi Conservation Lands as agreed between the parties. It has been agreed between the Lands Minister, the Minister and the Land Council that these lands over which the Land Claims have been withdrawn will be incorporated into the Worimi Conservation Lands through either:
 - (i) the addition of those lands to the Part 4A Lands referred to in Recital N(a) ("the Additions") as shown in light blue colour on the Land Claims Map; or
 - (ii) the reservation of those lands under Part 4 of the Act ("the Part 4 Lands") forming the Inter-Tidal Zone so that the Part 4 Lands can be managed and used in an integrated way with the Part 4A Lands.
- O) As a result of this Agreement which has been negotiated between the Parties as referred to in these Recitals, the Worimi Conservation Lands will comprise a combination of inalienable freehold land, held by the Land Council on behalf of the Aboriginal Owners and lands held by the Minister, reserved under the Act. Further, by this Agreement the Part 4A Lands are leased by the Land Council to the Minister for an initial period of 30 years under the Part 4A of the Act. They will become part of the national park reserve system of New South Wales but will be under the

care, control and management of a Board of Management appointed under Part 4A of the Act, with the majority of Board members being Aboriginal Owners. The Board of Management will also have a nominee of the Land Council and a representative of each of the Department of Environment and Conservation, Port Stephens Council, conservation groups and neighbouring land owners.

Acknowledgement and Recognition

- P) The Minister and the Director-General recognise the importance of lands the subject of the Land Claims to the Land Council and enter into this Agreement in order to facilitate the return of land to Aboriginal ownership consistent with the objects of the Land Rights Act as expressed in the preamble to that Act and to the creation of the Worimi Conservation Lands under the Act.
- Q) The Minister and the Director-General acknowledge the importance of the Worimi Conservation Lands to the Worimi Aboriginal people and accordingly, for the purposes of achieving this Agreement, have negotiated with the Land Council and the Aboriginal Negotiating Panel to contribute resources and materials under this Agreement towards ensuring the meaningful participation of the Worimi Aboriginal people in the future management, rehabilitation and conservation of the lands proposed for the Worimi Conservation Lands being established as a result of this Agreement.
- R) The terms of this Agreement are based on the position that was reached by each of the parties during the negotiations to resolve the Land Claims, to implement the terms of the MoU and to establish the Worimi Conservation Lands.
- S) The Parties, having taken advice and given full and proper consideration to all matters each considers relevant, have determined to resolve the matters between them in respect of the Land Claims and the MoU according to the terms of this Agreement and have resolved to enter into this Agreement in good faith.

The recitals explain the factual details which have led to the creation of the lands called the Worimi Conservation Lands lease, including the importance of the Land Council's land claims. It is not a legal part of the lease.

THE PARTIES AGREE

1. PREAMBLE, RECITALS, HEADINGS AND EXPLANATORY NOTES NOT PART OF THE LEASE

- 1 The Preamble, Recitals, all headings and boxed explanatory notes of this Lease are for information purposes only.
- 2 The Preamble, Recitals, all headings and boxed explanatory notes of this Lease do not form part of the Lease nor must they be used to construe the terms of the Lease in the event of any dispute about interpretation of any term of the Lease.

The preamble, recitals, headings and boxes containing plain English explanations are not a part of the legal words of this lease.

2. THE WORIMI CONSERVATION LANDS AND OTHER LAND

2.1. Description of the Lands subject to the Lease

- 1 The Lands at the commencement of the Lease comprise the Part 4A Lands.
- 2 The Lease applies to all the Lands, being the Part 4A Lands, and any Added Lands.
- 3 Copies of the instruments or extracts from the enactments of reservation of the Part 4A Lands are appended as Schedule 3 of this Lease and form part of this Lease.

2.2. Name of the reserves within which the Lands are located

- 1 The reserves within which the Lands are located are named Worimi State Conservation Area, Worimi National Park, and Worimi Regional Park. These reserves are collectively known as Worimi Conservation Lands.

This clause gives the formal names of the lands as Worimi State Conservation Area, Worimi National Park and Worimi Regional Park. All together, the lands will be called Worimi Conservation Lands.

2.3. Restrictions on dealings with the Lands

- 1 The Lands, or any part of the Lands, may not be the subject of any sale, exchange, disposal or mortgage and that, to the extent to which they may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister if such dealing is by the Land Council or of the Land Council if such dealing is by the Minister.

The lands cannot be sold. If the lands can be dealt with in another way, the Land Council or the Minister can't do this unless they have the agreement of the other one.

2.4. Change of classification of reserve land

- 1 The Minister agrees to use his best endeavours to give effect to any proposed change of classification of reserve land within the Lands that is recommended by the Board.
- 2 If the boundaries of reserve land within the Lands are revised by an Act of Parliament, Schedule 3 of this Lease is taken to have been amended to reflect the updated boundaries.

If the Board set up to manage the lands wants to change the classification of the reserves, the Minister will try to make that change happen. If the boundaries of the lands change, this lease will then relate to the new boundaries.

2.5. Grant and Transfer of lands subject to Land Claims immediately before this Lease coming into effect and the reservation of the Lands

- 1 The parties acknowledge that, immediately prior to the commencement of the Lease and the reservation of the Lands under the Act, the undetermined and surveyed parts of Land Claims 5749, 5711, 5750 and 6251 have been granted and transferred to the Land Council pursuant to s.36A of the Land Rights Act in order to give effect to the terms of the MoU and to provide for the implementation of this Lease.

Before the lease commenced and the lands were reserved, the relevant Aboriginal land claims were granted under s36A of the Aboriginal Land Rights Act 1983.

2.6. Addition of lands subject to Land Claims immediately before reservation of the Lands

- 1 In consideration of the Land Council agreeing to withdraw undetermined Land Claim 6618 shown on the Land Claims Map, the Minister agrees to cause those lands formerly subject to Land Claim 6618 to be added to the Lands in accordance with Part 4A Division 8 of the Act as soon as practicable following the reservation of the Lands under the Act in accordance with this Lease.
- 2 In consideration of the Land Council agreeing to withdraw that part of Land Claim 5750 that remains undetermined and unsurveyed immediately before this Lease is entered into, the Minister agrees to cause those lands formerly subject to that part of Land Claim 5750 shown on the Land Claims Map to be added to the Lands in accordance with Part 4A Division 8 of the Act as soon as practicable following the reservation of the Lands under the Act in accordance with this Lease.

The Land Council withdrew some land claims so that these lands can then be added to the reserved lands under Part 4A of the National Parks and Wildlife Act 1974 and the Minister agrees to add these lands to the reserves so that they are then included in this lease.

2.7. Addition of other lands not subject to Land Claims immediately before the reservation of the Lands

- 1 In consideration of the Land Council entering into this Lease and in accordance with the MoU and the outcomes reached during the negotiations for this Lease, the Minister agrees to the addition of other lands to the Lands in accordance with Part 4A Division 8 of the Act as soon as possible following the reservation of the Lands under the Act in accordance with this Lease. Those other lands are shown in light blue colour on the Land Claims Map and identified as follows:
 - (a) other crown lands identified as Lots 133, 134, 135, 256, 373, 585, and 590 in Deposited Plan 753204, Lot 2 in Deposited Plan 446235, Lot 7033 in Deposited Plan 1053720, other unsurveyed lands bounded by Lot 4 in Deposited Plan 233358 and Land Claim 6618, the unsurveyed triangle of land coloured green adjacent to the land shown in pink hatching on the Northern Boundaries Map (and in all cases excluding any part of those lands below the mean high water mark);

- (b) Part 11 Lands identified as Lot 4 in Deposited Plan 233358 shown on the Land Claims Map; and
- (c) lands identified as Lot 230 in Deposited Plan 1097995 and the road traversing Lot 225 and 230 in Deposited Plan 1097995 which in part were formerly subject to refused Land Claim 6928 lodged by the Land Council.

The Minister also agrees to add some lands that were not subject to any Aboriginal land claims to the reserves and these lands will then be included in this lease.

2.8. Consent of Land Council to adding of Additional Lands

- 1 The Land Council consents to the Additional Lands described in clauses 2.6 and 2.7 being added to the Lands.

The Land Council formally agrees to the addition of the lands to the reserves under Part 4A of the National Parks and Wildlife Act 1974, as outlined in clause 2.6 and 2.7.

2.9. Addition of lands to the Worimi Conservation Lands as lands reserved under Part 4 of the Act

- 1 In consideration for the Land Council agreeing to the Minister's request to withdraw that part of Land Claim 6602 covering the Inter-Tidal Zone (as defined in clause 26.8), the Minister agrees to reserve the Inter-Tidal Zone under Part 4 of the Act, simultaneously with the reservation of the Part 4A Lands under the Act. The Inter-Tidal Zone will be located within Worimi Regional Park.
- 2 The Minister further agrees to ensure the management of the Inter-Tidal Zone occurs in an integrated manner with the Part 4A Lands as set out in clauses 5.3, 15.1 and 18.13 of this Lease.

The inter-tidal zone of the beach will be managed by DEC because the land title for this area has not been transferred to the Land Council. This inter-tidal zone will be reserved under Part 4 of the National Parks and Wildlife Act 1974 instead of Part 4A. DEC will work together with the Board to manage the inter-tidal zone and this is discussed later in this lease.

2.10. Additions to the Lands

- 1 Subject to the process described below, it is desirable that further land be reserved as part of the Lands.
- 2 If land in the vicinity of the Lands is offered for sale or is able to be acquired, the Parties must consider whether negotiations should be undertaken to acquire all or part of the land for reservation or dedication as Added Lands.
- 3 The Director-General and the Board may notify the Parties of land which may be suitable for acquisition.
- 4 The addition of Added Lands to the Lands will only be with the consent of the Minister, the Land Council and the Board.
- 5 The Parties agree to discuss not less frequently than each review of this Lease the issue of possible additions to the Land.
- 6 As provided by the Act, the terms of this Lease are taken to extend and apply to any land added to the Lands under Part 4A Division 8 of the Act.

Other land can be added to the lands if the Board, the Land Council and the Minister agree. If other land in the area is for sale, the Land Council, the Minister and DEC will talk about whether it should be bought and then added to the lands. The lease will apply to any new land which is added. Possible additions to the lands should also be discussed when the lease is reviewed.

2.11. Maps relating to the Worimi Conservation Lands

- 1 A map of the Worimi Conservation Lands comprising the Part 4A Lands, the Part 4 Lands and the Additional Lands is attached to this Lease as Schedule 5.
- 2 If the boundaries of the reserves within the Worimi Conservation Lands are revised as referred to in clause 2.4 or Added Lands are added to the Lands, the Director-General may prepare a new map of the land to reflect the revised boundaries of the reserves within the Land and Schedule 5 of this Lease is taken to have been amended accordingly.
- 3 The Land Council or the Board may request the Director-General to provide it with an updated map of the Worimi Conservation Lands at any reasonable time.
- 4 Any map provided under this clause does not form part of the Lease.

This clause refers to the maps of the lands and the inter-tidal zone. DEC will give copies of the maps to the Board and the Land Council.

2.12. Acknowledgment of the Land Council holding the Lands on behalf of Aboriginal Owners and the Land Council's responsibilities to them

- 1 The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the Lands are held by the Land Council on behalf of the Aboriginal Owners.
- 2 The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the Land Council must, in accordance with s.52(2) of the Land Rights Act, act in the best interests of the Aboriginal Owners when exercising its functions pursuant to s.52 of the Land Rights Act with respect to the Lands.
- 3 The Land Council agrees, in order to give effect to its obligations under this clause, that it will not exercise such functions with respect to the Lands without first consulting the Board members who are Aboriginal Owners and obtaining their consent.

The Land Council, the Minister and DEC understand that the Land Council does not own the lands for itself. The Land Council holds the land on behalf of the Aboriginal Owners and must act in the best interests of the Aboriginal Owners and cannot do anything to the land without agreement of the Aboriginal Owners on the Board.

2.13. Grant or transfer of land at Birubi to the Land Council

- 1 The Parties acknowledge that the lands shown in pink hatching on the Northern Boundaries Map are to be transferred to the Land Council in freehold by the Lands Minister.
- 2 For the purposes of implementing the outcomes of the negotiations for this Lease, the Minister and the Director-General agree to support the grant and transfer of any land claim that may be lodged by the Land Council under the Land Rights Act in respect of lands shown in pink hatching on Northern Boundaries Map.
- 3 It is agreed by the Minister and the Director-General that such support includes, but is not limited to, the causing of a letter of support for the granting of such land claim to be sent by the Minister and/or the Director-General to the Lands Minister and the Director-General of the NSW Department administering the *Crown Lands Act* from time to time.

The parties to the lease acknowledge that the Lands Minister will transfer some free-hold land at Birubi to the Land Council and the Minister and DEC agree to support the grant of a land claim lodged by the Land Council for that land.

3. LEASE ISSUES

3.1. Purpose of and parties to the Lease

- 1 The Land Council leases the Lands to the Minister for the purpose of their reservation and management pursuant to the Act.

The Land Council leases the lands to the Minister so that they can be used and managed as a national park, a state conservation area and a regional park under the National Parks and Wildlife Act.

3.2. Lease of fixtures

- 1 The Land Council lease all fixtures and improvements held by the Land Council on the Worimi Conservation Lands to the Minister for the purpose of their management pursuant to the Act.

The Land Council also leases all structures on the lands that the Land Council owns to the Minister.

3.3. Ownership of fixtures, improvements and assets and obligations for maintenance and repairs

- 1 Unless otherwise provided by any Act, this Lease, an instrument issued by or under the Act or an Existing Interest, all fixtures and improvements on the Lands as at the commencement of the Lease are to be held in trust for the Aboriginal Owners and the Land Council and will be managed by the Director-General.
- 2 Unless otherwise agreed to by the Parties, any new fixtures erected on or improvements made to the Lands by the Director-General on behalf of the Board after the commencement of the Lease are to be held in trust for the Aboriginal Owners and the Land Council and will be managed by the Director-General.
- 3 Assets, including plant and equipment acquired by the Board from the Worimi Accounts, are owned by the Crown and held in trust for the Aboriginal Owners and the Land Council and will be managed by the Director-General in accordance with DEC's asset management system.

- 4 Fixtures and improvements to the Lands and assets of the Board which have been purchased using money from the Worimi Accounts will be accounted for by the Director-General as part of DEC's asset management system on behalf of the Board.
- 5 Unless otherwise provided by an Act, this Lease, an instrument issued by or under this Act or an Existing Interest, the Board is responsible for maintenance and repairs to any fixtures or improvements on the Lands.
- 6 The Board is responsible for maintenance and repairs to any assets acquired by the Board.

This clause sets out which assets in the lands are owned on behalf of the Aboriginal Owners and the Land Council. DEC will manage these assets and the Board is responsible for maintaining these assets.

3.4. Tin City

- 1 It is the view of the Parties that the structures known as Tin City located on the Lands are not owned by the Crown and therefore are not vested in the Land Council, nor consequently leased to the Minister, as part of the Lands.
- 2 To avoid any doubt, the land on which those structures are erected is vested in the Land Council and subject to this Lease.
- 3 To enable the future lawful occupation of the land on which those structures are erected, the Minister agrees to issue a licence to occupy and use the land on which that structure is erected subject to the occupier:
 - (a) accepting responsibility for maintaining the structure in a safe and reasonable state of repair;
 - (b) paying the licence fee determined by the Board;
 - (c) obtaining appropriate insurance;
 - (d) providing an appropriate indemnity to the Land Council, the Minister, the Board and the Director-General; and
 - (e) agreeing to any other reasonable conditions of the licence as approved by the Board.
- 4 The Minister agrees to use his best endeavours to enter into negotiations to facilitate the issue of such licences.

As the shacks at Tin City are not leased to the Minister, but the land that they are on is, the Minister can give a licence to allow Tin City to be legally occupied. The Board will set the conditions for any licence.

3.5. Regard to be had to Land Council resources when implementing the Lease

- 1 The Minister and the Director-General agree that when considering taking action under this Lease or requesting or requiring the performance of the Land Council of any of its obligations or duties under this Lease, the Minister and the Director-General will have regard to the limited resources, financial and otherwise, available to the Land Council.
- 2 The Minister and the Director-General further agree not to request or require the Land Council to undertake any action or perform any duty in a manner that would impose an onerous or unreasonable burden on the Land Council's resources or administrative processes.

This clause acknowledges that the Land Council has limited financial and other resources and says that the Minister and DEC should remember this when asking the Land Council to take action under the lease.

4. NATIVE TITLE

4.1. Reservation of native title

- 1 Nothing in this Lease is intended to in any way extend, diminish, extinguish, suspend or otherwise alter any common law or statutory native title rights and interests which may exist over the Lands nor does it intend to prevent any exercise of such native title rights and interests.

This lease is not intended to affect any native title rights and interests which may exist over the lands.

5. ACKNOWLEDGMENT OF PRINCIPLES

5.1. Acknowledgment Cultural and Nature Conservation Values

- 1 In the negotiation of this Lease, the Parties have had regard to the Cultural Values and the special significance of the Lands to Aboriginal Owners.
- 2 During negotiations of this Lease regard has been made to the Nature Conservation Values and the recreational and community values of the Lands.

- 3 It is acknowledged by each Party that, to Aboriginal Owners, the Nature Conservation Values form an integral part of the Cultural Values of the Lands.

The cultural values of the Aboriginal Owners as well as the nature conservation values (which are also important to the Aboriginal Owners) and other community values of the lands were considered in the negotiation of the lease.

5.2. Land Management Principles

- 1 The Lands will be managed according to the management principles described in Part 4 Division 2 of the Act as applied by Part 4A of the Act.

The lands will be managed according to the relevant principles set out in the National Parks and Wildlife Act.

5.3. Joint Management Principles

- 1 The Parties acknowledge that the Lands will be reserved under Part 4A of the Act and a Board will be established with a majority of Aboriginal Owners and that through the Board, the Aboriginal Owners and the Minister will jointly manage the Lands.
- 2 The Parties acknowledge that the Act and this Lease, particularly clauses 12.1 and 12.2, provide guidance on the roles and function of the Board.
- 3 The Parties acknowledge that the Act and this Lease, particularly clause 14, provide guidance on the relationship between the Board, the Minister and the Director-General, and on how the Director-General will give effect to Board decisions.
- 4 The Parties acknowledge that joint management involves a collaborative approach to protected area management between the Board, the Director-General and the Aboriginal Owners, which requires an acknowledgement of both the Aboriginal Owner's cultural obligations to the management of the Lands and the Board and Director-General's legislative obligations for management of the Worimi Conservation Lands.
- 5 The Parties acknowledge that joint management involves the Board, the Minister, the Director-General, the Land Council and the Aboriginal Owners building their capacity to work in partnership together and

provides a significant opportunity for creating sustainable economic development, training and employment opportunities for Local Aboriginal People.

- 6 Each of the Parties recognise and agree that effective joint management between the Parties will require each Party and the Board to be consulting with each other in decision making to create a partnership of equals where joint decision making becomes fully integrated into the management arrangements for the Worimi Conservation Lands.
- 7 The Minister and the Director-General acknowledge the unique circumstances of the establishment of the Worimi Conservation Lands as set out in this Lease involving:
 - (a) the grant and transfer pursuant to s.36A of the Land Rights Act of Land Claims lodged by the Land Council;
 - (b) the reservation and management of the Lands within the Worimi Conservation Lands under Part 4A of the Act;
 - (c) the agreement by the Land Council to withdraw Land Claims over certain lands to provide for the reservation of the Additional Lands as part of the Worimi Conservation Lands; and
 - (d) the agreement by the Land Council to withdraw that part of Land Claim 6602 covering the Inter-Tidal Zone to provide for the reservation of the Inter-Tidal Zone under Part 4 of the Act.
- 8 As a result of their acknowledgement contained in clause 5.3.7, the Minister and the Director-General agree that when undertaking their duties and functions under the Act and this Lease in respect of the Worimi Conservation Lands they will give special consideration to the principles of joint management for the Worimi Conservation Lands agreed to in this Lease.
- 9 The Minister and the Director-General further agree that these principles of joint management should constitute the foundation for all planning or management for the Worimi Conservation Lands and have an important role in the implementation of strategies and policies for the management of the Worimi Conservation Lands.

This clause talks about how the lands will be jointly managed by the Board and DEC, taking into account the Aboriginal Owner's cultural obligations and DEC's legal obligations. It also says it is important that the parties work jointly together.

6. COMMENCEMENT, TERM, REVIEWING AND RENEWING THE LEASE

6.1. Commencement of the Lease

- 1 The date of publication of the proclamation of the reservation of the Lands under the Act is taken to be the date of execution of the Lease, and the date of commencement of the term of the Lease.

The lease starts when the legal notice, which is required to reserve the lands, is published in the Gazette

6.2. Term of the Lease

- 1 The term of the Lease is thirty (30) years from the date of commencement of the Lease.

The lease is for an initial term of 30 years.

6.3. Holding over at expiry of Lease

- 1 If, at the time of expiry of the term of this Lease, the Parties have not reached agreement for the extension of the term of this Lease or for its replacement by a new Lease, the Minister must hold over under the Lease in accordance with s. 71AL of the Act until the date of execution of a new Lease.
- 2 During any such holding over period, the Parties are bound by all the provisions of this Lease by which they were bound prior to the expiry of the term of this Lease.

If this lease has not been renewed or replaced by the time it finishes, it remains in place until a new one is agreed to.

6.4. Renewing the Lease

- 1 Subject to sub-clauses 2, 3 and 4, this Lease may be renewed.
- 2 There is no limitation on the number of times the Lease may be renewed.
- 3 The renewal of the Lease must be for a further term of at least thirty (30) years.
- 4 Each renewal of the Lease must be with the consent of the Land Council and the Minister.

When the first 30 year lease has finished, the lease may be renewed any number of times, as long as the Land Council and Minister agree.

6.5. Renewal process

- 1 According to s. 71AI of the Act, at least 5 years before the expiry of each term of a Lease:
 - (a) the Director-General, on behalf of the Minister, and
 - (b) the Land Council, and
 - (c) the Aboriginal Owner Board members,must consider whether or not any one or more of the provisions of the Lease should be amended to enable the Lease to operate more effectively.
- 2 If it is agreed that a provision does require amendment, the Director-General, the Land Council and the Aboriginal Owner Board members must negotiate on and prepare the required amendment at least 2 years before the expiry of the then current term of the Lease.
- 3 Any amendment prepared in accordance with sub-clause 2 and agreed to by the Land Council must be presented, by the Director-General, to the Minister for approval at least 18 months before the expiry of the then current term of the Lease.
- 4 If an amendment is approved by the Minister, a new Lease must be prepared incorporating the amended provision.
- 5 At least 6 months before the expiry of the then current term of the Lease, the new Lease should, if possible, be executed in escrow by the Minister and the Land Council.
- 6 A lease executed under sub-clause 5 takes effect, in substitution for the previous Lease between the Minister and the Land Council, on the expiration of the term of the previous Lease.
- 7 If the Director-General and the Land Council agree that no provisions of the Lease require amendment, the Lease between the Parties operates for a

- further term of thirty (30) years, commencing on the expiration of the current term of the Lease, in accordance with its provisions.
- 8 The term of a Lease that renews or replaces a Lease whose term has expired runs from the date of execution of the new Lease by the Minister.
 - 9 The times specified by s. 71AI of the Act for the consideration of the provisions of the Lease, the negotiation and preparation of amendments, the presentation of the amendments to the Minister and the execution of the Lease may be varied by the agreement of the Parties.
 - 10 If there is disagreement between the Director-General, the Land Council and the Aboriginal Owner Board members as to whether a provision in the Lease requires amendment or as to the wording of an amendment to such a provision or if an amendment agreed between the Director-General, the Land Council and the Aboriginal Owner Board members is not approved by the Minister, the Minister or the Land Council may refer the matter for arbitration in accordance with s. 71BJ of the Act.
 - 11 In conducting the arbitration, the arbitrators are to have regard to the matters provided for in clause 24.3.10.

This clause sets out the timetable and process for negotiating the renewal of the lease before this lease finishes. The Minister or the Land Council can request that any disagreements be sorted out through arbitration. The arbitration process must consider certain matters which are set out in a later clause.

6.6. Effect of the new lease

- 1 In accordance with s. 71AD(1)(e) of the Act, if the Parties renew the Lease, such renewal will have the effect of completely replacing this Lease except insofar as provisions of this Lease are preserved by any such renewal or are required by any Act.

Any new lease replaces all of the old lease unless it is agreed that some parts of the old lease should continue or the law requires some parts to continue.

6.7. Rights to participate in consultations

- 1 In accordance with s. 71AD (2) (b) of the Act, in addition to the Minister and the Land Council, consultations concerning the operation of the Lease are to involve the Director-General and the Board.

The Board, the Land Council, the Minister and DEC are to be involved in any talks about how this lease is to work.

6.8. Reviewing the Lease

- 1 Pursuant to s. 71AH of the Act, at least once every five years the Director-General (on behalf of the Minister), the Land Council and the Aboriginal Owner Board members must review the provisions of this Lease and consider whether or not any one or more of the provisions of the Lease require amendment.
- 2 The review must include provisions relating to rent and the term of the Lease.
- 3 The review may consider the administrative arrangements within DEC for the management of the Lands.
- 4 Where the parties and the Aboriginal Owner Board members agree to an amendment as a result of the review consultations, the parties must execute a Deed to give effect to such agreement.
- 5 If a party to the Lease or the Aboriginal Owner Board members fail to agree to an amendment proposed by another party, the disagreement is to be arbitrated in accordance with s. 71BJ of the Act and clause 24.3.10. The decision of the arbitrators (including as to the wording of any amendment in dispute) will be final and binding on the Parties.
- 6 The arbitrators' determination must in any event preserve the overall level of the benefits and the rights conferred on the Land Council and the Aboriginal Owners by this Lease.
- 7 The costs associated with the review must be met by each Party to the review.

The parties to the lease have to look at it every five years and decide if any changes need to be made and each party pays their own costs for this process. The parties must look at the clauses relating to rent and the length of the lease. If the parties cannot agree on possible changes, the dispute can be arbitrated and the arbitrator cannot make a decision that takes away benefits given to the Aboriginal Owners under this lease.

6.9. Agreements to vary, amend or renew the Lease

- 1 Any variation, amendment or renewal of this Lease will require the agreement of the Parties (being, in the case of a variation or an amendment, the agreement only of those Parties who are Parties to the clause to be varied or amended) and will also require the agreement of the Aboriginal Owner Board members.

- 2 Despite the provisions of sub-clause 1, the Parties agree to take all such steps as are necessary to give effect to any determination from any arbitration, concerning the Lands, where such arbitration was conducted as a result of the provisions of this Lease or the Act.

Any changes to this lease have to be agreed to by the Land Council, Minister, DEC and Aboriginal Owner Board members unless the change is a result of arbitration because the parties could not agree.

7. MINISTER ENTITLED TO QUIET ENJOYMENT

- 1 Subject to the proper exercise by the Land Council of its rights and obligations under the Land Rights Act, the Minister, observing and performing the obligations of the Minister in this Lease, including the payment of rent, and procuring the observation and performance by the Director-General of obligations of the Director-General in this Lease, may peaceably possess and enjoy the Lands without interruption or disturbance from the Land Council.

This means that the Land Council cannot interfere with the Minister doing what is required by this lease on the lands, provided the Minister is complying with the lease.

8. RENT

8.1. Amount of rent

- 1 The Minister will pay rent of five hundred and seventy five thousand dollars (\$575,000.00) per annum.
- 2 The rent is subject to adjustment pursuant to clause 8.6 and to review pursuant to clause 8.8.

Each year, starting on 1 July and ending on 30 June the following year, the Minister will pay \$575 000 in rent to the Board to lease the lands. This amount of rent will be adjusted to account for inflation and can be reviewed under other clauses.

8.2. Amount of rent in first year of the Lease

- 1 The payment of rent under the Lease from the commencement of the Lease up to and including 28 February 2007 is to be waived.

- 2 Rent during the first year of the Lease is to be paid for the period 1 March 2007 to 30 June 2007.

The lease says what happens to the payment of rent if the lease does not start on 1 July. It also says no rent is due from the start of the lease until 28 February 2007. Instead, for the first year of the lease, rent is to be paid from 1 March 2007 to 30 June 2007.

8.3. Amount of rent in final year of the Lease

- 1 The final payment of rent under the Lease is to be a proportionate amount of the rent for that financial year calculated by the proportion of the number of days after the 1 July prior to the date of expiry of the Lease until and including the date of expiry compared to the days in the year from the preceding financial year.

As the last year of the lease will not end on 30 June, the rent is to be paid between 1 July and the end of the lease.

8.4. Date rent due

- 1 The rent is due on 1 July and is to be paid by the Minister by 31 July of each year except in the first year of this Lease.
- 2 The rent payable in the first year of the Lease is to be paid by the Minister by 31 March 2007.

Every year the rent must be paid by the Minister to the Board by 31 July, except in the first year when it must be paid by 31 March 2007.

8.5. Payment of rent to be annual

- 1 The rent is payable annually for each financial year (except as provided in clauses 8.2 and 8.3) and is payable in advance.

The rent has to be paid once a year (except for the part payments in the first and last year) and is paid in advance.

8.6. Adjustment of rent during term of Lease and accruing of monies in the Account

- 1 The rent is to be adjusted during the currency of the Lease, each 1 July after the first year of the Lease, to the amount obtained by multiplying the annual rent payable for the year last concluded by the fraction A/B where:

- A = the CPI figure most recently published prior to the 1 July on which the rent is to be adjusted;
- B = the CPI figure last published prior to 1 July of the year immediately preceding the year under review (provided that no adjustment must be made if the operation of this clause would lead to a reduction in the amount of the rent payable).

The rent is to be adjusted on 1 July every year after the first year in order to take inflation into account.

8.7. Matters considered in negotiating the rent

- 1 In negotiating the rent the Parties and the Aboriginal Negotiating Panel have had regard to the following matters as required by s. 71AE (4) of the Act:
 - (a) the nature, size and location of the Lands and the nature of the infrastructure and improvements on the Lands,
 - (b) the nature of the ownership rights in the Lands that the Land Council possesses,
 - (c) the provisions of the Act and this Lease relating to the Lands,
 - (d) the extent to which the cultural significance of the Lands to the Traditional Owners restricts the use that may be made of the Lands under this Lease,
 - (e) the arrangements contained in the Act and this Lease for the care, control, management and development of the Lands,
 - (f) the amount of rent payable under leases of land adjoining or in the vicinity of the Lands,
 - (g) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the Lands.
- 2 The Parties acknowledge that in reaching agreement about the rent, the overall package of benefits provided through the Lease (such as employment, training, capacity building, separate vehicle access fee, preparation of the Plan, contracting opportunities, and ongoing Recurrent Funding) was considered. The Parties further acknowledge that the Minister offered and the Land Council accepted in the circumstances a rent less than the rent valuations which were obtained. The Parties acknowledge that this was on the basis that the overall package of benefits

provided under the Lease met the primary objectives of the Parties, including the creation of employment and training opportunities for Local Aboriginal People.

This is a formal acknowledgment of the matters that were taken into account in agreeing to rent, including those required under the law. It also notes that the parties took into account the overall package of benefits provided to the Worimi community under this lease when agreeing on the rent.

8.8. Review of the rent

- 1 The amount of rent payable under this Lease is to be reviewed when the Lease is reviewed pursuant to clause 6.8.
- 2 Any decisions relating to the review of the rent for the Lands should reflect the principle that the overall package of benefits provided through the Lease are considered.
- 3 As the conditions of the initial Lease have been negotiated in anticipation of Additional Lands being added as soon as practicable after the commencement of the Lease, the Parties agree not to request a review of the rent following the adding of the Additional Lands.
- 4 Nothing in sub-clause 3 prevents the triggering of s.71BE of the Act in relation to any additions to the Lands.

The review of the lease must look at the amount of rent. Any review should take into account all of the benefits provided to the Worimi community under this lease. The rent can also be reviewed when new land is added to the lands (except for land which is added just after this lease starts because that has already been factored into the original rent).

9. ESTABLISHMENT AND MANAGEMENT OF ACCOUNTS

9.1. Establishment of separate accounts

- 1 The money for the Lands is to be managed through the following separate accounts held by the Director-General on behalf of the Board:
 - (a) The Account, into which is paid:
 - (i) rent paid by the Minister under clause 8 of this Lease; and
 - (ii) money received in respect of matters in s.138(1)(b) of the Act, including revenue from fees, licences and permits relating to clause 19 of this Lease;
 - (b) Recurrent Funds provided to DEC by Treasury;

- (c) Asset Acquisition Funds provided to DEC by Treasury;
- (d) external grants;
- (e) gifts, bequests and devises accepted on behalf of the Aboriginal Owners under clause 20; and
- (f) any other accounts approved by the Director-General and the Board.

DEC will hold a number of different accounts on behalf of the Board. Together these accounts will be called the Worimi Accounts. This clause says which money goes into each account so that different forms of income are kept separate.

9.2. Money received in relation to the Part 4 Lands

- 1 The Director-General agrees that any money received in accordance with s.138(1)(b) of the Act in respect of the Part 4 Lands and paid into the Fund will be kept in the Account and applied in relation to the Lands.

The inter-tidal zone at the beach is managed by DEC and is not a part of this lease. DEC agrees that money received in relation to the inter-tidal zone will be paid into one of the Worimi Accounts and be used for the lands.

9.3. Separate identification of accounts

- 1 The Director-General agrees that the accounts referred to in 9.1.1 will be separately identified within DEC's accounting system.

Each of the accounts held by DEC for the lands will be able to be separately identified in DEC's accounting system.

9.4. The structure for identifying funds in each account

- 1 When determining the structure for accounting for money the Board is to conform to the general accounting practices and standards adopted by the Director-General.

When the Board decides how to set up the accounts, they will need to comply with DEC's normal accounting practices and standards.

9.5. Director-General responsible for processing of money

- 1 The Director-General will be responsible for processing of all money received into and paid from the Worimi Accounts and will do so in

accordance with DEC processes and policies and the budget approved by the Board under clause 11.1.

This clause says that DEC is responsible for processing money in and out of the accounts and will follow all the Government's rules for processing money.

9.6. Applications by the Board for external funding

- 1 The Board may apply to bodies other than the Director-General or the NSW Treasury for external grants to be expended for the care, control or management of the Lands.
- 2 Any external grants provided to the Board as a result of such an application must not be counted by the Minister or the Director-General as an offset to any money that should otherwise be provided as Recurrent Funds or Asset Acquisition Funds.

The Board can apply to outside organisations for money to spend on the lands, and if successful, its ordinary budget will not be reduced as a result.

9.7. Accrual of money in the Account

- 1 Money paid into the Account, including rent, may accrue from year to year.
- 2 Recurrent Funds and Asset Acquisition Funds cannot be accrued from year to year, unless expressly authorised by NSW Treasury.
- 3 Money received as external grants or gifts, bequests and devises may be accrued in accordance with the terms of the grant or gift, bequest or devise.

Rent and gifts can accumulate in their relevant accounts from year to year. Money allocated by DEC for management of the lands cannot accumulate in its account from year to year (unless allowed by the Treasury).

9.8. Payment of interest into the Account

- 1 The Director-General agrees to credit to the Account, on a pro rata basis, interest paid by NSW Treasury in relation to money held in the Account.

DEC will make sure any relevant interest received from the Treasury is paid into the account which holds rent.

10. INITIAL AND ONGOING RECURRENT AND ASSET ACQUISITION FUNDS

10.1. Recurrent Funds

- 1 On the commencement of the Lease, the Director-General will allocate a total of \$950,000 per annum during the Initial Period as Recurrent Funds for the management of the Lands. This money is to be used on an ongoing annual basis for:
 - (a) the creation and maintenance of up to 9 new equivalent full time Aboriginal identified positions referred to in clause 17 of this Lease;
 - (b) other operational costs in relation to the Lands.
- 2 After the Initial Period, the Recurrent Funding for the management of the Lands will be adjusted to reflect any budgetary changes that apply to DEC as a whole. Whilst the Recurrent Funding allocation for the Lands may rise or fall with that of DEC, the level of funding for the Lands relative to that available for other reserves in the Hunter Region will be maintained. To achieve this, the Director-General will ensure that after the Initial Period, the Director-General will maintain the Recurrent Funding for the Lands at a level that preserves its proportion within the total Recurrent Funding allocated to reserves in the Hunter Region at the commencement of the Lease.
- 3 The Regional Manager will ensure that the Board is fully informed on the annual budgetary process, and that a Board representative (other than the Regional Manager) is given the opportunity to actively participate in the regional budget allocation process.
- 4 If structural arrangements within DEC change, the proportion to be maintained in sub-clause 2 will be calculated using the total Recurrent Funds for the DEC region with responsibility for the Worimi Conservation Lands.
- 5 For the purpose of implementing this clause, at the end of the Initial Period, the Board, the Land Council and the Director-General will meet to identify the Recurrent Funds for the Lands.

Ongoing DEC will allocate \$950 000 a year for the first 3 full years of the lease to be used for management of the lands, particularly the funding of up to the equivalent of 9 full time jobs for local Aboriginal people. After 3 years this amount may be adjusted, but the lands will still be allocated its proportion of the Hunter region budget.

10.2. Board costs

- 1 The Director-General will provide further Recurrent Funds of up to \$50,000 per annum for costs associated with meetings of the Board,

including sitting fees, travel costs and training. This amount is to be adjusted using the method described in clause 8.6.

DEC will allocate up to \$50 000 a year to meet the costs associated with Board meetings. This amount will be adjusted to account for inflation.

10.3. Asset Acquisition Funds

- 1 Applications for Asset Acquisition Funds to be expended after the commencement of the Lease may be made on behalf of the Board in accordance with existing DEC procedures.
- 2 The Director-General acknowledges there may be a need for the expenditure of Asset Acquisition Funds to make initial improvements at the Lands as a result of the Worimi Conservation Lands being newly created reserves under the Act.
- 3 The Director-General agrees to work with the Board to develop appropriate asset acquisition proposals for incorporation into the DEC forward estimates processes.

The Board and DEC will work together to apply for funds to spend on infrastructure for the lands. This may be necessary just after the lease begins as the lands are newly created reserves under the National Parks and Wildlife Act.

11. BUDGETS AND EXPENDITURE

11.1. Development of annual budget proposals

- 1 The Board, after consultation with the Regional Manager, will prepare and submit to the Director-General an annual budget estimate and works plan for the next financial year, which requires the submission of budgets 12 months prior to the commencement of the applicable financial year. The budget estimate and works plan should identify what money the Board has and the source of money to be expended in that year.
- 2 The Minister and the Director-General agree that this estimate will be included in any relevant budget submission to the NSW Treasury.
- 3 The Director-General will assist the Board to develop their budget estimates and works plan.
- 4 The Director-General will implement the agreed works plan in accordance with the Board-approved budget and provide reports to the Board at each meeting on expenditure and works progress.

This clause says how the Board's yearly budget will be developed and what that budget should include. DEC has to help with developing the budget, and once the budget is approved has to provide the Board with updates on how the budget is being spent.

11.2. Payments from the Worimi Accounts

- 1 When making payments from the Worimi Accounts, the Director-General may only approve the commitment or incurring of expenditure in accordance with the budget approved by the Board.
- 2 The Director-General may only commit or incur expenditure on behalf of the Board in accordance with an officer's particular financial delegation.

DEC can only spend money that has been agreed to in the budget approved by the Board and if DEC can legally make that payment.

11.3. Expenditure of money prior to the appointment of the Board

- 1 The Parties acknowledge that in the period before a Board is appointed, there will be necessary works that are required on the Worimi Conservation Lands. Until the Board is appointed, the Director-General may commit and incur reasonable expenses relating to the management of the Worimi Conservation Lands in accordance with the estimated budget and works program to be discussed with the representatives of the Aboriginal Negotiating Panel and representatives nominated by the Land Council under clause 12.4. Such reasonable expenses within any one month period should not generally exceed an amount representing 1/12 of the Recurrent Funds for that financial year.

Before the Board is appointed, there may be expenses relating to the lands and DEC is allowed to spend money to cover those expenses, but only within the budget discussed with the advisory group to help before the Board is appointed. The advisory group is referred to in clause 12.4 of the lease.

11.4. Use of funds in the Account

- 1 Rent and other funds in the Account may be used for asset items, recurrent expenses, Community Development, acquisition of land for the purpose of it becoming Added Lands and for such other purposes that comply with the expenditure provision of this Lease, and s. 139(5) of the Act.

This clause states what rent and other money in the separate rent account can be used for.

11.5. Employment of additional DEC staff from the Account

- 1 The Board may choose to authorise the payment from the Account or from other funds available to the Board for the appointment of additional DEC staff identified in the staffing strategy referred to in clause 17.1.1 to be involved in the care, control and management of the Worimi Conservation Lands.

Funds available to the Board can be used to fund additional DEC staff to be involved in the management of the lands.

11.6. External grants

- 1 Funds provided as external grants must be expended in accordance with any conditions of that grant.

Funds granted by external organisations can only be used for what they have been granted for.

12. ESTABLISHMENT AND ROLE OF BOARD

12.1. Acknowledgment that care etc are to be vested in Board of Management

- 1 The Parties acknowledge that upon appointment of the Board the care, control and management of the Lands is to be vested in the Board.
- 2 There will be one Board for the Lands.

There will only be one Board for the lands and this Board has the care, control and management of the lands. This is the main clause that gives the Board the power to manage the lands.

12.2. Additional functions of the Board

- 1 In addition to clause 12.1, the Board's functions in relation to the Lands include:
 - (a) the preparation of Plans;
 - (b) the preparation and approval of annual budgets;

- (c) approval of annual works programs;
 - (d) the supervision of payments from the Worimi Accounts including the Account, in accordance with approved annual budgets;
 - (e) considering proposals for the carrying out, by Aboriginal Owners or other Aboriginal persons, of cultural activities (such as hunting, gathering and fishing) within the Lands and of approving, or refusing to approve, the carrying out of those activities;
 - (f) preparation of operational plans;
 - (g) strategic oversight of the management of the Lands;
 - (h) development of a staffing strategy and participation in DEC staff selection panels;
 - (i) development of training strategies and community capacity building;
 - (j) preparation of cultural and heritage plans;
 - (k) the approval of the grant, extension or extinguishment of an interest, lease, licence, franchise, easement, right of way, authority or consent under the Act prior to their issue by the Minister or the Director-General;
 - (l) the exercise of the functions of a "Park Authority" in respect of the Lands for the purposes of the Regulation, including the issue of consents under that Regulation;
 - (m) the exercise of the functions of a "public authority" in respect of the Lands for the purposes of the *Environmental Planning and Assessment Act 1979* and any regulation or planning instrument made under that Act, including functions as a determining authority under Part 5 of that Act when exercising certain functions as a Park Authority;
 - (n) to provide annual financial reports to the Director-General;
 - (o) to consent to additions to the Lands under Part 4A Division 8 of the Act; and
 - (p) such other functions as this Lease, the Act or the Regulation may provide for from time to time.
- 2 In addition to clauses 12.1 and 12.2.1 the Board may develop policies in relation to:
- (a) land management arrangements for the purposes of clause 18.10;
 - (b) volunteers;
 - (c) law enforcement;

- (d) access to the Lands by Aboriginal people; and
 - (e) other matters which the Board considers appropriate.
- 3 In preparing policies on matters relevant to this Lease the Board must have regard to any applicable NSW Government or DEC policies.

This clause lists other duties the Board has in relation to the lands. The Board can develop policies in relation to the lands, but those policies have to consider DEC and other Government policies.

12.3. Management of the Lands before a Board is established.

- 1 The Director-General has the care, control and management of the Lands until such time as a Board is established for the Lands.

Before the Board is established, DEC will look after and manage the lands.

12.4. Consultation with representatives of Aboriginal Negotiating Panel and Land Council prior to appointment of Board

- 1 In recognition of the extensive involvement of the Aboriginal Negotiating Panel and Land Council representatives in the development of the Lease, the Director-General will ask each member of the Aboriginal Negotiating Panel and the Land Council whether they wish to be involved in consultation and the provision of advice relating to the Lands prior to the appointment of the Board. The Land Council may nominate up to 3 representatives for this purpose.
- 2 The Parties acknowledge that the purpose of this consultation and advice is to guide the Director-General in exercising the Director-General's responsibilities for the care, control and management of the Lands prior to the appointment of the Board in a way which does not pre-empt significant decisions which should be left to the Board.
- 3 Until the Board is appointed, the Director-General will consult and seek advice about management of the Lands from those representatives of the Aboriginal Negotiating Panel and up to 3 representatives of the Land Council who wish to be involved in this way.
- 4 The consultation and advice referred to in sub-clause 3 includes matters relating to employment of staff who are essential to ensure the proper management of the Worimi Conservation Lands; an interim staffing

strategy; erection of signs; setting, collection and waiver of vehicle access fees; development of an estimated annual budget and works program; and the licensing of commercial activities.

- 5 If a meeting is convened for the purposes of this clause, the Director-General will reimburse each participant for their reasonable costs relating to travel, accommodation and other related out of pocket expenses.
- 6 Any costs reimbursed in relation to sub-clause 5 may be paid from the Recurrent Funds provided for ongoing Board costs, as referred to in clause 10.2.1 of the Lease.

DEC will talk to an advisory group of the Aboriginal Negotiating Panel and up to 3 representatives of the Land Council when managing the lands before the Board is established. Costs of any meetings of this group will be reimbursed.

12.5. Management of the Lands while there is no Plan of Management

- 1 In the exercise of its functions with respect to the care, control and management of the Lands for which no Plan has been adopted, the Board will consult with and have regard to the advice of the Director-General.

The Board will consult with DEC regarding the management of the lands until a plan of management is prepared. The plan of management is referred to in clause 15.1.

12.6. Membership of the Board

- 1 The Minister agrees that the Board will consist of 13 members.
- 2 The Minister will use his best endeavours to ensure the Board is appointed within 6 months of the commencement of the Lease.
- 3 The make up of the Board will be as follows:
 - (a) eight must be Aboriginal Owners pursuant to s. 71AN(3)(a) of the Act;
 - (b) one is to be a person appointed by the Minister from nominees of the Land Council pursuant to s. 71AN(3)(b) of the Act;
 - (c) one is to be a person who is an elected councillor and appointed to represent the local council pursuant to s. 71AN(3)(c) of the Act;
 - (d) one is to be an officer of DEC pursuant to s. 71AN(3)(d) of the Act;
 - (e) one is to be a person appointed to represent conservation interests pursuant to s. 71AN(3)(e) of the Act; and

- (f) one is to be a person appointed on the nomination of owners, lessees and occupiers of land adjoining or in the vicinity pursuant to s. 71AN(3)(f) of the Act.
- 4 The Minister will appoint Deputies for each Board member.
- 5 In accordance with clause 67 of the NPW Regulation
 - (a) the person appointed as Deputy must be selected from the same category of persons as the Board member for whom the person is to deputise;
 - (b) in the absence of a Board member, the member's Deputy may, if available, act in the place of the Board member;
 - (c) while acting in the place of a member, the Deputy has all the functions of the member and is taken to be a member.
- 6 For the purposes of this clause, a vacancy in the office of a Board member is taken to be an absence of the Board member.

There will be 13 Board members who will be appointed and who will each have a deputy. There will be 8 Aboriginal Owners, a Land Council member and 4 other members. The Minister will try and make sure the Board is appointed within 6 months after the lease starts.

12.7. Aboriginal Owner Board members

- 1 The Aboriginal Owner Board members must be selected from those persons who are nominated by themselves or by another Aboriginal Owner of the Lands with the consent of the nominee.
- 2 In appointing Aboriginal Owners to the Board pursuant to s. 71AN(3) of the Act, the Minister must have regard to the gender, cultural affiliation and family grouping of the nominee in an endeavour to ensure that a representative group of members is appointed.
- 3 The Minister must also have regard to the recommendations of any body or group formed by Aboriginal people who have a Cultural Association with the Lands.

Under the law, the majority of Board members have to be Aboriginal Owners. The Minister must try to appoint a representative group of Aboriginal Owners to the Board. Any group formed by Aboriginal people who have a cultural association with the lands can make recommendations to the Minister about Board appointments.

12.8. DEC representative on the Board

- 1 The Director-General agrees that the officer of DEC to be nominated to the Board pursuant to s. 71 AN(3)(d) of the Act must be the person holding the office of Regional Manager for the Region in which the Worimi Conservation Lands are located or another suitable person holding a more senior position.
- 2 The Director-General agrees to nominate an officer of DEC to be the Deputy to the officer appointed pursuant to s. 71AN(3)(d) of the Act that has the authority to make decisions on behalf of the Director-General.

This means that the DEC representative on the Board will be the regional manager or another more senior person and the DEC representative's deputy has to have certain powers to make decisions.

12.9. Board member from neighbouring lands

- 1 The Minister acknowledges that the Land Council may nominate a representative pursuant to s.71AN(3)(f) of the Act.

The law requires one Board member to represent people from neighbouring lands and this clause say the Land Council may nominate a person to represent that group on the Board.

12.10. Term of office of Board members

- 1 The Minister agrees, pending any regulation so to provide, that the ordinary term of appointment for members of the Board must be for 5 years provided that:
 - (a) in the case of a Board member appointed pursuant to s. 71AN(3)(b) of the Act, that person remains a member of the Land Council;
 - (b) in the case of a Board member appointed pursuant to s. 71AN(3)(c) of the Act, that person remains an elected member of a local council where that council's area includes or adjoins the Lands;
 - (c) in the case of a Board member appointed pursuant to s. 71AN(3)(d) of the Act, that person remains an employee of DEC;
 - (d) in the case of a Board member appointed pursuant to s.71AN(3)(e) of the Act, that person continues to represent conservation interests; and

- (e) in the case of a Board member appointed pursuant to s. 71AN(3)(f) of the Act, that person continues to represent the interests of those people who nominated them.
- 2 In the event of a member of the Board being replaced during a term, the Minister agrees that any new member appointed as a replacement must only be appointed for the unexpired portion of the term of the member being replaced.

The normal term of office for a Board member is 5 years. The Land Council, local government, conservation, neighbour and DEC members will stop being on the Board if they stop being members of the relevant groups. Board members who replace someone who stops being a Board member will be appointed only until the person who has left had been appointed.

12.11. Notification if criteria for appointment to Board ceases to be applicable

- 1 A person appointed to the Board must notify the Board and the Director-General if during the term of their appointment the basis for their appointment ceases to be applicable.

If a person is appointed as a Board member because they fulfil certain criteria, they have to notify the Board and DEC if they no longer fulfil those criteria.

13. MEETINGS, DECISIONS AND REPORTING OF THE BOARD

13.1. Board meeting frequency

- 1 The Board must meet at least 4 times in each Financial Year.

The Board has to meet at least 4 times in each financial year.

13.2. Board Quorum

- 1 A quorum at any meeting of the Board will be seven members including (if Deputies to members are provided for) Deputies for any absent members and that more than half the number of members counted toward such quorum must be Aboriginal Owners appointed pursuant to s. 71AN(3)(a) including (if Deputies to such members are provided for) Deputies for any such absent Aboriginal Owner members.

- 2 Pending any regulation so to provide, any person who is obliged to be absent, temporarily, from any meeting as a result of the application of clause 13.4.1(d) must continue to be counted, during such absence, toward the existence of a quorum.

To make a proper decision, the Board must have at least 7 members (or their deputies) present, of which at least 4 have to be Aboriginal Owner members (or their deputies). If one of the members is temporarily out of the meeting because they have a conflict of interest in a matter, they can still be counted as part of the minimum number required at the meeting although they can't vote.

13.3. Protocols and procedures for the conduct of the business of the Board

- 1 The Board is to develop protocols and procedures for the conduct of the business of the Board within six months of its appointment.
- 2 The Board protocols and procedures must, at a minimum, meet relevant NSW Government guidelines for boards including "Conduct Guidelines for Members of NSW Government Boards and Committees" (November 2001), "Guidelines for NSW Board and Committee Members Appointments and Remuneration" (October 2004) as amended or replaced from time to time.
- 3 The protocols and procedures are to address the following, as a minimum, and may address any other matters the Board or the Minister considers appropriate:
 - (a) guiding principles;
 - (b) functions of the Board, including the functions listed in clause 12.2;
 - (c) roles and responsibilities of the chairperson and Board members;
 - (d) protocols for the passing of resolutions by the Board and voting at meetings;
 - (e) terms and conditions of Board appointment including term of appointment, remuneration and removal of members and creation of vacancies;
 - (f) protocols regarding when members are considered to be engaged in official duties;
 - (g) standards of conduct for Board members, which would include: due diligence, decision making, conflict of interest including Pecuniary Interest and non-pecuniary interests, fraud, corrupt conduct, acceptance of gifts, hospitality or benefits, use of public resources,

accountability of the Board for public expenditure, accountability of the Board for decision making;

- (h) public speaking and media contact;
- (i) conduct of Board meetings including location of meetings, quorums, voting, decisions of the Board, agendas for meetings, minutes of meetings, attendance at Board meetings including travel and insurance arrangements, assistance for members to attend meetings including family members, confidentiality of Board documents;
- (j) evaluation and reporting;
- (k) training and corporate governance including cultural awareness training for non Aboriginal Owner Board members;
- (l) specific issues regarding decisions of the Board with respect to Aboriginal cultural heritage, including Cultural Values, keeping Aboriginal Cultural Items, cultural information and reports;
- (m) Board member's duty as a Board member compared to their role as a representative of the body from which they are nominated; and
- (n) the nature, extent and timing of the reviews of the Lease pursuant to clause 6.8.

The Board must develop protocols and procedures within 6 months after it is appointed to set up how the Board will go about Board business. The protocols and procedures have to meet particular NSW Government guidelines.

13.4. Declaration of Pecuniary Interests by Members of the Board

1 Pending any legislative change so to provide:

- (a) if a member of the Board has a direct or indirect Pecuniary Interest in a matter that is being considered or is about to be considered at a meeting of the Board, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board;
- (b) a disclosure by a member of the Board at a meeting of the Board that the member:
 - (i) is a member, or is in the employment, of a specified company or other body, or
 - (ii) is a partner, or is in the employment, of a specified person, or
 - (iii) has some other specified interest relating to a specified company or other body or a specified person,is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person

which may arise after the date of the disclosure and which is required to be disclosed under (a) above;

- (c) particulars of any disclosure made under this clause are to be recorded by the Board in the minutes of the meeting and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person;
 - (d) after a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines, be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter;
 - (e) a person does not breach (a) to (d) if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a Pecuniary Interest.
- 2 A contravention of sub-clause 1(a) to (d) does not invalidate any decision of the Board.

This clause sets out when a Board members needs to tell the Board about a conflict of interest and leave a meeting because it would not be proper for them to deal with that matter.

13.5. Declaration of non-pecuniary interests by Members of the Board.

- 1 If:
- (a) a member has a non-pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board; and
 - (b) that interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter;
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

If a Board member has a conflict of interest in a matter that is not financial, the Board member has to tell the Board about that non-financial interest.

13.6. Right to obtain independent advice

- 1 Despite any other clause in this Lease which might imply the contrary, the Board has an absolute right to seek independent professional advice from

persons who are not employees of DEC on such topics as the Board sees fit.

- 2 The Parties also agree that, should the Board choose to seek independent professional advice from persons who are not employees of DEC, there is no obligation on the Minister or the Director-General to provide the Board with supplementary funding for the purposes of obtaining that advice.
- 3 The costs of obtaining independent professional advice which relates to the management of the lands may be paid from the Account.

The Board is allowed to get independent advice from outside experts to assist it in making a decision. DEC does not have to provide funding for that advice; however, costs of obtaining outside advice may be paid from the separate rent account.

13.7. Copies of correspondence

- 1 If requested by the Minister or the Director-General, the Board will provide to the Director-General a copy of any correspondence to or from the Board with any third party within 14 days of the dispatch or receipt (as appropriate) by the Board of such correspondence.
- 2 The Director-General will provide to the Board a copy of any correspondence in relation to this Lease or the Lands with any third party within 14 days of the dispatch or receipt (as appropriate) by the Director-General of such correspondence.
- 3 The Land Council may request the Board, Director-General or Minister to provide it with copies of correspondence relating to the Worimi Conservation Lands or the Lease. In deciding whether to provide copies of correspondence to the Land Council, the Board, Director-General or Minister, as applicable, may consider privacy or freedom of information legislation when deciding whether disclosure under this sub-clause is appropriate.

If the Board communicates direct with other people, DEC can get a copy of any letters to or from the Board. If DEC communicates with other people about the lands, DEC needs to give the Board a copy of any letters to or from DEC. The Land Council may ask the Board, DEC and the Minister for any letters about the lands or the lease.

13.8. Annual report information on the Lands

- 1 The Director-General may request at an appropriate time each year that the Board provide information on the Board's management of the Lands to assist in preparation of DEC's Annual Report.

DEC may ask the Board to give information each year to assist in the preparation of DEC's Annual Report.

14. IMPLEMENTING BOARD DECISIONS

14.1. Giving directions to the Director-General

- 1 Wherever in the Lease an obligation is placed upon the Director-General, the Minister agrees to issue appropriate directions to the Director-General to ensure the observance of the particular obligation.

If this lease requires DEC to do something, the Minister will direct DEC to make sure that thing is done.

14.2. Direction by the Minister

- 1 The Minister agrees to have regard to the views of the Board prior to giving any direction pursuant to s.12 of the Act in respect of works or activities on the Lands.

Before directing DEC to carry out an activity on the lands (as allowed by the law) the Minister will take into account the views of the Board.

14.3. Minister's powers to direct Board

- 1 The Parties acknowledge that in accordance with s. 71AO of the Act, in the exercise of its functions, the Board is subject to the control and direction of the Minister except that the Minister may not give directions to the Board in relation to:
 - (a) the contents of any report, advice, information or recommendation that is to be or may be made or given by the Board; or
 - (b) any decision of the Board, that is not inconsistent with the Act and the Plan, relating to the care, control and management of Aboriginal heritage and culture within the Lands.
- 2 Subject to sub-clause 1, wherever the Lease places an obligation placed upon the Board, the Minister may issue appropriate directions to the Board in respect of the observance of the particular obligation.

If the lease requires the Board to do something, the Minister will direct the Board to do that thing to try and make sure it gets done. However, the Minister can't tell the Board what advice to give or what to do about the care, control and management of Aboriginal heritage if the Board is following the National Parks and Wildlife Act and the Plan of Management.

14.4. Exercise of statutory powers on lands by employees of Minister etc on the Lands

- 1 The Parties acknowledge that in accordance with s. 71AD(1)(h), DEC and the officers, employees and contractors of the Minister and the Director-General are (subject to any Plan adopted with respect to the Lands and to any directions given and supervision and oversight exercised by the Board) entitled to exercise on and with respect to the Lands any power, authority, duty or function conferred or imposed on any one or more of them by or under the Act or any other Act.
- 2 The Director-General acknowledges and agrees that in accordance with s. 71BH of the Act, the Director-General must, when exercising any power, authority, duty or function conferred or imposed on them under the Act in relation to management of the Lands (but subject to the requirements of the Act, this Lease and the Plan), have regard to the interests of the Aboriginal Owners.

DEC staff can carry out their lawful duties on the lands, but they must look after the interests of the Aboriginal Owners.

14.5. Giving effect to decisions of the Board

- 1 The Minister and the Director-General agree to do all such things as are necessary and within power to ensure that effect is given to decisions of the Board (except where the Minister has directed otherwise pursuant to s. 71AO of the Act) for:
 - (a) the care, control or management of the Lands, or
 - (b) the preparation of a Plan for the Lands, or
 - (c) payments from the Worimi Accounts.
- 2 In addition, to avoid any doubt, the Director-General agrees to direct the Regional Manager to give effect to decisions of the Board where the decision is one which could have been taken by the Regional Manager if the Lands were to have remained under the care, control and management of the Director-General.
- 3 In agreeing pursuant to this clause to implement or cause to be implemented a decision of the Board, the Director-General reserves the right not to implement or cause to be implemented any decision of the Board if the Board has not authorised the expenditure of sufficient money to give effect to the decision.

This means that DEC agrees to do what is necessary to implement decisions of the Board provided the Board has also authorised the money to pay for it.

14.6. Board to exercise functions in accordance with the Plan

- 1 The Board must exercise its functions in accordance with any Plan adopted with respect to the Lands.

If there is a Plan of Management for the lands, the Board has to act in accordance with that Plan. The Plan of Management is referred to in more detail in clause 15.1.

14.7. Urgent action

- 1 Where urgent action is required, the Minister or the Director-General, as required, may exercise all necessary powers and functions without having regard to the views of the Board.
- 2 The Minister or the Director-General, as applicable, must then notify the Board as soon as possible of any action taken and, where the action is of an ongoing nature, have regard to the views of the Board on the continuation or ongoing conduct of that action.

If an emergency occurs or quick action is needed, DEC can act without talking to the Board. However, the Board must be told as soon as possible so that it can then have a say on any action taken.

14.8. The relationship between the Board and the Director-General

- 1 The decisions of the Board with respect to the care, control and management of the Lands will be implemented by the Regional Manager giving appropriate instructions to relevant DEC officers to the extent that this is required to give effect to such decisions.
- 2 The Area Manager is responsible for the day-to-day management of the Lands as directed by the Regional Manager and in accordance with the decisions of the Board and the Plan.
- 3 Management operations on the Lands will take place in a way which is integrated with the overall responsibilities of Hunter Coast Area.
- 4 If structural arrangements within the DEC change, management operations on the Lands will be carried out by the unit within DEC with geographic responsibility for the Lands.

- 5 The Director-General, Regional Manager and the Area Manager will use their best endeavours to give effect to the joint management arrangement reflected in this Lease, including committing time to activities that contribute to these arrangements. This may include DEC staff mentoring, supervising and training any new Aboriginal staff employed from the Account, DEC staff preparing grant applications for community capacity building programs and DEC staff developing programs with other Government and non-Government organisations on joint management issues.

The DEC Regional Manager will be responsible for implementing Board decisions and will direct the DEC Area Manager on the day-to-day management of the lands. Operational works on the lands will be integrated with the whole Hunter Coast Area. DEC will give its time and effort to implement the joint management arrangements.

14.9. Joint Management Coordinator

- 1 A Joint Management Coordinator appointed pursuant to clause 17.1 and 17.2, will be supervised by the Area Manager in the exercise of that person's day-to-day activities and responsibilities whilst remaining responsible for implementation of specific decisions of the Board.
- 2 The Joint Management Coordinator will be involved cooperatively with the Board members in ensuring that effect is given to the decisions of the Board with respect to the care, control and management of the Lands and will:
 - (a) monitor the implementation of the decisions of the Board;
 - (b) provide reports to the Board on the implementation of the Board's decisions;
 - (c) ensure the Board has appropriate information on which to base decisions;
 - (d) develop and assist in the development of protocols referred to in clause 13.3;
 - (e) coordinate Board meetings as needed;
 - (f) implement communication mechanisms between the Board and the Director-General; and
 - (g) manage the day-to-day organisation of the business of the Board, including the taking of minutes, arranging transport, accommodation, meeting venues and the like.

If a Joint Management Co-ordinator is appointed that position will report to the DEC Area Manager and will manage day-to-day Board business, e.g. setting up meetings, making sure the Board has necessary information.

15. PLANS AND LAND USE PLANNING

15.1. Preparation of a Plan

- 1 The Board will prepare a Plan for the Lands in consultation with the Director-General that is appropriate for the cultural landscape.
- 2 To assist the Board in meeting this responsibility, the Director-General will assist by preparing background reports, providing resource information, facilitating community consultation and engagement, preparing draft planning documents and undertaking any other activities related to the Plan as required by the Act.
- 3 To reflect the need for coordinated management for the Worimi Conservation Lands, it is the intention of the Parties that there will be one Plan for the Worimi Conservation Lands.
- 4 To the fullest extent practicable, the Director-General will prepare one Plan for the Lands, the Part 4 Lands and any Part 11 Lands.
- 5 The Director-General will consult with and have regard to the views of the Board about the preparation of the Plan as it applies to the Part 4 Lands and any Part 11 Lands.
- 6 The Board may recommend to the Director-General that those parts of the Plan applying to the Lands which they think should also apply to the Part 4 Lands and any Part 11 Lands.
- 7 The Minister will use his best endeavours to introduce legislation within 12 months of the commencement of the Lease to allow the Director-General and the Board to agree that a Plan relating to the Part 4A Lands may extend and apply to other land reserved under the Act, including the Part 4 Lands, and be given effect to by the Board.

The Board will prepare a Plan of Management for the lands in consultation with DEC. DEC will assist by doing things like the background studies and consultation. The one plan will also cover the part of the beach managed by DEC. The Board and DEC will work together to prepare one Plan. The Minister will try to introduce legislation so that in the future there can be one plan for the lands which automatically extends to that part of the beach managed by DEC.

15.2. Reviewing, amending or updating the Plan

- 1 The Director-General will assist the Board to review, amend or update the Plan, in accordance with the Act, and will make recommendations to the Board about appropriate amendments to the Plan. This sub-clause does not prevent the Director-General from recommending amendments at any other time to the Board.
- 2 If one or more Plans have been prepared in relation to the Worimi Conservation Lands and any Part 11 Lands, to the fullest extent practicable, all plans will be reviewed at the same time.

The Plan will be reviewed, amended and updated and DEC has to help the Board do this. DEC also has to look at the plan for the part of the beach managed by DEC at the same time, to help keep the plan consistent.

15.3. Cost of the Plan of Management

- 1 The Director-General shall be responsible for the costs associated with preparing, reviewing, amending or updating the Plan including the costs of public exhibition of the draft plan, public consultations and other actions as required by the Act.
- 2 The Board shall be responsible for the costs of any additional requirements requested by the Board which are over and above that which the Director-General would normally expend on preparing, exhibiting, reviewing, amending or updating a plan of management.

The ordinary costs of preparing the Plan of Management for the lands will be paid by DEC. The Board will have to pay for any extra requirements that it wants.

15.4. Operational plans

- 1 In addition to and not inconsistent with the Plan, the Board may from time to time request the Director-General to prepare of specific operational plans for particular management issues.
- 2 The Plan must authorise the adoption and implementation of such additional specific operational plans.

This means that as long as the Plan of Management says so, the Board can develop specific detailed plans for specific issues (like weed control) when it needs to do so.

15.5. Environmental Assessment

- 1 The Director General must assist the Board with respect to its duties pursuant to s. 71BL of the Act.

DEC has to assist the Board with environmental impact assessment under planning laws.

15.6. Community development

- 1 The Plan must provide for Community Development purposes consistent with this Lease and subsequently prescribed by the Regulation.
- 2 The Minister agrees to use his best endeavours to have regulations made under the Act to define the expression "Community Development" in terms consistent with the definition of that expression used in this Lease.

The Plan of Management prepared by the Board will need to talk about community development activities and any community development facilities. The Minister will try and have the words "community development" mean the same thing in the Regulation as it does in this lease.

15.7. Subletting land

- 1 The Land Council reserves the right to request the Minister to grant a sub-lease, licence or other right for any reasonable part of the Lands for Community Development purposes and in accordance with the Plan.
- 2 The Minister agrees not unreasonably to refuse to grant such a sub-lease, licence or other right for this purpose where it is in accordance with the Act and the Plan.

The Land Council can ask the Minister to do things like sub-let part of the lands for community development and if the sub-lease would be reasonable and lawful, the Minister cannot refuse.

16. OBSERVANCE OF CULTURAL PRACTICES AND TRANSFER OF ABORIGINAL CULTURAL ITEMS

16.1. Reservation of Traditional Owner's Rights to Use

- 1 Aboriginal Owners of the Lands, and any other Aboriginal people who have the consent of the Aboriginal Owner Board members, are entitled (subject to this and any other Act applying to the Lands and any Plan) to

enter and use the Lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal Owners.

- 2 The above reservations are subject to the Act, any other Act or the Plan, and the directions or decisions of the Board.

This clause sets out the rights of Aboriginal Owners to go on to and use the lands in accordance with their traditions but they have to do so in accordance with the law, the Plan of Management and decisions of the Board.

16.2. Transfer of Aboriginal cultural items

- 1 The Director-General and the Land Council agree that, if directed to do so in writing by or on behalf of the majority of Aboriginal Owner Board members, the Director-General will transfer the Aboriginal Cultural Items which are in or on the Lands (to the extent that they may not have already been vested pursuant to the proclamation) to the Land Council pursuant to s85A of the Act, subject to the following conditions:
 - (a) the Land Council will be deemed to have included the Aboriginal Cultural Items as part of the Lands the subject of this Lease; and
 - (b) the Board will have care, control and management of the Aboriginal Cultural Items.
- 2 The Director-General agrees not to withhold, unreasonably, any consent sought by the Board pursuant to s. 90 of the Act to permit the Board to deal with an Aboriginal cultural item in a manner considered appropriate by the Board.

If requested by the Aboriginal Owner Board members, DEC will give the ownership of Aboriginal heritage items within the lands to the Land Council. The Board will have control of those items. Also if the Board wants DEC to consent to their lawful destruction, DEC cannot unreasonably refuse.

17. EMPLOYMENT, CONTRACTING AND TRAINING

17.1. Staffing Strategy

- 1 The Director-General and the Board will work cooperatively together to develop a staffing strategy which establishes positions for the management of the Lands including Aboriginal identified positions.

- 2 Proposed amendments to the staffing strategy (including those relating to the employment of DEC staff from the Account) must be submitted by the Board as part of the DEC forward estimates process referred to in 10.3.

DEC and the Board will work together to work out what staff are needed to manage the lands, including positions which will be specifically identified for members of the Aboriginal community.

17.2. Positions for local Aboriginal people

- 1 The Director-General will create and maintain up to 9 equivalent new full-time Aboriginal identified positions as determined in the staffing strategy which are funded from Recurrent Funds. The positions will have responsibilities relating to the administration or day-to-day care, control or management of the Worimi Conservation Lands.
- 2 If the Board decide, one of the positions may be a Joint Management Co-ordinator whose duties must be in accordance with clause 14.9.
- 3 The positions may be created and filled as permanent, temporary, cadet or trainee positions as determined by the Board and the Director-General.
- 4 If no suitable applicants are available for an Aboriginal identified position, the position may be re-advertised as a temporary non-identified position or as an Aboriginal identified position at a lower grade or on a trainee basis. Where a position is temporarily filled in this way, towards the conclusion of any such temporary contract the Director-General will discuss with the Board whether the position should be re-advertised as an Aboriginal identified position.
- 5 The Director-General must consult under clause 12.4 prior to creating and filling any positions referred to in clause 17.2 which are to be interviewed before the appointment of the Board.

The equivalent of up to nine new full time positions specifically for local Aboriginal people will be created by DEC to work on the management of the lands. The Joint Management Co-ordinator position referred to clause 14.9 can be one of these jobs. This clause also says what happens when these positions cannot be filled by a local Aboriginal person.

17.3. Application of the Public Sector Employment and Management Act 2002

- 1 All positions established under the staffing strategy (regardless of the funding source for that position), are subject to the *Public Sector Employment and Management Act 2002* and will be employees of DEC.

This means that everyone agrees that all DEC positions (including Aboriginal positions) are subject to all normal public service rules.

17.4. Selection procedures

- 1 The Director-General must specify as an essential criteria for the appointment or employment of any Aboriginal identified position that will take part in the administration or care, control or management of the Worimi Conservation Lands, that the person have knowledge and a Cultural Association with the local area and Local Aboriginal People.
- 2 Subject to sub-clause 3, the Board is entitled to one (1) person nominated by them to be a member of any selection committee convened to consider applicants for appointment to a position with DEC where the duties and functions of the position require the officer to be responsible for, or to be substantially involved in, the administration or day-to-day care, control or management of the Worimi Conservation Lands.
- 3 The Board must be entitled to nominate the majority of persons on any selection committee convened to consider applicants for appointment to a position with DEC that is:
 - (a) funded from the Account (whether or not the position is an Aboriginal identified position), or
 - (b) an Aboriginal identified position where the duties and functions of the position must require the officer to be responsible for, or to take part in the day-to-day care, control or management of the Worimi Conservation Lands.

This clause outlines the requirements for selecting people for the new Aboriginal positions and for other positions involving the management of the lands. The Board will have one or more representatives on the selection panels.

17.5. Implementation of Aboriginal Employment and Development Strategy

- 1 The Minister undertakes, including with respect to the Lands, to use the Minister's best endeavours to implement the Aboriginal Employment and Development Strategy 2002–2006 which replaced the Aboriginal Employment and Training Plan 1991-1996 and to implement any plan replacing that Strategy and, in particular, any timetable set out in such a plan.

The Minister will promote Aboriginal training and employment within DEC.

17.6. Training of DEC staff

- 1 The Director-General must ensure that Aboriginal persons employed by DEC in the administration or care, control or management of the Worimi Conservation Lands or whose duties of employment will substantially involve them in the administration or care, control or management of the Lands, receive training in their work.
- 2 The training of Aboriginal persons pursuant to this clause may take the form of on-the-job training or attendance at structured internal courses of study provided by the Director-General or attendance at an external course of study determined by the Director-General in consultation with the Board.
- 3 The training of Aboriginal persons whose employment is funded from Recurrent Funds must be provided and paid by the Director-General within the course of employment of the employee.
- 4 The training of Aboriginal persons whose employment is funded from the Account must be provided by the Director-General, subject to any additional costs being met by the Board.

DEC will make sure that Aboriginal people working at the lands will be properly trained to carry out their jobs. This clause also says that either DEC or the Board will pay for the training.

17.7. General Training for Board Members

- 1 The Director-General will provide Board members and any Deputies with training to assist them in undertaking their functions as Board members as soon as possible after their appointment.
- 2 As a minimum Board training will address:
 - (a) the obligations and duties of the Board;
 - (b) the issues listed in clause 13.3;
 - (c) their legislative responsibilities under land management legislation (including legislative responsibilities under the Act, *Rural Fires Act 1974*, *Noxious Weeds Act 1993*, *Rural Lands Protection Act 1998*,

Pesticides Act 1999, Heritage Act 1977 and Wild Dog Destruction Act 1921); and

- (d) their responsibilities in relation to recruitment and employment issues.
- 3 The Board will at least once a year assess the training needs of Board members, including in the areas listed in clause 13.3 and will arrange for appropriate training to be undertaken.
- 4 The Minister and the Director-General must use their best endeavours to ensure that Board members have access to appropriate DEC training courses.
- 5 Board members must have access to appropriate DEC training courses subject to availability of places and the Board meeting any additional costs.

Soon after they are appointed, Board members will have training on issues related to their place on the Board, including their legal responsibilities. An assessment of training needs has to be done each year and the appropriate training arranged. Also, Board members should be able to access DEC training.

17.8. Cultural awareness training for the Board and DEC officers

- 1 The Minister agrees that all persons appointed to the Board and their Deputies, who are not Aboriginal Owners, will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board as soon as practicable after appointment of that person.
- 2 The reasonable cost of cultural awareness training for Board members and Deputies will be met from the Board's funds.
- 3 All DEC officers who are not Traditional Owners of the Lands who are appointed to or are to act for any continuous period longer than two months in:
 - (a) the position of Regional Manager; or
 - (b) any DEC positions located on or exclusively or predominantly involved in the management of the Lands;will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board as soon as practicable after that appointment.
- 4 The reasonable agreed cost of cultural awareness training for such DEC officers who are not Traditional Owners of the Lands will be met by the Director-General.

Non-Aboriginal Board members and DEC staff working on the lands will have to do cultural awareness training run by or approved by the Board. DEC will pay the costs of that training.

17.9. Contracts and Services

- 1 This clause applies to the procurement of all goods, services and works by quotation, contract, tender, and expression of interest or other manner consistent with Government practice for the care, control or management of the Worimi Conservation Lands where there is no preferred Government supplier which must be used for those goods, services or works.
- 2 The Director-General must create and maintain a register of
 - (a) local Aboriginal organisations (including the Land Council) or individuals; or
 - (b) organisations that will implement specific measures for the benefit of Local Aboriginal People;that are able to provide services in accordance with this clause.
- 3 The Board may recommend the Director-General set conditions for the procurement of goods, services and works for the care, control or management of the Lands.
- 4 To the fullest extent possible, the Board will consider setting conditions as referred to in sub-clause 3 that give preference to:
 - (a) the Land Council;
 - (b) local Aboriginal organisations or individuals; or
 - (c) organisations that will implement specific measures for the benefit of Local Aboriginal People.
- 5 When issuing the conditions of tendering for more substantial or ongoing works or services on the Worimi Conservation Lands the Director-General agrees to ask tenderers to provide information about:
 - (a) whether they are an Aboriginal organisation or individual or have employed Local Aboriginal People over a period of time;
 - (b) any measures the tenderer intends to implement for the benefit of Local Aboriginal People (including extending employment opportunities to Aboriginal people, training or otherwise enhancing the business skills of Aboriginal people and providing economic benefits to Aboriginal communities) as part of the contract;

- (c) examples of how similar measures have been implemented in past contracts undertaken by that tenderer; and
 - (d) any other information that is relevant to the evaluation of any additional conditions included in the tender conditions on the recommendation of the Board.
- 6 To the extent permitted by law and in accordance with applicable Government policies, when assessing tenders the Director-General agrees to give preferential weighting (in accordance with the applicable tendering and evaluation criteria in the conditions of tendering) to those conditions recommended by the Board under sub-clause 3.
 - 7 The Board may nominate a representative on any tender evaluation committee established by the Director-General that considers tenders for work on the Worimi Conservation Lands.

This clause explains how DEC and the Board, when choosing an organisation to carry out works on the lands, can ask that services are provided by Aboriginal organisations, including the Land Council, or organisations that otherwise provide benefit the Aboriginal community.

17.10. Community capacity building, training and other opportunities

- 1 The Board may establish a community capacity building program for the education and skills development training of Aboriginal people in skills relevant for employment in DEC and for the management of, and activities associated with, the Worimi Conservation Lands using funds controlled by the Board.
- 2 If requested by the Board, the Director-General will assist the Board in the establishment of a community capacity building program relating to the Worimi Conservation Lands which builds on the employment skills project already undertaken by DEC.
- 3 Assistance offered by the Director-General will be for the education and skills development of Aboriginal people in areas relevant to the care, control and management of the Worimi Conservation Lands and other areas relating to the Worimi Conservation Lands.
- 4 Such assistance may be: financial assistance, unpaid opportunities to participate in park management and training programs such as Aboriginal sites surveys and management programs, wildlife surveys, specialist assistance with relevant external funding applications and traineeship programs, volunteer and work experience programs.
- 5 The Director-General and the Board agree to cooperatively seek opportunities for training programs provided by other organisations to

complement or extend programs funded by the Board or the Director-General.

The Board may establish, with the help of DEC, a training program for Aboriginal people which will help them develop the skills necessary to work on the lands and other nearby areas.

18. LAND MANAGEMENT AND OTHER STATUTORY FUNCTIONS

18.1. Obligations of the Board to observe land management statutes

- 1 The Board must comply with the provisions of the Act and any other Act applying to the Lands and any Plan adopted with respect to the Lands.
- 2 The Parties agree that the Board will be responsible for performing all obligations of owners, occupiers and managers of the Lands under, but not limited to, the *Rural Fires Act 1997*, *Noxious Weeds Act 1993*, *Pesticides Act 1999*, *Wild Dog Destruction Act 1921*, *Heritage Act 1977* and (in relation to pests) *Rural Lands Protection Act 1998*.
- 3 The Land Council agree that if they receive a notice pursuant to any of the Acts mentioned in this clause they will as soon as practicable (and in any event within 14 days) advise and provide a copy to the Board via the Director-General; and will not carry out any activity on the Lands relating to those Acts except with the consent of the Board.
- 4 The Director-General will give two weeks' written notice to the Board before exercising functions pursuant to the *Rural Fires Act 1997*.
- 5 The Director-General agrees to consult with the Board, to consider any written submissions made by the Board with respect this clause and notify the Board in writing of the Director-General's decision.
- 6 The Minister and the Director-General will indemnify the Land Council against any liabilities under Acts referred to in this clause, except where liability has arisen in relation to a failure of the Land Council to comply with sub-clause 3.
- 7 The Director-General will notify the relevant local Rural Lands Protection Board, the Port Stephens Council and Rural Fire Services to advise of the commencement of the Lease arrangements and to request that any legal instruments which are served on the Land Council as the owner of the Lands are also copied to the Director-General.

This means that the laws and rules about managing land, protecting animals, plants and the environment apply to the Board and that if DEC has to carry out any legal duties in relation to the lands, DEC will let the Board know. This clause also sets out the relationship between the Land Council and the Board for those laws and rules about managing land.

18.2. Exercise of power

- 1 Upon reservation of the Worimi Conservation Lands as a National Park, Regional Park and State Conservation Area, the Director-General is vested with powers and functions pursuant to the Act and other legislation.
- 2 The Director-General agrees not to exercise or permit to be exercised, without consulting the Board after its appointed, any power vested in the Director-General under the Act, or any other legislation, which would have an exclusive, or non exclusive, impact on the Lands or any Aboriginal Cultural Items or Cultural Values on the Lands.
- 3 The Director-General agrees to provide to the Board as soon as practicable a copy of any statutory instrument issued by or on behalf of the Minister or the Director-General which relates exclusively to the Lands.

This clause means that even though DEC has legal powers in relation to the lands, DEC agrees not to use those powers unless the Board knows.

18.3. Annual works program

- 1 Management operations on the lands will be detailed in an annual works program which will be agreed between the Board and the Area Manager. If new or unexpected work is required the Board will consult with the Area Manager in order to program the works.

The Board and the DEC Area Manager will agree each year on what works will have to be carried out on the lands. The Board agrees to let the DEC Area Manager know of any extra works needed throughout the year, so that the DEC Area Manager can plan when to do those works.

18.4. Occupational health and safety

- 1 The Board must comply with all relevant legislation and DEC policies relating to occupational health and safety.

The Board will need to meet all occupational health and safety rules.

18.5. Consultation when exercising functions relating to Aboriginal Cultural Items or Aboriginal Places

- 1 The Director-General agrees to notify and have regard to the views of the Board when exercising functions relating to Aboriginal Cultural Items or Aboriginal Places that relate to the Lands.
- 2 The Director-General is responsible for exercising certain statutory functions relating to Aboriginal Cultural Items or Aboriginal Places.

When DEC has to exercise legal powers in relation to Aboriginal cultural heritage on the lands, DEC will act on the views of the Board.

18.6. Threatened species legislation

- 1 The Minister and the Director-General agree to consult with and have regard to the views of the Board as soon as practicable after commencing the preparation and prior to completion of any draft Priorities Action Statement, Recovery Plan or Threat Abatement Plan under the *Threatened Species Conservation Act 1995* for species whose habitats include all or part of the Lands if the proposed plan may include steps to be implemented on or in the vicinity of the Lands.
- 2 The Minister and the Director-General agree not to exercise or permit to be exercised any power under the *Threatened Species Conservation Act 1995* which relates to or impacts on the Lands without the consulting with the Board.
- 3 The Minister and the Director-General agree not to carry out or cause to be carried out any mandatory requirement under the *Threatened Species Conservation Act 1995* without consulting with and having regard to the views of the Board.
- 4 The Minister agrees not to cause the Board to be declared a public authority for the purposes of the *Threatened Species Conservation Act 1995* without the consent of the Board as to the terms of any such declaration.

This clause deals with how laws related to threatened species will work on the lands, including input of the Board.

18.7. Application of other land management legislation

- 1 The parties acknowledge that s.44 of the Act, as applied by s.47K and 47ZA, provides that nothing in the Act affects the operation of the *Fisheries Management Act 1994* in relation to lands within a National Park, State Conservation Area or Regional Park.
- 2 The parties acknowledge that s.47J of the Act provides for the modified application of certain mining legislation to lands within a State Conservation Area.

This clause states that there are other fishing and mining laws that apply to the lands and this lease doesn't change how those laws apply.

18.8. Use of DEC Equipment and Services

- 1 Mobility and temporary assignment or transfer of DEC equipment must be permitted so that equipment located elsewhere in other DEC areas can be also used on the Worimi Conservation Lands when its use is requested by the Board and it is available for such use.
- 2 Reciprocal arrangements will apply, in the same way, to advice or other professional services and advice from other DEC officers.
- 3 A right of access to the Lands with the consent of the Board, does not give any rights to use of DEC goods, plant, machinery or utilities on or for the Lands without the express authorisation of the Board.
- 4 The Board may authorise the use of DEC equipment by contractors in a manner consistent with DEC policy and/or practice on the use of DEC equipment.

This means that equipment located elsewhere in DEC can be used at the lands and the Board can let contractors use that equipment. Also, advice from other DEC staff will be available to the Board.

18.9. Rights of public access

- 1 The public has a right of general access to the Lands, in accordance with s. 71AD(1)(m) of the Act and this general right of access is to be subject to the Act and the Plan.
- 2 The principles to be applied by the Board which will guide the management of public access to the Lands are:

- (a) the protection of Cultural Values and continuation of cultural practices;
 - (b) the promotion and enhancement of appropriate use, understanding and enjoyment of the Lands;
 - (c) ecological sustainability;
 - (d) regional planning;
 - (e) safety, security, or protection of the Lands; and
 - (f) equity.
- 3 The Board will be able to apply any declarations of restrictions on access to visitors, staff or Aboriginal Owners as the Board considers appropriate. Because the Lands are of special cultural significance to the Traditional Owners a number of specific matters relating to restrictions on access should be set out in this Lease. These are:
- (a) the guiding principle of managing public access will be to meet visitor needs to increase their awareness, understanding and appreciation of the cultural significance of the Lands to the Traditional Owners;
 - (b) in addition, public access will be managed to increase visitor awareness, understanding and appreciation of the nature conservation values of the Lands;
 - (c) the Board having the power to preclude or restrict public access to ceremonial places or other cultural sites by zoning or other mechanism including restrictions based on gender necessary for the cultural protection of such ceremonial places or other cultural sites;
 - (d) some areas may be permanently or temporarily zoned by the Plan for Worimi cultural and management purposes. Such areas may not generally be open to public access;
 - (e) the Board may, at the request of the Land Council or a group of Aboriginal Owners or on its own volition:
 - (i) declare the whole or part of the Lands a "no alcohol" area for short periods for cultural reasons;
 - (ii) declare a defined area of the Lands to be a "no alcohol" area for any term or permanently, by prohibiting the possession and/or consumption of alcohol within the Lands or the defined area; and
 - (iii) the Board must define the meaning of the term "alcohol" for the purposes of such prohibition; and

- (f) access for self reliant bush walking will be managed in a manner which ensures safety and protects culturally sensitive areas and Nature Conservation Values.

This clause sets out some of the principles that will guide the Board in setting conditions for public access to the lands.

18.10. Reservation of Right of Entry and Inspection

- 1 For the purpose of ensuring and monitoring compliance with this Lease, the Land Council reserves a right in favour of any person authorised in writing by the Land Council, after reasonable notice to the Board and at all reasonable times, to enter upon the Lands or any part of them and to inspect the Lands and any improvements on the Lands.
- 2 Such access is to be subject to:
 - (a) such reasonable constraints as may be contained in the Plan;
 - (b) such reasonable restrictions as may be determined by the Board as being necessary for reasons of safety, security, privacy or protection of the Lands; and
 - (c) such restrictions as may arise under any industrial award or agreement relating to any staff residences on the Lands.

This means that the Land Council can, subject to some conditions like staff privacy, send a person into the lands to make sure the lease is being obeyed.

18.11. Agreement for mutual assistance

- 1 It is desirable that the management of the Worimi Conservation Lands and of other nearby land reserved under the Act take place in a co-operative framework involving the Board and the Director-General.

Co-operation between the Board and DEC and all the parks in the area is a good idea.

18.12. Land management arrangements with neighbours

- 1 Until any legislative amendment gives the Board powers such as those vested in the Director-General by s.146(3) of the Act, the Director-General agrees to enter into and give effect to any agreement reached by the Board, for the purpose of the management, maintenance or improvement of the

- Lands, with the owner or lessee of any other land concerning the management of that other land adjoining or in the vicinity of the Lands.
- 2 The Board may develop policies for the negotiation of conservation agreements under the Act with neighbouring land owners.
 - 3 The Director-General agrees to provide the Board with information about opportunities for it to participate in the development of strategies relating to regional land use planning and resource management.

If the Board decides to enter into an agreement with the owners of neighbouring land to benefit the management of the lands, DEC will carry out that decision.

18.13. Consistent management of adjacent land

- 1 The Director-General acknowledges the importance of working co-operatively with the Board to ensure the Worimi Conservation Lands and any Part 11 Lands are jointly managed in an integrated and consistent manner.
- 2 To the fullest extent practicable, the Director-General will exercise care, control and management of the Part 4 Lands in a way that is consistent with the management direction set by the Board in relation to the Lands.
- 3 To the fullest extent practical, the Minister and the Director-General will manage any Part 11 Lands in a way that is consistent with the management direction set by the Board in relation to the Lands.
- 4 Joint management of the Part 4 Lands and any Part 11 Lands may be achieved through mechanisms such as a memorandum of understanding with the Board, a single plan of management, the Board acting as an Advisory Committee for the Part 4 Lands and Part 11 Lands, or an agreement under s.146(3) of the Act which is approved by the Board.
- 5 As soon as practicable after the appointment of the Board, the Director-General will commence discussions with the Board about the joint management arrangements it wishes to establish in relation to the Part 4 Lands.
- 6 The Minister acknowledges that the proposed legislative amendments referred to in clause 15.1.7 will be an important step in facilitating joint management arrangements for the Part 4 Lands.

It will be best if the neighbouring land that is also a reserve managed by DEC is managed in co-ordination with the lands. The Board and DEC will talk about how this can be achieved.

18.14. Access to land surrounded by land reserved under the Act

- 1 The Land Council may seek an easement, right of way or licence from the Minister over the Lands for the purpose of access to any LALC Lands which are completely or partially surrounded by land reserved under the Act. Such a request must not be unreasonably refused.
- 2 To the extent permitted by the Act, until such time as a Plan is adopted for the Lands, the Minister or the Director-General shall not restrict access by the Land Council across the Lands to any LALC Lands that are completely or partially surrounded by land reserved under the Act.
- 3 The Minister and the Director-General agree to support (in the same manner agreed to in clauses 2.13.2 and 2.13.3) the grant and transfer of any land claim lodged by the Land Council in respect of a small strip of land coming off the southern most end of the existing public road reserve shown in purple colour on the Northern Boundaries Map that would provide an area of land for the extension of the public road reserve or other form of legal access to the land shown in pink hatching on the Northern Boundaries Map.
- 4 If all or part of the land claim referred to in sub-clause 3 is granted under the Land Rights Act or otherwise transferred to the Land Council, the Director-General will ask the Department administering the *Crown Lands Act* from time to time to give favourable consideration to extending the existing public road reserve shown in purple hatching on the Northern Boundaries Map to provide a direct legal access to the lands shown in pink hatching on the Northern Boundaries Map.

The Minister and the Land Council both agree to carefully consider requests for easements or other rights of way, so that there can be proper access to the Land Council's land. The Minister and DEC will work closely with the Land Council to improve access to nearby land owned by the Land Council.

18.15. Removal of road reserves across the Lands

- 1 The Land Council and the Director-General agree to discuss whether the public road reserve which provides access to the LALC Lands known as "The Tongue" is required as part of longer term management strategies for regulating access to and across the Lands.
- 2 The Director-General agrees to support any road closure or similar application made by the Land Council which relates to the Lands.

The Land Council and DEC will talk about the road to the land called "The Tongue" and whether that road is still really needed across the park to get access to "The Tongue".

18.16. Implementation of Master Plan for Fern Bay subdivision

- 1 The Parties acknowledge that a Master Plan has been prepared in relation to a development proposal at Lot 16 in Deposited Plan 258848 adjacent to the Worimi Conservation Lands and was adopted by the Minister for Planning on 8 August 2006. The instrument adopting the Master Plan includes requirements A1 and A2 in Schedule 3 of that instrument requiring ecological offset measures to be undertaken at part of the Additional Lands and the provision of public access from Lot 16 in Deposited Plan 258848 to the particular Additional Lands and related access measures. The Parties agree to participate in any negotiations which are required to implement requirements A1 and A2 referred to above and to take all reasonable steps to approve or undertake any works or to implement any subsequent related agreement to which they are a party in an expeditious manner.

The parties agree to participate in negotiations in relation to a nearby development at Fern Bay, in order to help implement any requirements set by the planning authority.

18.17. Management of neighbouring reserves

- 1 The Board and the Director-General may discuss the management of neighbouring reserves to ensure integrated management of land within the Hunter Region.

The Board and DEC agree to talk about the management of the neighbouring reserves so that the land management is coordinated.

18.18. Law enforcement on the Lands

- 1 Enforcement activities on the Worimi Conservation Lands in relation to the Act, or any other Acts for which the Director-General has primary or delegated responsibility are to be undertaken by DEC officers or as directed by the Director-General.
- 2 The Board may develop a law enforcement policy for implementation on the Lands.

DEC remains responsible for law enforcement on the lands, but the Board can develop a law enforcement policy which DEC can implement.

18.19. Commencement of prosecutions

- 1 The Director-General agrees not to authorise or permit to be authorised any prosecution (other than a prosecution arising from the issue of a penalty notice for an offence declared to be a penalty notice offence pursuant to the Regulation) arising out of any act or omission on or concerning the Worimi Conservation Lands without seeking the advice of the Board on the proposed prosecution.
- 2 The Director-General agrees to commence proceedings relating to offences that occur in relation to the Lands when requested to do so by the Board, unless the Director-General considers it would be unreasonable to do so.
- 3 The Director-General may commence such proceedings even if the Board has not requested to do so.
- 4 Nothing in this clause must be construed as limiting the right of the Land Council (or any other body or person) to bring proceedings in accordance with s. 176A of the Act.

The Board has a say in when DEC will prosecute offences in relation to the lands. The lease does not remove any existing rights of the Land Council to take other types of legal action.

18.20. Promotion of the Lands

- 1 The Director-General agrees to promote the Worimi Conservation Lands as part of the ordinary promotion of the national park reserve system of NSW and to consult and get the consent of the Board on any new and substantial mention of the Worimi Conservation Lands in DEC promotional publications prior to their printing and release.

This means that DEC agrees to promote the lands as a part of the whole national parks system in NSW and will consult the Board before releasing any new material which substantially mentions the lands.

19. FEES, LICENCES AND PERMITS

19.1. Setting of park entry and user fees

- 1 Prior to Board being established, entry, camping and any other fees for the Lands may be set by the Minister in consultation with the advisory group as set out in clause 12.4.
- 2 After the Board is established, entry, camping and any other fees for the Lands may be determined by the Board and set by the Minister in accordance with the Plan.

The Minister will establish entry fees prior to the set up of the Board. After the Board has been appointed, it will set the entry fees in accordance with the Plan and the approval of the Minister.

19.2. Commitment to establish separate vehicle entry fee

- 1 As soon as practicable after the commencement of the Lease, the Minister agrees to set a vehicle access fee that will apply to vehicles and will relate to the entry and use of the Lands. The amount will be broadly consistent with the beach vehicle access fee previously imposed by Port Stephens Council and DEC's park entry permit system. The fee will also allow entry and use of the Part 4 Lands, to extent that any access is lawfully allowed under the Act.
- 2 The vehicle access fee will be collected by the Director-General and paid into the Account.
- 3 The Minister agrees not to set a separate vehicle access fee in relation to entry or use of the Part 4 Lands.
- 4 The Board may request the Minister to review the vehicle access fee at least every four years.

The Minister agrees to set a separate vehicle entry fee. The vehicle entry fee will go towards the cost of managing the lands and there will not be another vehicle fee for people to go onto the part of the beach which is managed by DEC and not part of this lease.

19.3. Waiver of fees

- 1 The Board will develop a policy for approval by the Minister regarding the waiver of the payment of entry, camping or any other fees for non-commercial use of, or access to, the Lands. Such policy will provide for the waiver of fees for Traditional Owners, Aboriginal Owners and Land Council members.
- 2 Such use or access does not give any rights to use of the services, goods, plant, machinery or utilities on or for the Lands.

Some people, like Aboriginal Owners and Land Council members, can be exempt from paying the vehicle entry fees. Clause 26.7 in this lease says the Board and the Land Council will have to help DEC staff to identify the people who will be exempt, so the DEC staff does not accidentally charge the vehicle entry fees.

19.4. Continuation of existing licences, permits etc

- 1 The Parties acknowledge that the Lease is subject to any Existing Interest that is current on the date on which the Lands are vested in the Land Council.
- 2 Details of Existing Interests for which the Parties are aware as at the commencement of the Lease are listed in Schedule 6 of this Lease.

This means that all existing permission to use the lands will continue when the lands are transferred to the Land Council.

19.5. Access from Gan Gan Road to certain LALC Lands

- 1 The Parties acknowledge that the Land Council has an Existing Interest granted by the Lands Minister in relation to the Lands to provide access to the land shown in pink hatching on the Northern Boundaries Map and to adjacent LALC Lands.
- 2 The Minister undertakes to continue to approve the renewal or extension of this Existing Interest in accordance with the Act for the term of the Lease.

The Land Council's access to some of the other land it owns will be continued if that access is through the land managed by the Board.

19.6. Hunter Water

- 1 The Parties acknowledge that the Lands include special areas within the meaning of the *Hunter Water Act 1991* and that the Northern Stockton Aquifer has been identified for potential use as an emergency drought reserve.
- 2 The Parties acknowledge that the provisions of the Act cannot prevent, prohibit or require authorisation for development undertaken by Hunter Water for the purposes described in s.185A as enacted by the *National Parks Estate (Lower Hunter Region Reservations) Act 2006* including activities associated with groundwater extraction from the Northern Stockton Aquifer.
- 3 The Parties acknowledge that Hunter Water has an Existing Interest in relation to the Lands, namely an easement the details of which are referred to in Government Gazette No.144 on 24 December 1999 at pages 12534-12535.

Hunter Water has some interests in the groundwater of the lands which are important for when there is a bad drought. The law says that Hunter Water cannot be prevented from extracting this groundwater.

19.7. Granting or renewal of licences, permits etc

- 1 The Parties acknowledge that any power to grant, extend or extinguish any interest, licence, lease, franchise, easement, right of way, authority or consent of a kind referred to in clause 19.4 or otherwise under the Act or any other Act may only be exercised with the approval of the Board provided that notice pursuant to clause 19.10 (when required) has been given.
- 2 In the case of such extension or extinguishment, the Parties acknowledge that the extension or extinguishment is subject to any instrument under which the interest was granted, provided that the purposes of such interest, licence, lease, franchise, easement, authority or consent is not in conflict with any provision of this Lease, the Act, Regulation or the Plan.

This means that the extension of licences and other interests must have Board approval.

19.8. Commercial activities

- 1 The Parties agree that it is desirable that any proposed commercial activities to be carried out on the Part 4 Lands, the Lands and/or the LALC freehold Lands in the vicinity of the Lands (such as commercial tour operations and commercial filming) are managed in an integrated and streamlined way.
- 2 As soon as practicable after the commencement of the Lease, the Director-General will commence discussions with the Land Council about an agreement under s.146(3) of the Act to:
 - (a) provide a single point of contact for people seeking to undertake commercial activities at the Part 4 Lands, the Lands and/or at all or some of the LALC Lands in the immediate vicinity of the Lands; and
 - (b) a single framework for regulating and managing those activities.
- 3 The agreement may address the following issues:
 - (a) development of a single application form which relates to particular commercial activities on the Part 4 Lands, the Lands and the particular LALC Lands which are subject to the agreement;

- (b) a process for the agreement of standard conditions which would be attached to a single licence or consent;
- (c) payment of fees to a single contact point;
- (d) equitable sharing between the Board and the Land Council of any fees paid in relation to the commercial activities which are subject to the agreement;
- (e) communication of the joint arrangements to current and prospective commercial operators;
- (f) meeting the costs of implementing and administering any arrangements developed under the agreement from revenue generated by the relevant commercial activities;
- (g) arrangements for ensuring commercial activities are conducted in compliance with conditions;
- (h) proposals for extending the Regulation to all or part of the LALC Lands which are subject to the agreement;
- (i) access to the LALC Lands held by the Land Council;
- (j) insurance to be held by commercial operators; and
- (k) other matters as agreed by the Parties to the agreement.

All of the administrative procedures that have to be set up to allow a person to conduct commercial activities on the lands will be done in an integrated way to include surrounding land owned by the Land Council too, so that the procedures are simple and efficient for those lands.

19.9. Tour operator permit holders

- 1 This clause applies subject to the terms of any agreement entered into under s.146(3) for the purposes described in clause 19.8.
- 2 The Lands will not be added to any tour operator's permit without the approval of the Board.
- 3 Where functions relating to commercial tour operators are to be exercised by the Minister or the Director-General under the Act the Board may recommend to the Minister or the Director-General, as applicable, the conditions to be set for authorised tour operators operating on the Lands.
- 4 Where functions relating to commercial tour operators are to be exercised by the Board as a Park Authority under the Regulation, the Board will consult with and have regard to the views of the Director-General when setting conditions for such authorised tour operators.

- 5 The Board may recommend to the Minister or the Director-General as applicable that specific permits authorising tour operators to operate on the Lands under Part 12 of the Act be revoked.
- 6 The Parties agree that any per capita charge on visitors brought to the Worimi Conservation Lands by authorised tour operators will be paid into the Account.
- 7 Permits of tour operators current at the date of commencement of the Lease will be recognised by the Board for the unexpired period of such permit.
- 8 Where five or fewer reserves are on the schedule for any individual tour operator's permit, the fee for that permit is to be paid pro rata into the Account.
- 9 The Board may require, when considering applications for the issue or renewal of tour operators permits relating to the Lands, the use of trained Traditional Owners to ensure appropriate interpretation of Cultural Values.

This clause deals with permitting commercial tour operators to operate on the lands, including when the Board can give approval, or make recommendations to DEC or the Minister in relation such permits. It also provides that fees from such permits will go into the management of the lands.

19.10. Notice relating to issue or renewal of licences for commercial activities

- 1 The Minister will direct the Board that no new licences will be issued or existing licences renewed for commercial activities on the Lands be approved by the Board unless notice of such new licence or renewal has been given to all Board members at least one month prior to the meeting of the Board which is to consider the matter.

This means that no new approvals for commercial activities can be given by the Board unless one month's notice is given to the Board members of the application before the Board meeting that decides on the application.

19.11. Visitor monitoring

- 1 The Minister may direct the Board to take part in DEC state-wide monitoring of Park visitor numbers.
- 2 The Director-General agrees to implement, to the extent reasonably practicable, any modifications to the state-wide monitoring program which

are requested by the Board to increase the accuracy of information concerning visitor numbers to the Worimi Conservation Lands.

This clause deals with the monitoring of visitor numbers at the lands.

20. HOLDING OF PROPERTY AND ACCEPTANCE OF GIFTS

20.1. Acknowledgment of the Land Council holding other property on behalf of Aboriginal Owners for use as directed by the Board

- 1 The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that all property (other than Aboriginal Cultural Items) transferred to the Land Council by or as a consequence of this Lease is held by the Land Council on behalf of the Aboriginal Owners for use as directed by the Board for the care, control and management of the Lands (and, if requested by or on behalf of the Director-General, of any other lands reserved under the Act).

The property dealt with by this lease is held by the Land Council on behalf of Aboriginal Owners.

20.2. Gifts etc on behalf of Aboriginal Owners

- 1 The Minister and the Director-General agree to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Aboriginal Owners in respect of the Lands is transferred to the Land Council on their behalf.

This means that if anyone leaves something in their will or gives something to the Minister for the Aboriginal Owners, the Minister will make sure that the gift is made the property of the Land Council on behalf of the Aboriginal Owners.

20.3. Gifts etc on behalf of the Board

- 1 The Minister and the Director-General agree to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Worimi Conservation Lands or the Board is credited to the Account (if in monetary form) or transferred to the Land Council (on behalf of the Aboriginal Owners) to be dealt with as directed by the Board (if in non-monetary form).

This means that if anyone leaves money in their will or gives money to the Minister for the lands or the Board, the Minister will make sure that the money is paid into the accounts set up for the lands. If anyone leaves something in their will that isn't money or gives it to the Minister for the lands or the Board, the Minister will make sure that the gift is made the property of the Land Council on behalf of the Aboriginal Owners to be used by the Board.

21. INTELLECTUAL PROPERTY

- 1 Intellectual property in any traditional art or designs on the Lands must, to the extent it is currently vested in the Director-General, be vested in the Land Council on behalf of the Aboriginal Owners from the commencement of this Lease.
- 2 The Parties further agree that, to the extent that any other intellectual property (such as but not confined to objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation) and including; human remains and tissues, all items of immovable (including burials, sacred and historically significant sites) and movable cultural property, literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages, words, symbols and designs) and also traditional, scientific, agricultural, technical and ecological knowledge (including genes, tissues, cultigens, medicines pharmaceutical products, and the phenotypes of flora and fauna) derived exclusively from the Lands is vested in the Crown and within the administration of the Minister or the Director-General, this Lease transfers such intellectual property to the Land Council on behalf of the Aboriginal Owners.
- 3 The Director-General will not use such intellectual property without the written consent of the Land Council and approval of the Board.
- 4 The Land Council or the Board may set conditions on the use of the intellectual property.
- 5 The Land Council or the Board agree not to charge a fee if the use of that intellectual property is for the promotion of the Worimi Conservation Lands or of the national park reserve system.
- 6 The Minister agrees to use his best endeavours to seek to have transferred to the Land Council any intellectual property of the types covered by sub-clauses 1 and 2 which is vested in the Crown and which is not within the administration of the Minister or the Director-General.

This clause means that both known and unknown traditional art and other cultural property at the lands at the time that the land is granted to the Land Council will be owned by the Aboriginal Owners, through the Land Council, but the DEC can use them for free only to promote the lands.

22. CHANGES TO LEGISLATION

22.1. Minister seeking legislative change applying to the Lands but not applying solely to the Lands without consulting the Board and the Land Council

- 1 The Minister agrees not to introduce nor to cause to be introduced, without consulting the Board and the Land Council, any Bill into the NSW Parliament that would:
 - (a) apply to the Lands and affects the care, control or management of the Lands by the Board; or
 - (b) significantly affect any rights or powers of the Land Council or the Aboriginal Owners in regard to the Lands;whether or not such legislation is to apply solely to the Lands.
- 2 Where legislation subject to sub-clause 1, if enacted, would substantially diminish any rights or powers of the Land Council, the Board or the Aboriginal Owners under this Lease or the Act, the Minister will give at least four weeks' notice in writing of such introduction to the Board and the Land Council.
- 3 The Minister will give at least eight weeks' notice in writing of such introduction to the Board and the Land Council, any Bill into the NSW Parliament applying solely in respect of the Lands or applying solely to land (which includes the Lands) dealt with pursuant to Part 4A of the Act.
- 4 If the Minister becomes aware of any Bill which has been tabled in the Parliament which may apply to the Lands, the Minister will advise the Board as soon as practicable.
- 5 The Minister agrees to consider any written submissions made by the Board and/or the Land Council/s with respect this clause, have regard to the views of the Board and/or Land Council and will notify them in writing of the Minister's decision.

The Board and the Land Council have a say before the Minister can propose new laws in Parliament where those new laws will affect the lands. The Minister has to give the Board and the Land Council 4 weeks' notice if the rights of the Aboriginal Owners will be affected by a proposed Act and also has to inform the Board of other proposed Acts which might be introduced to Parliament by other parties.

22.2. Minister to consult on regulations

- 1 The Minister will consult the Board and the Land Council before the making, amending or repealing of any regulations:
 - (a) under the Act or the *Wilderness Act 1987*, *Threatened Species Conservation Act 1995*; or
 - (b) under any other similar Act administered by the Minister and where their implementation is the responsibility of the Director-General where such regulations apply to the Lands whether applying solely to the Lands or otherwise.
- 2 The Minister agrees to consider any written submissions made by the Board and the Land Council with respect this clause, have regard to the views of the Board and the Land Council and will notify them in writing of the Minister's decision.

This means that the Minister will not make any general rules that apply to the lands unless the Board and the Land Councils have been consulted first.

22.3. Minister not to make regulations applying solely to the Lands without consulting the Board and the Land Council

- 1 The Minister will not seek, without consulting the Board and the Land Council, to have made, amended or repealed any regulations applying solely in respect of the Lands.
- 2 Where the Minister has consulted the Land Council and the Board pursuant to sub-clause 1 about making, amending or repealing any regulations applying solely to land (which includes the Lands) dealt with pursuant to Part 4A of the Act and the Land Council or the Board has not agreed to the proposal, the Minister will give at least four weeks' notice that the regulation will be made.
- 3 The Minister agrees to consider any written submissions made by the Board and the Land Council with respect this clause, have regard to the

views of the Board and Land Council and will notify them in writing of the Minister's decision.

This means that the Minister will not make any special rules for the lands unless the Land Council and the Board are consulted.

23. WORLD HERITAGE, NATIONAL HERITAGE LIST AND WILDERNESS DECLARATIONS ISSUES

- 1 The Minister may seek World Heritage listing of all or any part of the Lands but only with the consent of the Land Council and the Board.
- 2 Whilst the parties acknowledge that, at the time of the execution of the Lease, the Lands are not World Heritage listed in whole or in part, should such listing occur at any time during the currency of the Lease, the Parties to the Lease will comply with any requirements arising as a consequence of such listing whether or not such requirements are already encompassed in this Lease, the Plan or the operational practices for the Lands.
- 3 The Minister and the Director-General agree not to nominate the Lands or any part of the Lands for inclusion on the National Heritage List without the consent of the Board.
- 4 In the event that the Lands or any part of the Lands are included on the National Heritage List, the Minister and the Director-General agree not to enter any agreement with the Commonwealth for such land without the consent of the Board.
- 5 The Minister agrees to consult with and have regard to the views of the Board prior to exercising any power or carrying out any act or function under the *Wilderness Act 1987* which relates to or impacts on the Lands.
- 6 The Minister agrees to direct any person to whom any power is delegated under the *Wilderness Act 1987* to consult with and have regard to the views of the Board prior to exercising any such power or carrying out any act or function which relates to or impacts on the Lands.
- 7 The Director-General agrees not to exercise nor permit to be exercised any power under the *Wilderness Act 1987* which relates to or impacts on the Lands without consulting the Board.
- 8 The Director-General agrees not to carry out or cause to be carried out any mandatory requirement under the *Wilderness Act 1987* without consulting with and having regard to the views of the Board.
- 9 The Minister agrees not to declare, or permit any person to whom any power is delegated under the *Wilderness Act 1987* or under the Act to

declare, any further part of the Lands (additional to that part which has already been declared to be a wilderness area) to be a wilderness area without the consent of both the Land Council and the Board.

This clause deals with how the Wilderness Act and heritage listing will operate on the lands including input which has to be sought by the Board in relation to such issues.

24. DISPUTE RESOLUTION

24.1. Preliminary steps for resolution of disputes between the Land Council and the Minister or the Land Council and the Director-General

- 1 If there is a dispute between the Land Council and the Minister or Land Council and the Director-General:
 - (a) in the first instance, the Chair of the Land Council will seek to resolve the matter in issue with the Regional Manager;
 - (b) if such discussion is not able to resolve the matter in issue, the Chair of the Land Council will seek to resolve the matter in issue with the DEC Northern Branch Director; and
 - (c) if such further discussion is not able to resolve the matter in issue, the process set out in clause 24.3 is to be followed.

This clause sets out the first informal steps that have to be followed for settling disputes between the Board and the Minister or DEC. This includes talks with the DEC Regional Manager and the Chair of the Land Council talking to the relevant DEC senior manager.

24.2. Preliminary steps for resolution of disputes between the Land Council and the Board

- 1 If there is a dispute between the Land Council and the Board, in the first instance, the Chair of the Land Council will seek to resolve the matter in issue with the Chair of the Board.
- 2 The Land Council and the Minister agree that the Minister will direct the Board that, if there is a dispute between the Land Council and the Board, in the first instance, the Chair of the Board will seek to resolve the matter in issue with the Chair of the Land Council.
- 3 If such discussion is not able to resolve the matter in issue, the process set out in clause 24.3 is to be followed and that the Minister will direct the Board to do so in all such circumstances.

This clause sets out the first informal steps that have to be followed for settling disputes between the Land Council and the Board. This includes making sure the Chairs of the Board and the Land Council talk.

24.3. Formal dispute resolution processes

- 1 If after the steps as relevantly set out in clauses 24.1 or 24.2 are unsuccessful in resolving any dispute, any one of the Parties in dispute considers that the matter remains unresolved, that Party must notify, in writing, the other Parties to the dispute of the matters continuing to be in dispute.
- 2 Such written notice must give those other Parties fourteen days in which to resolve the matter in dispute and notify the other Parties of the steps taken or to be taken in resolution.
- 3 If following the expiry of fourteen days after the giving of notice pursuant to sub-clause 1 above, any party considers that the matter has not been resolved, that party must convene, within twenty one days of the expiry of such notice, a meeting of the Parties to discuss the matter in dispute.
- 4 If any meeting is convened pursuant to sub-clause 3 above, each party must attend such meeting either in person or by agent authorised to negotiate on their behalf.
- 5 During any meeting convened pursuant to sub-clause 3, the Parties (or their representatives) will negotiate bona fide and in good faith to agree on steps necessary to resolve the matter in dispute.
- 6 If the Parties are able to agree on how to resolve the matter in dispute, the Parties agree that all or any one will take all such steps as are necessary to give effect to the proposed resolution.
- 7 If the Parties are unable to agree on how to resolve the matter in dispute, the Parties may appoint a mediator to assist them endeavour to resolve the matters in dispute.
- 8 If the Parties remain unable to agree on how to resolve the matter in dispute, the matter in dispute (and responsibility for any costs of the arbitration) must be referred to arbitration pursuant to s. 71BJ of the Act (or, should s. 71BJ not apply to the dispute, the arbitration must be conducted as if it did apply), the results of which the parties agree must be binding on each of them.
- 9 Any arbitration must include any issues of compensation to any Party to this Lease as a result of the matter in dispute.

- 10 In conducting any arbitration, the arbitrators are to have regard to:
- (a) the Plan;
 - (b) the preservation of the rights and interests of native title holders;
 - (c) the opinions interests, duties and responsibilities of the Land Council and its membership;
 - (d) the views on the matter expressed by the Aboriginal Owner Board members;
 - (e) the preservation and protection of traditional ways of life, culture and tradition;
 - (f) the interests, proposals, opinions and wishes of Aboriginal Owners in relation to the management, use and control of the Worimi Conservation Lands;
 - (g) the growth and development of Worimi social, cultural and economic structures;
 - (h) freedom of access to the Worimi Conservation Lands by Traditional Owners and their freedom to carry out on those Lands rites, ceremonies and other activities in accordance with their tradition;
 - (i) the preservation of the natural environmental values;
 - (j) the continuing management of the Lands under Part 4A of the Act;
 - (k) the use of the Worimi Conservation Lands for tourist and educational activities; and
 - (l) the duties, functions and responsibilities of the Minister and the Director-General in relation to the Worimi Conservation Lands.

This sets out the formal process for resolving any disputes which can't be resolved informally. It says that the parties will have to try mediation and arbitration and sets out how and when these processes will happen.

25. INSURANCE, INDEMNITIES AND FUTURE TAX LIABILITIES

25.1. Public liability insurance

- 1 The Director-General will accept the responsibility for maintaining public liability insurance for the Lands.
- 2 The Minister must direct the Board to require all licence or permit holders operating on the Lands (including the Land Council) to have their own public liability insurance policy for their activities with the amount of

cover required for such policy to be the amount generally required from time to time for licensees or permit holders operating in national park reserves in NSW.

This means that DEC will remain responsible for public liability insurance but the Board will have to require any commercial operators using the lands to have their own public liability insurance.

25.2. Workers Compensation insurance

- 1 The Director-General will remain liable for the arrangement of workers compensation insurance for DEC employees working on the Lands.
- 2 If the Director-General apportions payment of workers compensation insurance for DEC employees to each of the Regions for DEC employees working within that region, these costs will be paid:
 - (a) from the Account, for any DEC employees who are paid from the Account; and
 - (b) from Recurrent Funds, for any DEC employees who are paid from Recurrent Funds.

This means that DEC will remain responsible for workers compensation insurance for DEC staff and also addresses how the workers compensation insurance will be paid.

25.3. Insurance of Board members and their vehicles whilst on Board duties

- 1 Board members and their Deputies will be covered under DEC's Miscellaneous Insurance Policy against any personal injury sustained while engaged in official duties both on and off the Worimi Conservation Lands.
- 2 Should an accident occur whilst any member is using their private vehicle on Board business, the amount claimable for property damage against the Director-General is limited to an amount equal to the basic excess on that vehicle's comprehensive insurance policy.
- 3 Provision to the Director-General of prior evidence of comprehensive insurance coverage of a Board member's private vehicle is required before any amount is claimable for property damage.

Board members will be covered under DEC's insurance against any personal injury while on official duties both on and off the lands. Board members using their cars on official duties both on and off the lands will be covered under DEC insurance for any basic excess on the comprehensive insurance on their car. The Board member must have full comprehensive insurance on their car and have shown proof of this to DEC before using their car on Board business.

25.4. Volunteers undertaking work approved by the Board

- 1 Where volunteers (including members of the Land Council) are undertaking work on or off the Lands on projects approved by, and carried out on behalf of, the Board pursuant to this Lease and where such voluntary working is undertaken with the express prior approval of the Board, those volunteers will be covered under DEC's Miscellaneous Insurance Policy against any injury sustained during or arising from that work.
- 2 Such volunteers will be supervised by DEC staff or have previously been given appropriate training by DEC staff in the use of relevant equipment and in the principles and practices of occupational health and safety in the workplace.

If injured in the course of carrying out approved work on the lands, volunteers will be covered under DEC's insurance policies. Volunteers will need to do approved training and be supervised by DEC staff.

25.5. Indemnification of the Board

- 1 The Minister agrees that the State will provide indemnity for Board members when acting intra vires and in good faith in the discharge of their duties (whether acting individually or collectively).

This means that the Minister will protect the Board and Board members from legal action, so long as they have been acting legally.

25.6. Indemnification of the Land Council and release

- 1 The Minister and the Director-General will, in the absence of any negligence or wrongful act or wrongful omission by the Land Council, jointly and severally indemnify the Land Council and keep it indemnified against the following liabilities:

- (a) all claims, demands, proceedings, losses, injuries or liabilities (including damages and legal costs) arising from the implementation of this Lease over the Lands and the Land Council's duties and functions in respect of the Lands under the Act, including but not limited to, all actions taken and omissions made by the Board, the Minister or the Director-General and all employees, contractors and agents of them as a result of their carrying out their duties and functions under this Lease; and
 - (b) any successful claim by any third party for any matter arising from the Lease, the care, control or management of the Lands by the Director-General and the Board, any direction given by the Minister to the Board, or the vesting of the Lands in the Land Council.
- 2 The Minister and the Director-General release the Land Council from all claims or actions or costs arising from them in connection with the above liabilities, losses, damages, injuries etc unless they are caused by the negligence or wrongful act or wrongful omission of the Land Council.

This means that the Minister and DEC will protect the Land Council from certain legal action, so long as they have been acting properly and legally.

25.7. Future liability for Commonwealth or State taxes

- 1 Should the Land Council become liable to pay any Commonwealth or State taxes or charges solely as a result of the Lands being vested in the Land Council (rather than being retained by the Crown), the Minister agrees that the State must meet the costs of such taxes, charges or local government rates in addition to any other money payable pursuant to this Lease or pursuant to the normal budgetary allocations by the Director-General for the management of the Lands.
- 2 Should the Land Council become liable to pay any Commonwealth or State taxes or charges as a result of all lands reserved pursuant to the Act being liable to pay such Commonwealth or State taxes or charges or local government rates, the cost of such Commonwealth or State taxes or charges or local government rates will be met by the Board.

This clause sets out who is responsible for any future new taxes or rates that must be paid. If the taxes arise just because the lands are no longer owned by the Crown, then the State will pay, otherwise the Board will pay for other taxes associated with land management.

26. DEFINITIONS AND PROCEDURAL MATTERS

26.1. Use of Language

- 1 A word or expression that indicates one or more particular genders must be taken to indicate every other gender unless the contrary is expressly intended to give effect to the expression in context.
- 2 A reference to a word or expression in the singular form includes a reference to the word or expression in the plural form unless the contrary is expressly intended to give effect to the expression in context.
- 3 A reference to a word or expression in the plural form includes a reference to the word or expression in the singular form unless the contrary is expressly intended to give effect to the expression in context.
- 4 A reference to an Act (including "the Act") includes any regulations made pursuant to that Act and any amendments to that Act or regulations for the time being in force and also to any Act or regulations enacted or made in substitution.
- 5 A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision.
- 6 A reference to "power" does not encompass any mandatory obligation under any Act.

This clause explains what is meant by particular words and expressions used throughout the lease. It helps to interpret some terms which might be confusing.

26.2. Other procedural provisions

- 1 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including but not limited to persons taking by novation), and assigns.
- 2 A reference to this Lease is a reference to this Lease (and where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- 3 A reference to a Minister, authority, body, person or delegate includes the Minister, authority, body, person or delegate for the time being performing the functions performed by that Minister, authority, body, person or delegate at the date of this Agreement.

- 4 Nothing in this agreement is to be construed as the Parties creating a relationship of partnership or joint venture between the Parties.

This clause explains other terms and concepts which are used in the Lease.

26.3. Severability

- 1 Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of the jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

If part of the lease is found by a court to be invalid only that part is taken out of the lease.

26.4. Applicable law

- 1 The laws applying to this Lease are the laws of the State of New South Wales.
- 2 The parties also agree that any disputes arising out of or in connection with this Lease which are not able to be resolved through the processes prescribed by this Lease are to be subject to the jurisdiction of the courts of New South Wales.

This means that the laws the lease is made under are the laws of NSW. Any disputes which the parties can't settle themselves through the processes in this lease will be dealt with by the NSW court system.

26.5. Notices

- 1 If any notice is required by this Lease to be given by any one of them to either or both of the others, such notice must be in writing and must be sent by prepaid post to the following address as relevant:
 - (a) when to the Minister - to Parliament House, Macquarie Street, Sydney;
 - (b) when to the Director-General - to the last address notified to the Board by the member of the Board appointed pursuant to s. 71AN(3)(d) as being the appropriate address for such notices; or

- (c) when to the Land Council - to the last address notified to the Board by the member of the Board appointed pursuant to s. 71AN(3)(b) as being the appropriate address for such notices.
- 2 The Parties also agree that any such notice required by this Lease may also be given by any one of them to either or both of the others by electronic transmission to any electronic address provided by a Party for that purpose.
- 3 The Parties also agree that any such notice given by any one of them to either or both of the others by electronic transmission must be in substitution for the requirement that such notice be in writing and sent by prepaid post to the relevant address pursuant to sub-clause 1 above.

This clause describes how and where formal written notices under the lease are to be sent if they are needed.

26.6. Registration of Lease

- 1 The Parties will take all such steps as are necessary to effect the lodgement and/or registration of all documents required to be lodged and/or registered pursuant to s. 71AG of the Act.
- 2 The Director-General agrees to co-ordinate the lodgement and/or registration process required of the Parties pursuant to sub-clause 1.

This means that the lease and other necessary documents will be registered by DEC as required by law.

26.7. Advice about Traditional Owners, Aboriginal Owners or Land Council members

- 1 The Parties acknowledge that a DEC officer may be unsure or unable to determine whether a person is a Traditional Owner, Aboriginal Owner or Land Council member and may need to take action which would not otherwise be required if the DEC officer was aware that the person was a Traditional Owner, Aboriginal Owner or Land Council member.
- 2 The Aboriginal Owner Board members will assist DEC officers in determining whether a person is a Traditional Owner or an Aboriginal Owner, if so requested by the Director-General, and will provide advice in writing if requested by the Director-General.
- 3 The Land Council will assist DEC officers in determining whether a person is a Land Council member, if so requested by the Director-General, and will provide advice in writing if requested by the Director-General.

DEC officers might not always know if someone is a Traditional Owner, Aboriginal Owner or Land Council member and so DEC might need to ask for help from the Land Council or the Aboriginal Owner Board members.

26.8. Definitions

“Aboriginal Cultural Item” and **“Cultural Item”** means “Aboriginal Object” as defined in the Act.

“Aboriginal Negotiating Panel” means the Panel appointed by the Minister administering the *Aboriginal Land Rights Act 1983* pursuant to Part 4A Division 2 of the Act, to participate in negotiations with the Minister and the Worimi Local Aboriginal Land Council for this Lease.

“Aboriginal Object” is as defined in the Act.

“Aboriginal Owner Board members” means the Aboriginal Owners who are members of the Board.

“Aboriginal Owners” means all those persons named as having a cultural association with the Lands in the Register of Aboriginal Owners kept under Part 9 Division 3 of the Land Rights Act.

“Aboriginal Place” means any place declared to be an Aboriginal place under section 84 of the Act.

“the Account” means the separate account in the National Parks and Wildlife Fund known as the Stockton Bight Lands Management Account.

“the Act” means the *National Parks and Wildlife Act 1974 (NSW)*.

“Added Lands” means any lands added to the Lands after the commencement of the Lease in accordance with Division 8 of Part 4A of the Act, including the Additional Lands.

“Additional Lands” means the specific lands to be added to the Lands as soon as practicable following the commencement of the Lease, being the lands described in clause 2.6 and 2.7 of the Lease and shown in light blue colour on the Land Claims Map.

“Advisory Committee” means an advisory committee established by the Minister under s.24(3) of the Act.

“Area Manager” means the DEC Area Manager for the Hunter Coast Area or such other equivalent position created from time to time.

“Asset Acquisition Funds” means funds used for the creation or enhancement of assets as defined by NSW Treasury.

“Board” means the Board of Management to be appointed pursuant to s. 71AN of the Act and this Lease for the management of the Lands.

“Community Development” includes, but is not limited to:

- (a) recreation activities and facilities;
- (b) cultural activities and facilities;
- (c) general park activities and facilities; and
- (d) activities that will improve the capacity of Traditional Owners of the Lands and Land Council members to participate in the management of the Lands

that are consistent with this Lease, including the principles referred to in clause 5.

“CPI figure” means the Australian Consumer Price Index (all Groups Index) as determined by the Australian Bureau of Statistics for Sydney.

“Crown” means the Crown in the right of the State of New South Wales.

“Cultural Association” means an association with the Lands that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the Lands.

“Cultural Area” means the area which has been determined by the Aboriginal Owners and the Office of the Registrar to be the area (in which the Lands are situated) associated with the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the Lands.

“Cultural Values” means the value people have given to items through their associations with those items. Manifestations of cultural values may be non-physical and/or physical and include, but are not limited to, spiritual values cultural practices, knowledge, songs, stories, art, buildings, paths, and human remains. When natural elements of the landscape and waterways acquire

meaning for a particular group, they have cultural values. These elements of the landscape and waterways may include landforms, flora, fauna and minerals.

“DEC” means the NSW Department of Environment and Conservation and incorporates the National Parks and Wildlife Service.

“Deputy or Deputies” means one or more deputies appointed by the Minister pursuant to the Regulation.

“Director-General” means the Director-General of DEC or any person acting in that position or exercising, pursuant to delegation, from time to time, any of the powers authorities duties or functions of the Director-General, but does not include the Board.

“Existing interest” in relation to a National Park or a Regional Park means an interest within the meaning of s.39 of the Act, as applied by ss.47ZA, 71AB and 71BD the Act and in relation to a State Conservation Area, means an interest within the meaning of s.47H, as applied by s.71AB and s.71BD of the Act.

“Financial Year” means the annual period commencing 1 July and finishing on 30 June of the following year.

“Fund” means the National Park and Wildlife Fund referred to in s. 137 of the Act.

“Hunter Coast Area” means the geographic region as determined by DEC.

“Hunter Region” means the geographic region as determined by DEC.

“Initial Period” means the 3 year period commencing on 1 July 2007 and ending on 30 June 2010.

“Inter-Tidal Zone” means that area of land at Stockton Beach between the mean high water mark and mean low water mark extending from the eastern boundary of Lot 2 in Deposited Plan 446235 to the eastern southern boundary of Lot 4 in Deposited Plan 233358.

“the LALC Lands” means land granted or transferred to the Land Council in freehold in the vicinity of the Worimi Conservation Lands, including land granted under s.36 of the Land Rights Act.

“the Land Claims” means the land claims made under the Land Rights Act by the Land Council and which have the claim numbers 5711, 5749, 5750, 6251, 6602, 6618, 6928 and 7283.

“Land Claims Map” means the map titled “Worimi Land Claim Grant Areas” prepared by DEC and attached to this Lease as Schedule 2.

“Land Council” means the Worimi Local Aboriginal Land Council being a statutory corporation established under the Land Rights Act.

“Land Rights Act” means the *Aboriginal Land Rights Act 1983* (NSW).

“the Lands” means the Part 4A Lands and any Added Lands.

“Lands Minister” means the Minister administering the Crown Lands Act 1989 and the Crown Lands Minister within the meaning of s.36(1) of the Land Rights Act.

“Lease” means this Lease or any amended version of this Lease and is referred to in the recitals as the “Part 4A Lease”.

“Local Aboriginal Person” or **“Local Aboriginal People”** means one or more persons who has or have knowledge and a cultural association with the local area and the local Aboriginal community.

“Master Plan” means the Master Plan No. 20-4-2005 prepared by Fern Bay Joint Venture Winten (No 20) Pty Ltd pursuant to State Environmental Planning Policy No.71 Coastal Protection.

“Minister” means the Minister administering the Act from time to time.

“MoU” means the document titled “Memorandum of Understanding Stockton Bight” dated 13 February 2001 signed by representatives of the Land Council, Worimi Traditional Owners and Elders, the (then) Department of Land and Water Conservation and the (then) National Parks and Wildlife Service and attached to this map as Schedule 1.

“National Park” has the same meaning as in the Act.

“Nature Conservation Values” means those values corresponding to the objects set out in s. 2A(1)(a) of the Act relating to the conservation of nature.

“Northern Boundaries map” means the map titled “Attachment 3: Proposed Stockton Northern Boundaries” dated 14 September 2006 and attached to this Lease as Schedule 4.

“Park Authority” has the same meaning as in the Regulation.

“Parties” means the Land Council, the Minister and the Director General.

“Part 4 Lands” means that part of the Worimi Conservation Lands that is reserved under Part 4 of the Act from time to time and at the commencement of the Lease comprises the Inter-Tidal Zone.

“Part 4A Lands” means that part of the Worimi Conservation Lands that is granted to the Land Council under s.36A of the Land Rights Act immediately prior to commencement of the Lease as shown in purple colour on the Land Claims Map.

“Part 11 Lands” means land acquired, occupied or otherwise held by the Minister under Part 11 of the Act that is adjoining or in the vicinity of the Worimi Conservation Lands.

“Pecuniary Interest” means an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter.

A person is taken to have a pecuniary interest in a matter if:

- (a) the person’s spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter, or
- (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

However, a person is not taken to have a pecuniary interest in a matter:

- (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- (b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or

- (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

“Plan” means the plan of management under the Act adopted from time to time applying to the Lands which is prepared as part of a plan of management which also applies to the Part 4 Lands and any Part 11 Lands.

“Priorities Action Statement” has the same meaning as in the *Threatened Species Conservation Act 1995 (NSW)*.

“Recovery Plan” has the same meaning as in the *Threatened Species Conservation Act 1995 (NSW)*.

“Recurrent Funds” means annual funds used for routine care control and management of the Lands.

“Regional Manager” means the DEC Regional Manager of the Hunter Region or such other equivalent position created from time to time.

“Regional Park” has the same meaning as in the Act.

“Regulation” means the *National Parks and Wildlife Regulation 2002*.

“State Conservation Area” has the same meaning as in the Act.

“Threat Abatement Plan” has the same meaning as in the *Threatened Species Conservation Act 1995*.

“Tin City” means those structures in the vicinity of the area of Worimi Regional Park shown as “Tin City” on the map titled “Stockton Bight Park Proposals” attached as Schedule 5 to this Lease.

“Traditional Owner” means those persons who have an association with the Cultural Area that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the Lands whether or not those people are included on the register of Aboriginal Owners kept under Part 9 Division 3 of the Land Rights Act.

“Urgent Action” includes responses to:

- (a) public health or safety incidents of a serious nature;

- (b) fire management, other than scheduled hazard reduction work natural disasters (however caused) including marine mammal strandings and pollution incidents such as oil spills; and
- (c) any other issues identified by the Board.

“Wilderness Area” means an area declared by the Minister to be a wilderness area pursuant to the provisions of the *Wilderness Act 1987 (NSW)*.

“the Worimi Accounts” means the aggregated set of accounts in the Fund, including the Account, which may be used for the care, control and management of the Worimi Conservation Lands.

“Worimi Conservation Lands” means the land reserved from time to time under Part 4 or Part 4A of the Act as Worimi National Park, Worimi State Conservation Area and Worimi Regional Park comprising the Lands and the Part 4 Lands and shown on the map prepared from time to time and attached to this Lease as Schedule 5.

“World Heritage listed” means listed as an item of cultural heritage or natural heritage of outstanding universal value pursuant to the Commonwealth Act and the international convention referred to in s. 71AD(2)(c) of the Act.

This clause provides set definitions of certain terms that are used in the lease.

Note: The Department of Environment and Conservation (DEC) is now known as the Department of Environment and Climate Change (DECC)

LEASE FOR WORIMI CONSERVATION LANDS

Signed sealed and delivered by
Robert John Debus, Minister for the
Environment, in his capacity as the
Minister administering the National
Parks and Wildlife Act 1974
in the presence of:

Signed sealed and delivered by, the Chair of the
Worimi Local Aboriginal Land Council
in the presence of:

Signed sealed and delivered by
Dr Anthony Ian Fleming in his capacity as
the Acting Director-General of
the Department of Environment and
Conservation
in the presence of:

LIST OF SCHEDULES ATTACHED TO THIS LEASE

Schedule 1

Memorandum of Understanding Stockton Bight dated 13 February 2001.

Schedule 2

Map titled "Worimi Land Claim Grant Areas" dated 19 December 2006.

Schedule 3

Reservation instruments.

Schedule 4

"Attachment "C": Proposed Stockton Northern Boundaries" dated 14 September 2006.

Schedule 5

Map titled "Worimi Conservation Lands" dated 19 December 2006.

Schedule 6

Existing interests.



RED CHIEF LOCAL ABORIGINAL LAND COUNCIL

PO Box 745
GUNNEDAH NSW 2380
Phone: (02) 6742 3602 Fax: (02) 6742 3815
Mobile: 0403 041 957
Email: ceo@redchiefalc.com.au

Membership Roll Certification

Certification of Red Chief Local Aboriginal Land Council Membership Roll

I, Toni Comber Chief Executive Officer (CEO) of the Red Chief Local Aboriginal Land Council, do hereby certify that the attached membership comprising 12 pages commencing with the name Stephen Adams and ending with the name Vicki Wortley, is a true and accurate record of all the voting and non-voting members of this land council as of 16th August 2016.

This certified roll contains 177 voting members and 251 non-voting members.

Signed, CEO of Red Chief Local Aboriginal Land Council.

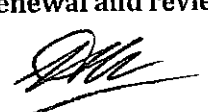
This and the following 131 pages comprise Annexure A to Lease dated from Nambucca Heads Local Aboriginal Land Council and Unkya Local Aboriginal Land Council to the Minister for Climate Change and the Environment

Annexure A

Table of Contents

1.	Definitions, Interpretation and other matters	14
1.1	Definitions	14
1.2	Interpretation	25
1.3	Term	27
1.4	Authority to enter into Lease	27
1.5	Effect on Native Title	27
1.6	Notices	28
1.7	Registration	30
1.8	Costs and expenses	30
1.9	Advice about Gumbaynggirr People, Aboriginal Owners or Land Council Members	31
2.	Lands	32
2.1	Description of Part 4A Lands at the Commencement Date	32
2.2	Name and reservation category	32
2.3	Additional Lands	32
2.4	Added Lands and consent of the Land Councils	34
2.5	Inter-Tidal Zone and Creek Bed	34
3.	Premises and Assets	35
3.1	Existing fixtures and improvements on Part 4A Lands at Commencement Date	35
3.2	Ownership of fixtures, improvements and assets erected, made or acquired after the Commencement Date	35
3.3	Maintenance and repairs of fixtures, improvements and assets	35
4.	Statutory Provisions	36
4.1	Characteristics of Lease and Lease Document	36
4.2	Acknowledgement of the Land Councils holding the Part 4A Lands on behalf of the Aboriginal Owners	36
4.3	Restrictions on dealings with the Part 4A Lands	37
4.4	Renewal and review of Lease	38

PL LC



MD RS

RD

5.	Land Management	41
5.1	Land Management Principles	41
5.2	Management of the Part 4A Lands	41
5.3	Consistent and integrated management of adjacent land	42
5.4	Indigenous Protected Area	43
5.5	Coordination between the Board and other management bodies	43
5.6	Coordination between the Board and the Prescribed Body Corporate	43
5.7	Obligations to observe land management statutes	44
5.8	Planning and building applications	44
5.9	Public access	44
5.10	Fees, including entry and user fees	45
5.11	Obligations of the Director-General to observe land management statutes	46
5.12	Use of DECCW equipment and services	46
5.13	Managing threatened species	47
5.14	Law enforcement & compliance	49
5.15	Interpretation of and education on Part 4A Lands for the public	49
5.16	Licences, leases and permits	50
5.17	Recognition of state-wide annual entry passes	51
5.18	Commercial activities	51
5.19	Neighbour agreements	51
5.20	World Heritage and national heritage register issues	52
6.	Plans and land use planning	52
6.1	Preparation of a Plan	52
6.2	Reviewing, amending or updating the Plan	53
6.3	Cost of the Plan	54
6.4	Operational plans	54
6.5	Fire management strategy	54
6.6	Environmental assessment	54
6.7	Community Development	54
6.8	Subletting land	54
7.	Management structure	55
7.1	Functions of the Board	55
7.2	Roles and responsibilities of the Board	55
7.3	Management before the Plan	56
7.4	The Minister and the Director-General	57
7.5	The Regional Manager and Area Manager	57
7.6	Direction by the Minister	58
7.7	Joint Management Coordinator	58

7.8	Management of the Part 4A Lands before a Board is established	59
7.9	Exercise of statutory powers by employees of Minister on the Part 4A Lands	60
7.10	Urgent action	61
7.11	Rights to participate in consultations	61
7.12	Director-General's exercise of powers	61
7.13	Direct dealings with third parties	62
7.14	Consultation about making and amending legislation	62
8.	Board	63
8.1	Establishment of the Board	63
8.2	Membership of the Board	63
8.3	Board indemnity	66
8.4	Right to obtain independent advice	66
8.5	Board policies, procedures and governance	67
8.6	Declaration of non-pecuniary interests by Board Members	69
8.7	Declaration of pecuniary interests by Board Members	70
8.8	Ongoing Board costs	72
8.9	Insurance for volunteers undertaking work approved by the Board	72
8.10	Insurance of Board Members and their vehicles whilst on Board duties	72
8.11	Public liability insurance	72
8.12	Indemnity and release of the Land Councils	73
8.13	Workers compensation insurance	73
8.14	Delegation of powers to the Board	74
9.	Board Facility	74
9.1	Background to the Facility clause	74
9.2	Business Opportunities Analysis	74
9.3	Scoping, planning, design, construction and maintenance of the Facility	78
9.4	Annual meeting to discuss progress of the establishment of a facility	80
9.5	Time period within which facility must be completed	80
10.	Employment, education, training and community capacity building	81
10.1	Employment principles	81
10.2	Staffing strategy	81
10.3	Positions for local Aboriginal people	81
10.4	Application of the <i>Public Sector Employment and Management Act 2002</i> (NSW)	82
10.5	Selection procedures	83
10.6	Implementation of <i>Aboriginal Employment and Development Strategy</i>	83

10.7	Training of DECCW officers	83
10.8	General training for Board Members	84
10.9	Cultural awareness training for the Board and DECCW officers	84
10.10	Contracts and services	85
10.11	Community capacity building, training and other opportunities	87
10.12	Occupational health and safety	87
11.	Traditional cultural use	88
11.1	Protection of traditional activities	88
12.	Indigenous Cultural & Intellectual Property, research and related matters	88
12.1	Board policy	88
12.2	Ownership of existing and future ICIP and Intellectual Property Rights in Research Data	90
12.3	Use of ICIP and Intellectual Property Rights in Research Data	91
12.4	Control of research and ICIP associated with research	93
13.	Gumbaynggirr Cultural Heritage	95
13.1	General notification and declaration of sites	95
13.2	Notice of application which may interfere with Gumbaynggirr Cultural Heritage	95
13.3	Alternative procedures may be agreed	96
13.4	Protocol in relation to Aboriginal Remains	96
13.5	Transfer of Aboriginal Objects	97
13.6	Repatriation of Aboriginal Objects	97
13.7	Identification of reports and documents held outside of DECCW about Gumbaynggirr People	98
14.	Good faith	98
15.	Income and finances	99
15.1	Establishment and management of the Part 4A Accounts	99
15.2	Rent	100
15.3	Recurrent Funds and Asset Acquisition Funds	103
15.4	Other revenue sources	105
15.5	Development of annual budget proposals	106
15.6	Financial supervision by the Board	106
15.7	Expenditure	108
15.8	Payment of DECCW staff from the Rent Account	109
15.9	Tax	109

16. Disputes	110
16.1 Preliminary steps for resolution of disputes between a Land Council and the Minister or a Land Council and the Director-General	110
16.2 Preliminary steps for resolution of disputes between the Land Council and the Board	110
16.3 Preliminary steps for resolution of disputes between the Land Councils	110
16.4 Definitions	111
16.5 Notice of dispute or difference	111
16.6 Negotiate in good faith	111
16.7 Mediation	111
16.8 Arbitration	112
17. Miscellaneous	113
Schedule 1	118
Proclamation relating to the Added Lands	118
Schedule 2	119
Commencement and execution dates	119
Schedule 3	120
Reservation instruments for the Part 4A Lands and the Creek Bed	120
Schedule 4	122
Cultural Landscape Management	122
Schedule 5	123
List of Existing Interests	123
Schedule 6	124
Gumbaynggirr Traditional Ecological Knowledge	124
Schedule 7	126
Holistic Management	126
Schedule 8	128
Map of the Land Claims	128
Schedule 9	129
Rights and Interests asserted in the Native Title Claim and the DNA	129
Schedule 10	131
Map of Gaagal Wanggaan (South Beach) National Park	131
Schedule 11	132
LEC Settlement Agreement extracts about the facility	132

Parties

1. Minister for Climate Change and the Environment
2. Director-General of the Department of Environment, Climate Change and Water
3. Unkya Local Aboriginal Land Council
4. Nambucca Heads Local Aboriginal Land Council

Recitals

- A** The Gumbaynggirr People have always been and remain today the traditional custodians of the land and waters within their traditional country.
- B** South Beach, Warrell Creek, Gumma Peninsula and adjacent islands (also collectively referred to as "the Land and Waters") are part of the cultural landscape of the Gumbaynggirr People and are a ceremonial and cultural resource place for the Gumbaynggirr People.
- C** This Lease relates to a part of the Land and Waters, being the lands at South Beach which forms part of this broader cultural landscape. South Beach is a narrow strip of land between the Pacific Ocean and Warrell Creek. It is about 11 km from north to south and averages about 500 metres east to west. The location of South Beach ensures that it is rich in the natural products of land, ocean shore and estuary and so will always have a high cultural significance to the Gumbaynggirr People.

- D** The Gumbaynggirr People have developed over many generations a holistic Traditional Ecological Knowledge of their lands and waters, natural resources and environment. They have resided permanently at certain points on the landscape and also have cultural camping areas throughout the Land and Waters. As a result, environmental protection and sustainable land use management practices form an integral part of Gumbaynggirr culture.
- E** Gumbaynggirr People have an inherited responsibility for and commitment to protect the spirits and integrity of the Land and Waters, which is a responsibility that has been handed down from generation to generation since creation. To the Gumbaynggirr People:
- The landscape is encompassed by water which is the sustenance given to the Aboriginal people by Yuludarla (God). Water is a significant cultural part of this landscape.
 - The cultural landscape covered by the Lands and Waters form part of a broader Gumbaynggirr cultural landscape which includes the dreaming stories of the Gumbaynggirr creation ancestors, creation places, ceremonial areas as well as evidence of past occupation, continuing occupation and management.
 - The integrated use and management of the landscape is embedded within the culture and is of special cultural significance to Gumbaynggirr People.
- F** Gumbaynggirr People have looked after, and in turn been looked after by, the Land and Waters since the current coastal environments were created when sea levels stabilised about 6,000 years ago. Aboriginal use of the Land and Waters over that time is reflected throughout the landscape which is of enormous spiritual and cultural importance to the Gumbaynggirr People.

- G** The Gumbaynggirr People have a special interest in their Gumbaynggirr Cultural Heritage so it is important that the Gumbaynggirr People are involved in the protection and management of the Gumbaynggirr Cultural Heritage.
- The Gumbaynggirr People will be involved in and participate in any decisions in relation to the Gumbaynggirr Cultural Heritage in accordance with this Lease.
- H** Throughout the period since European settlement into the area during the first half of the 19th century, there has been direct interference with the exercise by the Gumbaynggirr People of their cultural and traditional tenure and management practices over the Lands and Waters. Loss of land, the imposition of European tenure systems and land use and the institutionalisation of the Gumbaynggirr People on reserves have all caused fragmentation, disturbance and culturally inappropriate use of the landscape.
- I** Despite this however, the cultural connections of the Gumbaynggirr People with the Land and Waters continued throughout the colonial period and remain strong. Saltwater was a binding force that maintained the sustenance of Gumbaynggirr culture. During colonial incursion into the area of the Land and Waters, water could not be settled on or colonised, while the land was taken over and occupied. Saltwater has therefore continued to sustain Gumbaynggirr People and culture. Having survived with the help of water, Gumbaynggirr People believe they are now obliged to Yuludarla to protect the water along with the lands, thus completing the circle of protection, management and responsibility.
- J** The interrelationship between the health of the natural environment and the cultural, social, economic and physical well-being of Indigenous people, including the Gumbaynggirr People, means that efforts to implement conservation and environmental programmes over the Land and Waters, such as through the implementation of this Lease, must always recognise, accommodate, promote and strengthen the role of the Gumbaynggirr People and their communities.

- K** However, it is recognised that the ability of the Gumbaynggirr People to participate in environmental management and sustainable development practices over the Land and Waters for the past 230 years has been limited as a result of the economic, social and historical impact of European colonisation of the area.
- L** In response to this absence of recognition of, or protection for, the cultural significance of the Land and Waters, a series of land claims were lodged over the parts of Land and Waters on behalf of the Gumbaynggirr People between 1984 and 1995. The Nambucca Heads LALC and the Unkya LALC each made a number of land claims under the ALR Act over the Gumma Peninsula, South Beach and the three islands in the Nambucca River. These land claims were given land claim numbers 972, 4193, 4198, 5448, 5515 and 5523 by the Crown Lands Minister. In 1996 the Native Title claimants lodged the Native Title Claim over part of the Land and Waters on behalf of the Gumbaynggirr People.
- M** The Land Claims and the Native Title Claim were all mechanisms adopted by the Gumbaynggirr People in order to assert their rights to gain ownership, control, and management responsibility for the Land and Waters.
- N** In March 1996, the Crown Lands Minister refused all of the Land Claims under the ALR Act for reasons including that the South Beach lands were needed for the essential public purpose of nature conservation. The Nambucca LALC and the Unkya LALC, each lodged appeals to the Land and Environment Court of NSW under section 36(5) of the ALR Act against the Crown Lands Minister's refusal of their respective Land Claims.
- O** The Land and Environment Court appeals and the processes generally for determination of the Land Claims and the Native Title Claim stimulated the interest of the NSW Government, including the Minister and the Director-General, to explore the means by which future management of the Land and Waters could be achieved.

- P** After several years of negotiations between the Minister, the Crown Lands Minister and the Land Councils, in December 2002 an agreement was reached before the Land and Environment Court under which:
- the Crown Lands Minister granted to the Nambucca Heads LALC the Land Claim number 972 over most of the Gumma Peninsula and Land Claim number 4193 over the three islands; and
 - the Minister, the Director-General and the Land Councils agreed to enter into negotiations together for the development of a lease, which would enable the establishment of a protected area over the South Beach area of the Land and Waters to be owned by the Land Councils and leased back to the Minister under Part 4A of the NPW Act.
- Q** A major component of the settlement under the LEC Settlement Agreement is for South Beach to be jointly managed between the Aboriginal community and the Department of Environment, Climate Change and Water on behalf of the Minister. Joint management of South Beach provides the Gumbaynggirr People with an opportunity for the integration of their Traditional Ecological Knowledge system with non-Aboriginal science and technology systems as well as offering the Minister and the Director-General opportunities for identifying and implementing improved techniques for conservation and sustainable use of biological diversity in the management of a protected area over South Beach.
- R** In April 2002 the NSW Minister for Aboriginal Affairs appointed an Aboriginal Negotiating Panel under section 71G of the NPW Act to assist the Land Councils and the Minister in negotiating the terms of this Lease for the South Beach joint management arrangement contemplated in the LEC Settlement Agreement.
- S** The Land Councils, the ANP and the Native Title claimants all came together, on behalf of the Gumbaynggirr People, to negotiate with the Minister and the Director-General for the development of this Lease. As a part of the lease negotiations, these Indigenous parties together prepared a Draft Negotiations Agreement which provided the NSW Government with an outline of the long-term ownership, land use and management outcomes sought by the Gumbaynggirr People for the

- Lands and Waters. The DNA was provided to the Minister and Director-General in May 2004.
- T** The DNA expresses the needs of the Gumbaynggirr People to:
- (a) practise their cultural traditions and customs, and to preserve and practise their language. The continuation of such practices is required for the preservation and maintenance of Gumbaynggirr Traditional Ecological Knowledge;
 - (b) increase their land holdings to the Land and Waters so as to improve the overall environmental integrity of the Land and Waters, to provide economic opportunities for the Gumbaynggirr People and to provide the opportunity to employ sympathetic management strategies with regard to the Land and Waters; and
 - (c) obtain greater management control over the Land and Waters, self-management of their resources, and participation in development decisions affecting the Land and Waters, including participation in the establishment and management of protected areas for the Land and Waters.
- U** The Minister and the Director-General acknowledge the importance of the Land and Waters to the Gumbaynggirr People and accordingly, for the purposes of achieving this Lease, have negotiated with the Land Councils, the ANP and the Native Title claimants to contribute resources and materials under this Lease towards ensuring the meaningful participation of the Gumbaynggirr People in the future management, rehabilitation and conservation of the Land and Waters.
- V** This Lease has been negotiated between the parties as set out in these Recitals to establish a joint management regime for South Beach in accordance with Part 4A of the NPW Act and to achieve, in part, the goals and aspirations of the Gumbaynggirr People as set out in the DNA.
- W** The terms of this Lease are based on the position that was reached by each of the parties during the negotiations to resolve the Land Claims, to implement the terms of the LEC Settlement Agreement and to establish a protected area over South Beach.
- X** The parties, having taken advice and given full and proper consideration

to all matters each considers relevant, have determined to resolve the matters between them in respect of the Land Claims and the LEC Settlement Agreement according to the terms of this Lease and have resolved to enter into this Lease in good faith.

It is as agreed as follows.

1. Definitions, Interpretation and other matters

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Aboriginal Cultural Material means an Aboriginal object within the meaning of the NPW Act and includes Aboriginal Remains.

Aboriginal Negotiating Panel or **ANP** means the Panel appointed by the Minister administering the ALR Act pursuant to Part 4A Division 2 of the NPW Act, to participate in negotiations with the Minister and the Land Councils for this Lease.

Aboriginal Owner Board Members means the Aboriginal Owners who are members of the Board.

Aboriginal Owners means the Aboriginal persons named as having a cultural association with the Part 4A Lands in the Register of Aboriginal Owners kept under Division 3 of Part 9 of the ALR Act.

Aboriginal Remains has the same meaning as in the NPW Act.

Added Lands means the area of Land and Waters which the Parties have agreed will be added to the Part 4A Lands in accordance with clause 2.4, being the lands described in the proclamation using the applicable form of words contained in Schedule 1.

Additional Lands means an area (other than the Added Lands) which is vested in the Land Councils on or after the Commencement Date as part of the Part 4A Lands in accordance with clause 2.3.

Advisory Council means the National Parks and Wildlife Advisory Council constituted under the NPW Act.

ALR Act means the *Aboriginal Land Rights Act 1983* (NSW).

Apical Ancestor means Aboriginal persons known and accepted by the Gumbaynggirr People as the ancestors of the Gumbaynggirr People, including but not limited to the following presently known persons:

1. King Ben Bennelong;
2. Maggie Buchanan and Davy Cowling;
3. Biddy, the mother of Lavina Duncan (Bina Whaddy);
4. Fanny Purrapine, the mother of Lily Kelly and Hilda Kelly Robinson;
5. Darby Kelly;
6. The father of Maggie Kelly's mother Biddy;
7. William 'Old Bill' Dotti;
8. John 'Jack' Dotti;
9. Lucy Flanders;
10. Dave Ballangarry;
11. Robert Walker and Louise Linwood;
12. John 'Jack' Long;
13. Bridget 'Biddy' Briggs Needam;
14. Mary Briggs and Fred Briggs;
15. Susan, mother of Charles Jarrett Snr;
16. Rose Taylor;
17. Charles Layton;
18. Mick McDougall;
19. Clara Skinner;
20. Sylvie Craig;
21. Elizabeth 'Kitty' Campbell/Cameron (known as Elizabeth Blakeney);
22. Emily Sutton;
23. Fred Hookey;
24. Nobby Neville;
25. Mary Jane Ferguson;
26. Billy Lardner Jnr;
27. King Bobby of Oban;

28. The parent of Charlie Whitton and Lucy Larrigo (nee Whitton);
29. Walter Smith and Stella Jane Davis; and
30. Jane Garde/Maskey.

Approved Determination of Native Title has the same meaning as in the *Native Title Act 1993* (Cth).

Area Manager means the DECCW Area Manager for the Coffs Coast Area or an equivalent position created from time to time.

Asset Acquisition Funds means funds to be used for the creation or enhancement of assets, as defined by NSW Treasury.

Board means the Board to be appointed pursuant to section 71AN of the NPW Act and this Lease for the management of the Part 4A Lands.

Board Member means a person appointed to the Board by the Minister in accordance with the NPW Act.

Branch Director means the DECCW Coastal Branch Director or an equivalent position created from time to time.

Burra Charter means the *Charter for the Conservation of Places of Cultural Significance* (1999) adopted by Australia ICOMOS.

Business Day means a day which is not a Saturday, Sunday or a day that is a public holiday throughout New South Wales.

Business Opportunities Analysis or **BOA** means the document prepared pursuant to clause 9.2.

Commencement Date means the date of publication in the *NSW Government Gazette* of the reservation of the Part 4A Lands by the Governor of the State of New South Wales pursuant to section 71Y of the NPW Act, being the date specified in Schedule 2 which the Minister has caused to be inserted into this Lease pursuant to section 71AF of the NPW Act.

Common Law Holders has the same meaning as in the *Native Title Act 1993* (Cth).

Community Development has the same meaning given to it in the NPW Regulation.

CPI means the Consumer Price Index for Sydney (All Groups) published from time to time by the Australian Bureau of Statistics.

Creek Bed means that part of Gaagal Wanggaan (South Beach) National Park reserved under Part 4 of the NPW Act as defined in the relevant reservation instrument using the applicable form of words contained in Schedule 3.

Crown means the Crown in the right of the State of New South Wales.

Crown Lands Minister means the Minister administering the *Crown Lands Act 1989* (NSW) and with responsibility for determination of the Land Claims pursuant to Part 2 of the ALR Act.

Crown Reserve means the Crown reserve to be created under the *Crown Lands Act 1989* (NSW) over the Inter-Tidal Zone as referred to in clause 2.5.

Cultural Area means the area which has been determined by the Aboriginal Owners and the Office of the Registrar to be the area (in which the Part 4A Lands are situated) associated with the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the Part 4A Lands.

Cultural Association means an association with the Part 4A Lands that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the Part 4A Lands.

Cultural Landscape Management means the management of land, water and natural resources in accordance with Schedule 4.

Cultural Values means the value which Gumbaynggirr People have given to items through their associations with those items. Manifestations of Cultural Values may be non-physical and/or physical and include, but are not limited to, spiritual values, cultural practices, knowledge, songs, stories, art, buildings, paths, and Aboriginal Remains. When natural elements of the landscape and waterways acquire meaning for a particular group, they have Cultural Values. These elements of the landscape and waterways may include landforms, flora, fauna and minerals.

DECCW means the Department of Environment, Climate Change and Water and incorporates the National Parks and Wildlife Service.

Determination of Native Title has the same meaning as in the *Native Title Act 1993* (Cth).

Director-General means

- (a) the Director-General of DECCW (whether appointed in a temporary, permanent or acting capacity); or
- (b) any member of staff exercising any of the powers, authorities or functions of the Director-General pursuant to delegation or otherwise.

For the avoidance of doubt, this does not include the Board.

Draft Negotiations Agreement or **DNA** means the document which was jointly prepared by the Indigenous parties and provided to DECCW, on behalf of the NSW Government, on 5 May 2004.

Execution Date means the date of execution of this Lease, being the date specified in Schedule 2 which the Minister has caused to be inserted into this Lease pursuant to section 71AF of the NPW Act.

Existing Interest means an existing interest within the meaning of section 39 of the NPW Act and includes the existing interests listed in Schedule 5.

Expiry Date means the 30th anniversary of the Commencement Date.

Facility includes associated infrastructure such as a carpark; access road; and electricity, sewerage and telecommunication services.

Gumbaynggirr Country means the land and waters in which the Gumbaynggirr People have a connection under Gumbaynggirr law and custom.

Gumbaynggirr Cultural Heritage means Aboriginal Cultural Material (including Aboriginal Remains) and Aboriginal Places as defined in the NPW Act, which is or was located:

- (a) on the Part 4A Lands; or
- (b) on or in the Land and Waters.

Gumbaynggirr People means Aboriginal persons who are:

- (a) either:
 - (i) direct descendants of an Apical Ancestor; or
 - (ii) persons who have been adopted by, or are direct descendants of a person who has been adopted by, an Apical Ancestor or a direct descendant of an Apical Ancestor; or
 - (iii) persons who have been otherwise incorporated, or who are direct descendants of a person who has been otherwise

incorporated, as a member of the Gumbaynggirr People in accordance with Gumbaynggirr laws and customs; and

- (b) who have a cultural association with land, including the Part 4A Lands, that derives from Gumbaynggirr traditions, observances, customs, beliefs or history.

Gumbaynggirr Traditional Ecological Knowledge or ***Traditional Ecological Knowledge*** means the Gumbaynggirr system of knowledge and management based on traditional laws and customs developed since indigenous occupation of the Land and Waters and includes:

- (a) knowledge about local ecosystems and ecosystem functions;
- (b) knowledge about territories and habitats;
- (c) knowledge about species and genetic resource status;
- (d) sustainable use of biological diversity and its components;
- (e) knowledge and technologies about in situ conservation and natural resource management;
- (f) traditional medicine production techniques and ethno-botanical techniques;
- (g) spiritual and cultural uses;
- (h) information about the various physical, biological and social components of the landscape;
- (i) rules for using the land without damaging it irreparably;
- (j) relationship amongst the users of the landscape;
- (k) technologies for using the landscape to meet the subsistence, health, trade and ritual needs of the local people; and
- (l) a view of the world that incorporates and makes sense of all the above in the context of long-term and holistic perspective in decision-making.

The principles for managing the Part 4A Lands in accordance with Traditional Ecological Knowledge are set out in Schedule 6.

Holistic Management means the management of land, water and natural resources in accordance with Schedule 7.

ICOMOS means the International Council on Monuments and Sites.

Indigenous Cultural and Intellectual Property or ***ICIP*** means all Intellectual Property Rights in, based on or derived from indigenous cultural property that is:

- (a) on, concerning or removed from the Part 4A Lands; and
 - (b) of, concerning or relating to, the Gumbaynggirr People,
- including but not limited to Intellectual Property Rights in, based on or derived from:
- (c) artwork and designs;
 - (d) cultural objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation;
 - (e) human remains and tissues;
 - (f) all items of immovable (including burials, ceremonial, carved trees, sacred and historically significant sites) and movable (including baskets, canoes, traditional clothing and ceremonial items, tools and implements) cultural property;
 - (g) literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages, words, and designs), and any recordings thereof;
 - (h) traditional, scientific, agricultural, technical and ecological knowledge (including genes, tissues, cultigens, medicines and pharmaceutical products);
 - (i) recordings in any form; and
 - (j) the phenotypes of flora and fauna derived exclusively from the Part 4A Lands,

but excluding:

- (k) Intellectual Property Rights in any Research Data;
- (l) proprietary rights and Intellectual Property Rights in such works:
 - (i) created by a third party under the direction or control of the Minister and/or Director General prior to the Commencement Date; or
 - (ii) gifted to the Minister and/or the Director-General; and

- (m) for the avoidance of doubt, all files, documents, maps, photographs and other records whether in printed or electronic form made by or under the direction or control of the Minister or the Director-General prior to the commencement of the Board Policy prepared under clause 12.1, being files, documents, maps, photographs and other records whether in printed or electronic form made by or under the direction or control of the Minister or the Director-General prepared for the purposes of the assessment of the Land Claims under the ALR Act, the assessment of the Native Title Claim, the reservation of the lands under the NPW Act or the *Crown Lands Act 1989* (NSW), the negotiation of the LEC Settlement Agreement or this Lease, and any legal advice provided for such purposes.

Indigenous Land Use Agreement or ***ILUA*** has the same meaning as in the *Native Title Act 1993* (Cth).

Indigenous Protected Area means an area designated as an indigenous protected area pursuant to an agreement with the Commonwealth Government.

Initial Period means the three year period commencing on 1 July 2010 and ending on 30 June 2013.

Intellectual Property Rights means all intellectual property rights conferred by statute, common law or in equity, in relation to copyright, inventions (including patents, innovation patents and utility models), registered and unregistered designs, registered and unregistered trade marks, but excluding moral rights, and similar personal rights, which by law are non-assignable.

Interim Advisory Committee means the committee formed pursuant to clause 7.8(b).

Inter-Tidal Zone means that area of land at South Beach between the mean high water mark and mean low water mark extending from the southern boundary of Lot 7310 of DP 1149441 to the northern boundary of Lot 7315 of DP 1149441.

Land and Waters means the Part 4A Lands, the Part 4 Lands, the Crown Reserve, Gumma Peninsula (being the land comprised in Lot 555 of DP 1072228) and the three islands (being the land comprised in Lots 557 to 559 of DP 1072228).

Land Claims means the land claims made pursuant to ALR Act, being claim numbers 972, 4193, 4198, 5523, 5448 and 5515. A map showing these land claims is attached as Schedule 8, but does not form part of this Lease.

Land Council means either:

- (a) the Nambucca Heads LALC;
- (b) the Unkya LALC; or
- (c) in circumstances where the Land Councils are required to act jointly, both the Nambucca Heads LALC and the Unkya LALC.

Land Management Principles means the principles in clause 5.1.

Lease means this Lease or any amended version of this Lease, as in force from time to time.

LEC Proceedings means:

- (a) Land and Environment Court Proceedings No. 30056/96; or
- (b) Land and Environment Court Proceedings No. 30057/96.

LEC Settlement Agreement means the agreement referred to in Recital P between the Nambucca Heads LALC, the Unkya LALC, the Crown Lands Minister, the Minister and the Director-General dated 18 December 2002 which was entered with respect to or in connection with the LEC Proceedings.

Minister means the Minister administering the NPW Act from time to time.

Ministerial Corporation means the corporation sole named the "Minister administering the *National Parks and Wildlife Act 1974*" constituted under section 150 of the NPW Act.

Nambucca Heads LALC means the Nambucca Heads Local Aboriginal Land Council being a statutory corporation incorporated under the ALR Act.

National Heritage means those properties listed on the National Heritage List under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Native Title has the same meaning as in the *Native Title Act 1993* (Cth).

Native Title Claim means the native title claimant application filed on 16 December 1996 and designated National Native Title Tribunal file number NC 96/41 and Federal Court file number NSD 6054/98 as amended

from time to time. A list of rights and interests asserted in this claim and the DNA are listed in Schedule 9.

Native Title Holders has the same meaning as in the *Native Title Act 1993* (Cth).

Native Title Rights and Interests has the same meaning as in the *Native Title Act 1993* (Cth).

Notice means a notice, demand, consent or authority given or made by any person pursuant to clause 1.6.

NPW Act means the *National Parks and Wildlife Act 1974* (NSW).

NPW Regulation means the *National Parks and Wildlife Regulation 2009* (NSW).

Part 4 Lands means that part of Gaagal Wanggaan (South Beach) National Park reserved under Part 4 of the NPW Act.

Part 4A Accounts means the separate account in the fund known as Gaagal Wanggaan (South Beach) National Park Fund established pursuant to section 138(1)(b1) of the NPW Act and referred to in clause 15.1(a).

Part 4A Lands means:

- (a) the parts of the Land and Waters comprising Lots 7310, 7311, 7312, 7314 and 7315 of DP 1149441, Lot 112 of DP 755539, Lots 235 and 236 of DP 755539, being the lands that are granted to the Land Councils pursuant to section 36A of the ALR Act on or prior to the Commencement Date and described in the relevant reservation instrument using the applicable form of words contained in Schedule 3;
- (b) the Added Lands; and
- (c) any Additional Lands,

as amended from time to time by an Act of Parliament.

Party and Parties means:

- (a) the Nambucca Heads LALC;
- (b) the Unkya LALC;
- (c) the Minister; or
- (d) the Director-General.

Permit means a licence, permit, consent, authority or other permission.

Plan means the plan of management applying to the Part 4A Lands under Part 5 of the NPW Act, as in force from time to time.

Prescribed Body Corporate has the same meaning as in the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

Recurrent Funds means the funds to be used for the routine care, control and management of the Part 4A Lands.

Regional Manager means the DECCW Regional Manager of the North Coast Region or such other equivalent position created from time to time.

Rent Account means that part of the Part 4A Accounts into which rent and revenue is paid pursuant to clause 15.1(a)(i)(A)(1).

Research Data means the outcome or findings of any studies or investigations predominantly relating to, or connected with, the Part 4A Lands, including but not limited to:

- (a) research into cultural heritage or artefacts on or in connection with the Part 4A Lands;
- (b) research into flora and fauna on or in connection with the Part 4A Lands;
- (c) research into the ecological use of the Part 4A Lands; and
- (d) research into the socio-economic values in relation to the Part 4A Lands,

but excluding:

- (e) works:
 - (i) created by a third party under the direction or control of the Minister and/or Director General prior to the Commencement Date; or
 - (ii) gifted to the Minister and/or the Director-General; and
- (f) for the avoidance of doubt, all files, documents, maps, photographs and other records whether in printed or electronic form made by or under the direction or control of the Minister or the Director-General prior to the commencement of the Board Policy referred to in clause 12.1, being files, documents, maps, photographs and other records

whether in printed or electronic form made by or under the direction or control of the Minister or the Director-General prepared for the purposes of the assessment of the Land Claims under the ALR Act, the assessment of the Native Title Claim, the reservation of the lands under the NPW Act or the *Crown Lands Act 1989* (NSW), the negotiation of the LEC Settlement Agreement or this Lease, and any legal advice provided for such purposes.

Term means the period defined in clause 1.3(a).

Unkya LALC means the Unkya Local Aboriginal Land Council being a statutory corporation incorporated under the ALR Act.

World Heritage means those properties listed pursuant to the *Convention concerning the Protection of the World Cultural and Natural Heritage*.

1.2 Interpretation

In this Lease, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to this Lease includes the recitals, schedules and annexures (if any);
- (c) headings are inserted for ease of reference only and are to be ignored in construing this Lease;
- (d) if a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to any Party to this Lease or any other agreement or document includes the Party's successors and substitutes or assigns;
- (f) an obligation, representation or warranty on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (h) no rule of construction applies to the disadvantage of a Party on the basis that that Party put forward this Lease or any part of this Lease;
- (i) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for

the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

- (j) a reference to a person which has ceased to exist or has reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by another person, is a reference to the person established or constituted in its place or by which its functions have become exercisable;
- (k) a reference to any statutory authority, government body (corporate or unincorporated) or person established under any written law includes a reference to any person or body (corporate or unincorporated) established or continued to perform the same or substantially similar function;
- (l) references to time are to local time in Nambucca Heads, New South Wales;
- (m) where time is to be reckoned from a day or event, that day or the day of that event is excluded;
- (n) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (o) substantial means not merely nominal;
- (p) a reference to includes or including means includes, without limitation, or including, without limitation, respectively;
- (q) all obligations are taken to be required to be performed duly and punctually;
- (r) words importing do include do, permit or omit, or cause to be done or omitted; and
- (s) a reference to an agreement or document is to the agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Lease.

1.3 Term

(a) Term of Lease

Subject to the terms of this Lease, this Lease commences on the Commencement Date and expires at midnight on the Expiry Date.

(b) Holding over

(i) If, at the Expiry Date, the Parties have not reached agreement:

(A) for the extension of the Term of this Lease; or

(B) for its replacement by a new lease,

the Minister will hold over under the Lease in accordance with section 71AL of the NPW Act until the date of execution of a new lease.

(ii) During any holding over period under clause 1.3(b)(i), the terms of this Lease shall apply to the Parties.

1.4 Authority to enter into Lease

(a) Each Party represents and warrants to each other Party that:

(i) it has obtained all necessary authorisations to enter into this Lease; and

(ii) this Lease is valid, binding and enforceable in accordance with its terms against each Party.

(b) To the extent that this Lease places an obligation on any Party or requires any Party to take some step or perform or do some task, the Parties warrant that those steps and tasks will be performed.

1.5 Effect on Native Title

(a) Subject to any Native Title Rights and Interests that may exist over the Part 4A Lands at the Commencement Date, in accordance with sections 71C(4), 71Z(3)(a) and 71BI(1) of the NPW Act, the Land Councils grant this Lease to the Minister.

(b) Nothing in this Lease, and the exercising of powers and the carrying out of functions pursuant to this Lease, is intended to, in any way extend, diminish, extinguish, suspend or otherwise alter any common law or statutory Native Title Rights and Interests which may exist

over the Part 4A Lands at the Commencement Date, nor does it prevent any exercise of such Native Title Rights and Interests.

- (c) The Parties acknowledge that the Native Title Claim covers an area which includes the Part 4A Lands.
- (d) The Parties agree that, pending the making of a Determination of Native Title in respect of the Part 4A Lands (or any part or parts thereof in relation to which Native Title has not been extinguished), the Parties and the Board shall refrain from any action which might affect the exercise and enjoyment of Native Title Rights and Interests unless that action is done in accordance with the *Native Title Act 1993* (Cth).
- (e) The Parties agree that, in the event that an Approved Determination of Native Title is made in terms which recognise the existence of Native Title in respect of the whole or any part of the Part 4A Lands, the Parties and the Board shall, in accordance with s.71BI(2) of the NPW Act, enter into arrangements through an ILUA with the Prescribed Body Corporate to ensure that the Native Title Rights and Interests in respect of the Part 4A Lands are preserved and that any action which might affect the exercise and enjoyment of Native Title Rights and Interests shall occur:
 - (i) in accordance with the procedures in the ILUA; or
 - (ii) if the action is not covered by the ILUA or the ILUA is not yet in force, otherwise in accordance with the *Native Title Act 1993* (Cth).

1.6 Notices

- (a) Any notice, demand, consent or other communication (a **Notice**) given or made under this Lease:
 - (i) must be in writing and signed by a person duly authorised by the sender;
 - (ii) must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:

Minister

to:

32 Marina Drive

Coffs Harbour NSW 2450

Attention: Area Manager

Fax No: (02) 6651 9525

Director-General

to:

32 Marina Drive

Coffs Harbour NSW 2450

Attention: Area Manager

Fax No: (02) 6651 9525

Nambucca Heads Local Aboriginal Land Council

to:

PO Box 358, Nambucca Heads NSW 2448

Attention: Chief Executive Officer

Fax No: (02) 6568 9161

Unkya Local Aboriginal Land Council

to:

Shop 7 Skylight Arcade

17 – 19 Wallace Street

Macksville NSW 2447

PO Box 319, Macksville NSW 2447

Attention: Chief Executive Officer

Fax No: (02) 6568 2610

- (iii) will be taken to be duly given or made:
- (A) in the case of delivery in person, when delivered;
 - (B) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the Sydney metropolitan area) or four Business Days after the date of posting (if posted to an address outside the Sydney metropolitan area); and
 - (C) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and

indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a date that is not a Business Day or is later than 4pm (local time) it will be taken to have been duly given or made at the start of business on the next Business Day.

- (b) The Parties agree that any Notice to be given or made under this Lease to the Board is to be made as follows:
 - (i) if the Board has not been constituted by the Minister, the Notice is to be given to the Director-General in accordance with clause 1.6(a); or
 - (ii) if the Board has been appointed by the Minister, the Notice is to be given to the Board at the address notified by the Board to the Parties from time to time and is to be made in a form in accordance with clause 1.6(a).

1.7 Registration

- (a) The Parties agree to take all steps as necessary to effect the lodgement for registration of all documents required to be lodged for registration:
 - (i) pursuant to section 71AG(1) of the NPW Act in relation this Lease;
 - (ii) pursuant to section 71AH(4) of the NPW Act in relation to amendments made by agreement between the Parties and the Aboriginal Owner Board Members; and
 - (iii) pursuant to section 71AJ(2) of the NPW Act in relation a re-negotiated lease under clause 4.4(b).
- (b) The Director-General agrees to co-ordinate the lodgement for registration process required of the Parties pursuant to clause 1.7(a) above.

1.8 Costs and expenses

The Director-General must pay to the Land Councils or otherwise discharge:

- (a) the Land Councils' reasonable legal costs, charges and expenses of and incidental to any assignment, sub-lease, variation, surrender, renewal, extension or termination of this Lease (excluding costs arising from assignments, sub-leases, variations, surrenders, renewals, extensions or terminations requested by the Land Councils or by the Minister or the Director-General in accordance with the direction of the Board);
- (b) all reasonable costs incurred by the Land Councils in connection with the granting of all consents or approvals requested by the Minister or the Director-General (including the costs of consultants and whether or not consent or approval is actually granted), excluding those consents or approvals requested by the Minister or the Director-General in accordance with the direction of the Board; and
- (c) all legal and other costs, charges and expenses for which the Land Councils are liable in consequence of or in connection with the default by the Director-General in performing or observing the covenants, obligations and provisions contained or implied in this Lease.

1.9 Advice about Gumbaynggirr People, Aboriginal Owners or Land Council Members

- (a) The Parties acknowledge that a DECCW officer may be unsure or unable to determine whether a person is a member of the Gumbaynggirr People, an Aboriginal Owner or a Land Council member and may need to take action which would not otherwise be required if the DECCW officer was aware that the person was a member of the Gumbaynggirr People; an Aboriginal Owner or a Land Council member.
- (b) If requested by the Director-General, DECCW officers will seek the advice of one or more Aboriginal Owner Board Members in determining whether a person is a Gumbaynggirr Person or an Aboriginal Owner.
- (c) If requested by the Director-General, the Land Councils will:
 - (i) assist DECCW officers in determining whether a person is a Land Council member; and
 - (ii) provide advice in writing.

2. Lands

2.1 Description of Part 4A Lands at the Commencement Date

- (a) The land subject to this Lease is the Part 4A Lands within Gaagal Wanggaan (South Beach) National Park.
- (b) The Parties have agreed that the instrument reserving the Part 4A Lands is to be made using the form of words contained in the relevant part of Schedule 3 of this Lease and forms part of this Lease.
- (c) A map of Gaagal Wanggaan (South Beach) National Park is appended as Schedule 10, but does not form part of this Lease.

2.2 Name and reservation category

The Part 4A Lands are part of a national park called Gaagal Wanggaan (South Beach) National Park.

2.3 Additional Lands

- (a) The Parties acknowledge that Additional Lands should be reserved as part of the Part 4A Lands, where this will assist with the improvement of:
 - (i) the overall cultural or environmental integrity of the Land and Waters; and/or
 - (ii) the management of the Part 4A Lands,and provide the opportunity for coordinated management strategies within the Part 4A Lands.
- (b) The Parties agree that if land and waters located outside the Part 4A Lands, but within the vicinity of the Part 4A Lands, is offered for sale by private treaty or auction, the Parties will consult with one another and the Board to determine whether negotiations should be undertaken to acquire all or part of such Additional Land (whether by the Minister or the Land Councils) for reservation as an addition to the Part 4A Lands.
- (c) The addition of any land or waters to the Part 4A Lands requires the consent of the Board and the Land Councils, in accordance with section 71AZ of the NPW Act.

- (d) The Parties agree to discuss not less frequently than each review of this Lease pursuant to clause 4.4(e) the issue of possible additions to the Part 4A Lands.
- (e) Subject to this clause 2.3, the Minister may, for the purpose of obtaining land for reservation under the NPW Act, add to the Part 4A Lands by:
 - (i) (on behalf of Her Majesty) entering into and giving effect to an agreement for the vesting in, or surrendering to, Her Majesty of any land; or
 - (ii) acquiring land by agreement or by compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW),
and in accordance with Part 11 of the NPW Act.
- (f) The Parties agree that where other land or waters are to be reserved for conservation purposes under section 71BC of the NPW Act for addition to the Part 4A Lands, the Additional Lands will be:
 - (i) reserved as part of the Gaagal Wanggaan (South Beach) National Park;
 - (ii) vested in both of the Land Councils;
 - (iii) cared for, controlled and managed by:
 - (A) the Board; or
 - (B) if the Board has not been established for the Part 4A Lands, by the Director-General, until the Board is established; and
 - (iv) this Lease is taken to extend to and apply to the Additional Land in the same way as it applies to the Part 4A Lands.
- (g) Where land or waters in the vicinity of the Part 4A Lands contain Gumbaynggirr Cultural Heritage for which the Director-General has responsibilities, the Director-General will use his or her best endeavours where possible to consider incorporating those lands and waters into the Part 4A Lands.

2.4 Added Lands and consent of the Land Councils

- (a) In accordance with the LEC Settlement Agreement the Minister agrees to cause the following lands to be added to the Part 4A Lands pursuant to Part 4A Division 8 of the NPW Act, as soon as practicable after the Commencement Date:
 - (i) part of the land identified in brown on the LEC Settlement Agreement map, being Lot 233 of DP 755539 and Lot 234 of DP 755539;
 - (ii) the land identified in green hatching on the LEC Settlement Agreement map being Lot 224 of DP 755539 and Lots 237 to 246 of DP 755539; and
 - (iii) the land west of Lot 233 as referred to in the correspondence from Unkya LALC to DECCW and the NSW Crown Solicitor's Office dated 21 January 2010 and the remainder of the land identified in brown on the LEC Settlement Agreement map, being Lot 7313 of DP 1149441.
- (b) The Land Councils consent to the addition of the lands referred to in clause 2.4(a) to the Part 4A Lands.

2.5 Inter-Tidal Zone and Creek Bed

- (a) For the purposes of implementing the outcomes of the negotiations for this Lease, the Minister agrees to support the establishment of a reserve trust and its appointment as trustee of the Inter-Tidal Zone by the Crown Lands Minister under the *Crown Lands Act 1989*.
- (b) The Minister agrees that the Ministerial Corporation will accept appointment as the reserve trust manager for the Inter-Tidal Zone under the *Crown Lands Act 1989*.
- (c) The Minister agrees to use his or her best endeavours to ensure that the Crown Lands Minister establishes the reserve trust and appoints the reserve trust manager as soon as practicable after the registration of the ILUA.
- (d) The Minister agrees to reserve the Creek Bed under Part 4 of the NPW Act, as soon as practicable after the Commencement Date.
- (e) To the fullest extent reasonably practicable, the Minister agrees to ensure the management of the Part 4 Lands and Crown Reserve

occurs in an integrated manner with the Part 4A Lands as set out in clause 5.3.

3. Premises and Assets

3.1 Existing fixtures and improvements on Part 4A Lands at Commencement Date

Unless otherwise provided by any Act, this Lease, an instrument issued by or under the NPW Act or an Existing Interest, all fixtures and improvements on the Part 4A Lands as at the Commencement Date are to be held by the Crown in trust for the Aboriginal Owners and the Land Councils.

3.2 Ownership of fixtures, improvements and assets erected, made or acquired after the Commencement Date

- (a) Unless otherwise agreed to by the Parties, any new fixtures erected on or improvements made to the Part 4A Lands by the Director-General on behalf of the Board on or after the Commencement Date are to be held by the Crown in trust for the Aboriginal Owners and the Land Councils.
- (b) Assets, including plant and equipment acquired using funds from the Part 4A Accounts are owned by the Crown and held in trust for the Aboriginal Owners and the Land Councils and will be managed by the Director-General.

3.3 Maintenance and repairs of fixtures, improvements and assets

- (a) Unless otherwise provided by an Act, this Lease, an instrument issued by or under this NPW Act or an Existing Interest, the Board is responsible for allocating funds (from Recurrent Funds) for maintenance and repairs to any fixtures or improvements on the Part 4A Lands held by the Crown in trust for the Aboriginal Owners.
- (b) The Board is responsible for allocating funds from the Part 4A Accounts for maintenance and repairs to any assets acquired by the Director-General on behalf of the Board for use on the Part 4A Lands.

4. Statutory Provisions

4.1 Characteristics of Lease and Lease Document

- (a) This Lease is entered into by the Parties pursuant to Part 4A of the NPW Act and is to be interpreted and implemented in accordance with the NPW Act.
- (b) The Land Councils lease the whole of the Part 4A Lands vested in them to the Minister, pursuant to the NPW Act.

4.2 Acknowledgement of the Land Councils holding the Part 4A Lands on behalf of the Aboriginal Owners

(a) Aboriginal Owners

- (i) The Parties acknowledge that the Land Councils in which the Part 4A Lands are vested, hold the Part 4A Lands on behalf of the Aboriginal Owners.
- (ii) The Land Councils must act in the best interests of the Aboriginal Owners when exercising their functions with respect to the Part 4A Lands, as required by section 52(2)(e) of the ALR Act.
- (iii) Except where required by law, the Land Councils agree that in accordance with section 71BG of the NPW Act, they will not exercise their functions with respect to the Part 4A Lands or under this Lease without the agreement of the Aboriginal Owner Board Members.

(b) Native Title Holders

- (i) The Parties and the Board acknowledge that the Part 4A Lands are subject to the Native Title Rights and Interests (if any) in the Part 4A Lands.
- (ii) Except where required by law, the Land Councils, the Board, the Director-General and the Minister agree that they will only exercise their functions with respect to the Part 4A Lands or under this Lease:
 - (A) in accordance with the procedures in the ILUA; or
 - (B) if the action is not covered by the ILUA or the ILUA is not yet in force, otherwise in accordance with the *Native Title Act 1993* (Cth).

4.3 Restrictions on dealings with the Part 4A Lands

- (a) The Parties agree that in accordance with section 71AD(1)(n) of the NPW Act:
 - (i) the Part 4A Lands, or any part of the Part 4A Lands, may not be the subject of any sale, exchange, disposal or mortgage; and
 - (ii) to the extent to which the Part 4A Lands may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister.
- (b) **Reservation of right of entry and inspection**
 - (i) For the purpose of ensuring and monitoring compliance with this Lease, the Land Councils reserve a right in favour of any person authorised in writing by the Land Councils, after reasonable notice to the Board and the Director-General and at all reasonable times, to enter upon the Part 4A Lands or any part of them and to inspect the Part 4A Lands and any improvements on the Part 4A Lands.
 - (ii) The Parties agree that such access is to be subject to:
 - (A) such reasonable constraints as may be contained in the Plan;
 - (B) such reasonable restrictions as may be determined by the Board as being necessary for reasons of safety, security, privacy, cultural reasons or protection of the Part 4A Lands; and
 - (C) such restrictions as may arise under any industrial award or agreement relating to any residences on the Part 4A Lands.

(c) **Minister entitled to quiet enjoyment**

Subject to this Lease, the Minister, observing and performing the obligations of the Minister in this Lease and procuring the observation and performance by the Director-General of obligations of the Director-General, may peaceably possess and enjoy the Part 4A Lands without any interruption or disturbance from the Land Councils or any person lawfully claiming by, from, under or in trust for the Land Councils.

(d) **Preservation of existing leases and licences**

This Lease is subject to any Existing Interest, any licence issued under Part 9 of the NPW Act, any lease, licence, franchise or easement granted under Part 12 of the NPW Act and any authority or consent issued under NPW Act or NPW Regulation affecting the Part 4A Lands, or any part of the Part 4A Lands, that is current on the Commencement Date.

4.4 Renewal and review of Lease

(a) **Ability to renew**

This Lease may be renewed subject to the following:

- (i) there is no limitation on the number of times the Lease may be renewed;
- (ii) each renewal of the Lease must be for a further term of at least 30 years; and
- (iii) each renewal of the Lease must be with the consent of the Land Councils and the Minister.

(b) **Renewal process**

- (i) Pursuant to section 71A1 of the NPW Act, and subject always to there being agreement pursuant to clause 4.4(f):
 - (A) at least five years before the expiry of each term of the Lease, the Director-General on behalf of the Minister, the Land Councils and the Aboriginal Owner Board Members must consider whether or not any one or more of the provisions of this Lease should be amended to enable the Lease to operate more effectively;

- (B) if it is agreed that a provision does require amendment, the Director-General, the Land Councils and the Aboriginal Owner Board Members must negotiate on and prepare the required amendment at least two years before the expiry of the then current term of the Lease;
- (C) any amendment prepared in accordance with this clause and agreed to by the Land Councils must be presented, by the Director-General, to the Minister for approval at least 18 months before the expiry of the then current term of the Lease;
- (D) if an amendment is approved by the Minister, a new lease must be prepared incorporating the amended provision;
- (E) at least six months before the expiry of the then current term of the Lease, the new lease must be executed in escrow by the Minister and the Land Councils;
- (F) a lease executed under this clause takes effect, in substitution for the previous lease between the Minister, the Director-General and the Land Councils, on the expiration of the term of the previous lease;
- (G) if the Director-General and the Land Councils agree that no provisions of the Lease require amendment, the Lease operates for a further term of 30 years, commencing on the expiration of the current term of the Lease, in accordance with its provisions; and
- (H) the term of a new lease that renews or replaces a lease whose term has expired runs from the date of execution of the new lease by all Parties, and the Minister must cause the date of commencement of the term to be inserted into the new lease.

(c) **Timeframes**

The times specified by clause 4.4(b) for the consideration of the provisions of the Lease, the negotiation and preparation of amendments, the presentation of the amendments to the Minister and

the execution of the lease may be varied by the agreement of the Parties.

(d) Disputes on renewal

- (i) If there is disagreement between the Director-General, the Land Councils and the Aboriginal Owner Board Members as to whether a provision in the Lease requires amendment or as to the wording of an amendment to such a provision or if an amendment agreed between the Director-General, the Land Councils and the Aboriginal Owner Board Members is not approved by the Minister, the Minister or either of the Land Councils may refer the matter for dispute resolution in accordance with clause 16.
- (ii) In accordance with section 71AD(1)(e) of the NPW Act, if the Parties renew this Lease, that renewal will have the effect of completely replacing this Lease except to the extent that the renewal preserves any provisions of this Lease or to the extent required by any statute.

(e) Review of Lease

- (i) Pursuant to section 71AH of the NPW Act at least once every five years the Land Councils, the Aboriginal Owner Board Members and the Director-General on behalf of the Minister, must review the provisions of this Lease and consider whether or not any one or more of the provisions of the Lease require amendment.
- (ii) The review to be conducted for the purposes of this clause 4.4(e) must include a consideration of the adequacy of the then existing arrangements for management of the Part 4A Lands and whether a recommendation should be made for amendments to the NPW Act to meet specific requirements relating to the management of the Part 4A Lands.
- (iii) Where the Parties and the Aboriginal Owner Board Members agree to an amendment to the Lease as a result of the review consultations, the Parties must execute all necessary documentation to give effect to such agreement.

- (iv) If the Parties or the Aboriginal Owner Board Members fail to reach an agreement with respect to an amendment, the disagreement shall be referred to clause 16 for resolution.

(f) **Agreement to vary, amend or renew the Lease**

Any variation, amendment or renewal of this Lease requires either the written agreement of the Parties (being, in the case of a variation or an amendment, the agreement only of those Parties who are Parties to the clause to be varied or amended) and also requires either the agreement of the Aboriginal Owner Board Members or an Act of Parliament pursuant to section 71AK of the NPW Act.

5. Land Management

5.1 Land Management Principles

- (a) The Land and Waters are of special cultural significance to the Gumbaynggirr People and have a high ecological significance.
- (b) The Land and Waters are part of the cultural landscape of the Gumbaynggirr Country.
- (c) Land and waters are not separated in Gumbaynggirr People's culture but are a single, indivisible cultural landscape and ecosystem.
- (d) Gumbaynggirr People consider there is a direct relationship between the health of the natural environment (and its sustainable development) and the social, economic, physical and spiritual well-being of the Gumbaynggirr People.

5.2 Management of the Part 4A Lands

The Part 4A Lands shall be managed in accordance with the following:

- (a) the objective of recognising and protecting Native Title Rights and Interests (if any) in the Part 4A Lands and the avoidance of actions which (whether valid or not) might to any extent affect the existence, exercise or enjoyment of Native Title Rights and Interests:
 - (i) unless those actions are in accordance with the procedures in the ILUA; or

- (ii) if the action is not covered by the ILUA or the ILUA is not yet in force, otherwise in accordance with the *Native Title Act 1993* (Cth).
- (b) the NPW Act, this Lease, the Plan, and other relevant legislation;
- (c) the Land Management Principles;
- (d) Cultural Landscape Management;
- (e) Holistic Management;
- (f) Gumbaynggirr Traditional Ecological Knowledge; and
- (g) any other land management systems or methodologies which the Board agree are applicable to the management of Part 4A Lands.

5.3 Consistent and integrated management of adjacent land

- (a) The Director-General acknowledges the importance of working co-operatively with the Board to ensure the Part 4A Lands, Part 4 Lands and the Crown Reserve are managed in an integrated and consistent manner.
- (b) To the fullest extent practicable, the Director-General will exercise care, control and management of the Part 4 Lands in a way that is consistent with the management direction set by the Board in relation to the Part 4A Lands.
- (c) To the fullest extent practicable, the Ministerial Corporation will exercise its functions as the reserve trust manager of the Crown Reserve, including its care, control and management, in a way that is consistent with the management direction set by the Board in relation to the Part 4A Lands.
- (d) Integrated management of the Part 4 Lands and the Crown Reserve will be pursued through mechanisms such as a memorandum of understanding with the Board, a single plan of management, the Board acting as an Advisory Committee for the Part 4 Lands and any land occupied or acquired by the Minister under Part 11 of the NPW Act, or an agreement under section 146(3) of the NPW Act which is approved by the Board.
- (e) As soon as practicable after the appointment of the Interim Advisory Committee, the Director-General will commence discussions with the Interim Advisory Committee about the integrated management

arrangements to be initially established in relation to the Part 4 Lands and the Crown Reserve.

5.4 Indigenous Protected Area

- (a) The Parties support an application for declaration as an Indigenous Protected Area of the three islands (being the land comprised in Lots 557 to 559 of DP 1072228) and the land on Gumma Peninsula (being the land comprised in Lot 555 of DP 1072228) owned by the Nambucca Heads LALC .
- (b) The Parties provide in principle support for an Indigenous Protected Area to be extended over the Part 4A Lands, the Part 4 Lands and the Crown Reserve.
- (c) An application by the Land Councils to extend an Indigenous Protected Area to the Part 4A Lands may only be made with the approval of the Board.
- (d) An application by the Land Councils to extend an Indigenous Protected Area to the Crown Reserve may only be made with the approval of the Ministerial Corporation.

5.5 Coordination between the Board and other management bodies

- (a) The Board shall develop a protocol relating to the coordination of management of the Part 4A Lands and neighbouring land and waters.
- (b) The protocol will address the following:
 - (i) the exchange of information between the Board and the owners and managers of neighbouring land and waters; and
 - (ii) how best to ensure a coordinated approach with respect to the management of the Part 4A Lands and the neighbouring land and waters.

5.6 Coordination between the Board and the Prescribed Body Corporate

- (a) The Board and the Prescribed Body Corporate shall develop a protocol relating to the coordination of management of the Part 4A Lands by the Board and the exercise of Native Title Rights and Interests (if any) in the Part 4A Lands.
- (b) The protocol will address the following:

- (i) the exchange of information between the Board and the Prescribed Body Corporate in relation to the Native Title Rights and Interests in the Part 4A Lands (if any); and
- (ii) how best to ensure a coordinated approach with respect to the management of the Part 4A Lands and the exercise of Native Title Rights and Interests (if any).

5.7 Obligations to observe land management statutes

The Minister, the Director-General and the Land Councils agree to comply with, and ensure that their employees, contractors and agents comply with, the provisions of:

- (a) the NPW Act and NPW Regulation;
- (b) any other legislation applying to the Part 4A Lands; and
- (c) any Plan in force with respect to the Part 4A Lands.

5.8 Planning and building applications

Any application to carry out a project under Part 3A or development under Part 4 of the *Environmental Planning and Assessment Act 1979* (NSW) on the Part 4A Lands may only be made with the consent of the Land Councils and the Board.

5.9 Public access

(a) Rights of public access

- (i) The public has a right of general access to the Part 4A Lands, subject to the Plan, the NPW Act and NPW Regulation, and Board policies in accordance with section 71AD(1)(m) of the NPW Act.
- (ii) The principles to be applied by the Board to guide the management of public access to the Part 4A Lands include:
 - (A) the protection of Cultural Values;
 - (B) Gumbaynggirr Cultural Heritage;
 - (C) the protection of natural values;
 - (D) the promotion and enhancement of appropriate use, understanding and enjoyment of the Part 4A Lands;
 - (E) ecological sustainability;

- (F) equity; and
- (G) safety, security or protection of the Part 4A Lands.
- (b) The Parties acknowledge that the Board may, as it considers appropriate, apply any declarations of restrictions on access to visitors, staff or Aboriginal people in accordance with the Plan or Board policy.
- (c) The Minister and the Director-General must use their reasonable endeavours to enter into all necessary legal agreements to ensure that public access to the Part 4A Lands by vehicles along or in the vicinity of the formed road to the south of the Part 4A Lands is achieved as soon as practicable, and in any event within 18 months of the Commencement Date.

5.10 Fees, including entry and user fees

- (a) **Setting of park entry and user fees**
 - (i) Subject to the Minister's prior approval, the Board may impose fees, including entry and camping fees.
 - (ii) The Director-General will promote the Part 4A Lands as part of DECCW's state-wide promotion of parks and reserves with approval of the Board.
- (b) **Exemption from fees**
 - (i) The Board has the discretion to waive the payment of any fees, including entry and camping fees, by Gumbaynggirr People, Aboriginal Owners, and Land Council members with respect to the non-commercial use of, or access to, the Part 4A Lands.
 - (ii) The Board shall develop a written policy regarding the waiving of fees before it grants any exemptions. The Parties acknowledge that the Board may exempt other Aboriginal people with a Cultural Association with the Part 4A Lands from the payment of fees in accordance with this policy.
 - (iii) The use of, or access to, the Part 4A Lands does not give any rights to use the services, goods, plant, machinery or utilities on or for the Part 4A Lands.

5.11 Obligations of the Director-General to observe land management statutes

- (a) The Director-General is responsible for performing all obligations of owners, occupiers and managers of the Part 4A Lands, but not limited to, the *Rural Fires Act 1997* (NSW), the *Noxious Weeds Act 1993* (NSW), the *Pesticides Act 1999* (NSW), the *Wild Dog Destruction Act 1921* (NSW) and (in relation to pests) the *Rural Lands Protection Act 1998* (NSW).
- (b) The Land Councils agree that:
 - (i) if they receive any notice pursuant to the Acts mentioned in this clause they will advise and provide a copy to the Board as soon as practicable and in any event within 10 Business Days of receipt of the notice in writing; and
 - (ii) they will not carry out any activity on the Part 4A Lands under those Acts except with the consent of the Board.
- (c) The Director-General will notify the relevant local Livestock Health and Pest Authority, the Nambucca Shire Council and Rural Fire Services to advise of the commencement of the Lease arrangements and to request that any legal instruments which are served on either of the Land Councils as owner of the Part 4A Lands are also copied to the Director-General and the Board.
- (d) The Director-General may exercise functions as a fire authority under the *Rural Fires Act 1997* (NSW) with regard to the Board's fire management strategy under clause 6.5. In responding to incidents in exercise of functions under the *Rural Fires Act 1997* (NSW), the Director-General will, where reasonably practical, consult with the Board.
- (e) The Minister will indemnify the Land Councils against any liabilities under the legislation mentioned in this clause, except where liability has arisen in relation to a failure of the Land Councils to comply with clause 5.11(b).

5.12 Use of DECCW equipment and services

- (a) Subject to availability, mobility and temporary assignment or transfer of DECCW equipment will be permitted so that equipment located

elsewhere in other DECCW areas can be also used on the Part 4A Lands.

- (b) DECCW will make advisory and other professional services which are available to its officers in carrying out their statutory functions equally accessible to the Board, subject to availability.
- (c) A right of access to the Part 4A Lands with the consent of the Board does not confer any right to use DECCW equipment on the Part 4A Lands, without the Director-General's or the Board's express authorisation.
- (d) Where under DECCW's usual procedures a charge is applied to cover the costs of using equipment (such as heavy machinery or a helicopter) or providing a service (such as centralised management of commercial tour operator licences), those costs may only be charged to the Part 4A Accounts with the prior approval of the Board. The rate at which any equipment or services are charged will be at the same rate which applies to other parks in the North Coast Region.
- (e) The Minister and the Director-General agree to contribute non financial, in-kind resources up to an amount of \$150,000 per annum for matters referred to in this Lease, such as:
 - (i) in-kind staff time through supervision, expert advice and corporate support provided by DECCW staff who are not funded from the Part 4A Accounts;
 - (ii) subject to availability, equitable access to and use of resources such as equipment and vehicles; and
 - (iii) assistance with preparing funding applications.

For the purposes of this clause, the in-kind resources do not include the provision of the fire unit and boat referred to in clause 15.3(b).

5.13 Managing threatened species

- (a) The Director-General will consult with and have regard to the views of the Board and the Land Councils as soon as practicable after commencing the preparation of any draft priorities action statement, recovery plan or threat abatement plan, and prior to adopting any

priorities action statement under the *Threatened Species Conservation Act 1995* (NSW):

- (i) for species whose habitats include all or part of the Part 4A Lands; or
 - (ii) if the proposed recovery plan may include steps to be implemented on or in the vicinity of the Part 4A Lands.
- (b) The Minister will consult with and have regard to the views of the Board and the Land Councils prior to approving any recovery plan or threat abatement plan under the *Threatened Species Conservation Act 1995* (NSW):
 - (i) for species whose habitats include all or part of the Part 4A Lands; or
 - (ii) if the proposed recovery plan may include steps to be implemented on or in the vicinity of the Part 4A Lands.
- (c) The Minister and Director-General will not exercise or permit to be exercised any power under the *Threatened Species Conservation Act 1995* (NSW) which relates to or impacts on the Part 4A Lands without prior consultation with the Board and the Land Councils.
- (d) The Minister will not cause the Board to be declared a public authority for the purposes of the *Threatened Species Conservation Act 1995* (NSW) without consulting the Land Councils and the Board as to the terms of any such declaration.
- (e) The Board shall take any appropriate action available to the Board to implement priorities action statements, recovery plans and threat abatement plans as they relate to the Part 4A Lands, and must not make decisions that are inconsistent with the provisions of those plans.
- (f) The Gumbaynggirr People have expressed a wish to establish a food and medicine nursery containing plant or animal species of a threatened species, population or ecological community listed in Schedules 1, 1A or 2 of the *Threatened Species Conservation Act 1995* (NSW). The Parties acknowledge that a licence under the *Threatened Species Conservation Act 1995* (NSW) or the NPW Act may be required.

5.14 Law enforcement & compliance

- (a) Enforcement activities on the Part 4A Lands in relation to the NPW Act or any other Acts for which DECCW has primary or delegated responsibility and any regulations under these Acts are to be undertaken by DECCW officers.
- (b) The Board will develop a law enforcement policy, to be approved by the Director-General, for implementation on the Part 4A Lands.
- (c) The Director-General will consult with the Board in relation to the proposed commencement of any criminal proceedings by or on behalf of the Director-General relating to offences on the Part 4A Lands.
- (d) The Director-General agrees to commence proceedings relating to offences that occur in relation to the Part 4A Lands when requested to do so by the Board, unless the Director-General acting reasonably considers it would be unreasonable to commence those proceedings. If the Director-General considers it would be unreasonable to commence those proceedings, he or she will have to provide the reasons in writing for this decision to the Board.
- (e) The Director-General may commence prosecution proceedings even if the Board has not requested the Director-General to do so.
- (f) Nothing in this clause is to be construed as limiting the right of the Land Councils (or any other body or person) to bring proceedings in accordance with section 176A of the NPW Act.

5.15 Interpretation of and education on Part 4A Lands for the public

- (a) The Board will develop education and interpretation policies for the Part 4A Lands.
- (b) The policies will provide for:
 - (i) the involvement of Gumbaynggirr People in running education programs relating to the Part 4A Lands;
 - (ii) addressing the cultural significance of the Land and Waters to the Gumbaynggirr People, and areas and places of cultural significance within the Part 4A Lands;
 - (iii) acknowledgement of the Gumbaynggirr People on signs, data, interpretive installations and publications for the Part 4A Lands; and

- (iv) all interpretive works and written material is to be designed and implemented having regard to the principles of ICOMOS expressed in the Burra Charter. Those principles include:
 - (A) conservation, interpretation and management of a place should provide for the participation of people for whom the place has special associations and meanings, or who have social, spiritual or other cultural responsibilities for the place;
 - (B) significant associations between people and a place should be respected, retained and not obscured. Opportunities for the interpretation, commemoration and celebration of these associations should be investigated and implemented;
 - (C) for many places, associations will be linked to use; and
 - (D) the cultural significance of many places is not readily apparent, and should be explained by interpretation. Interpretation should enhance understanding and enjoyment, and be culturally appropriate.

5.16 Licences, leases and permits

- (a) As required by section 71AD(1)(l) of the NPW Act, and subject to the Minister or Director-General's consultation with the Board, any interest, lease, licence, franchise, easement, authority or consent referred to in clause 4.3(d) may be granted, extended or extinguished subject to the requirements of the NPW Act and, in the case of an extension or extinguishment, subject to any instrument under which the interest, lease, licence, franchise, easement, authority or consent was granted.
- (b) In the case of a grant, extension or extinguishment, the extension or extinguishment must not be in conflict with any provision of this Lease or the NPW Act or of any other enactment applying to the Part 4A Lands.

5.17 Recognition of state-wide annual entry passes

- (a) The Board will recognise state-wide DECCW annual entry permits and not charge any additional entry fee for the Part 4A Lands, without the approval of the Minister.
- (b) The Minister and the Director-General will ensure that the Part 4A Lands are promoted fairly, equitably and in a culturally appropriate way by DECCW to holders of state-wide DECCW annual entry passes.

5.18 Commercial activities

- (a) The Part 4A Lands will not be added to any permit or licence for commercial activities without the approval of the Board.
- (b) The Board will:
 - (i) set conditions for authorised commercial activities operating on the Part 4A Lands; and
 - (ii) consult with and have regard to the views of DECCW when setting conditions for such authorised commercial activities.
- (c) The Parties agree that any per capita charge on visitors brought to the Part 4A Lands by authorised commercial operators will be paid into the Rent Account.
- (d) Where five or fewer reserves (including the Part 4A Lands) are on the schedule for any individual commercial operator's permit, the fee for that permit will be paid pro rata into the Rent Account.

5.19 Neighbour agreements

- (a) Until any legislative amendment gives the Board powers such as those vested in the Director-General by s146(3) of the NPW Act, the Director-General agrees to enter into and give effect to any agreement reached by the Board, for the purpose of the management, maintenance or improvement of the Part 4A Lands, with the owner or lessee of any other land adjoining or in the vicinity of the Part 4A Lands, concerning the management or care of that other land.
- (b) The Board may develop policies for the negotiation of conservation agreements, as defined under the NPW Act, with neighbouring land owners.

- (c) DECCW agrees to provide the Board with information about opportunities for the Board to participate in the development of strategies relating to regional land use planning and resource management.

5.20 World Heritage and national heritage register issues

- (a) No Party may seek to have the Part 4A Lands listed as World Heritage or National Heritage without first obtaining the consent of the other Parties and the Board.
- (b) Whilst the Parties acknowledge that, at the time of the execution of the Lease, the Part 4A Lands are not World Heritage listed in whole or in part, should such listing occur at any time during the currency of the Lease, the Parties will comply with any requirements arising as a consequence of the listing whether or not those requirements are already encompassed in this Lease, the Plan or the operational practices for the Part 4A Lands.

6. Plans and land use planning

6.1 Preparation of a Plan

- (a) The Board will prepare a Plan for the Part 4A Lands in consultation with the Director-General that is appropriate for the cultural landscape.
- (b) The Plan for the Part 4A Lands shall be prepared in accordance with the NPW Act and this Lease as soon as practicable, but in any case within the timeframe as provided for in section 72(1F) of the NPW Act.
- (c) In preparing the Plan the Board must consider the matters included in clause 5.2.
- (d) To assist the Board in meeting this responsibility, the Director-General will assist by:
 - (i) preparing and providing background reports;
 - (ii) providing resource information;
 - (iii) facilitating community consultation and engagement;
 - (iv) preparing draft planning documents; and
 - (v) undertaking any other activities related to the Plan as required by the NPW Act.

- (e) The Minister will use his or her best endeavours to introduce legislation within 12 months of the Commencement Date to allow the Director General and the Board to agree that a Plan relating to the Part 4A Lands may extend and apply to other land reserved under the NPW Act, and be given effect to by the Board.
- (f) To the fullest extent practicable, the Director-General will prepare one plan for the Part 4A Lands, the Part 4 Lands and the Crown Reserve.
- (g) The Board may recommend to the Director-General that particular parts of the Plan which apply to the Part 4A Lands should also apply to the Part 4 Lands.
- (h) The Board may recommend to the Ministerial Corporation that particular parts of the Plan which apply to the Part 4A Lands should also apply to the Crown Reserve.
- (i) The Director-General shall use best endeavours to implement the recommendations of the Board made pursuant to paragraphs (g) and (h).

6.2 Reviewing, amending or updating the Plan

- (a) The Director-General will assist the Board to review, amend or update the Plan, in accordance with the NPW Act, and will make recommendations to the Board about possible amendments to the Plan. This sub-clause does not prevent the Director-General from recommending amendments at any other time to the Board.
- (b) If the Minister receives any advice in relation to the draft Plan from the Advisory Council, the Minister will provide a copy of that advice to the Board, and invite the Board to comment on that advice within 60 days, or within two weeks following the next meeting of the Board, whichever is later.
- (c) In considering whether to adopt or make alterations to the Plan, the Minister must have regard to the matters in clause 5.2.
- (d) Once the Plan is complete, the Minister will not make an alteration to the Plan or cancel the Plan without:
 - (i) notifying the Board and inviting the Board to comment on the proposed change or alteration within 60 days or two weeks

following the next meeting of the Board, whichever is later;
and

- (ii) giving a decision in writing to the Board including reasons for that decision.

6.3 Cost of the Plan

- (a) The costs associated with preparing, reviewing, amending or updating the Plan including the costs of public exhibition of the draft plan, public consultations and other actions as required by the NPW Act will be paid from the Recurrent Funds.
- (b) The costs of any additional requirements requested by the Board which are over and above that which the Director-General would normally expend on preparing, exhibiting, reviewing, amending or updating a plan of management will be paid from the Rent Account.

6.4 Operational plans

- (a) In addition to and not inconsistent with the Plan, the Board may from time to time prepare specific operational plans for particular management issues.
- (b) The Plan must authorise the adoption and implementation of such additional specific operational plans.

6.5 Fire management strategy

The Board shall develop a fire management strategy for the Part 4A Lands, taking into consideration Gumbaynggirr Traditional Ecological Knowledge principles and the requirements of the *Rural Fires Act 1997* (NSW).

6.6 Environmental assessment

The Director-General must assist the Board with respect to its duties pursuant to section 71BL of the NPW Act.

6.7 Community Development

The Plan must provide for Community Development purposes consistent with this Lease and the NPW Regulation.

6.8 Subletting land

- (a) The Land Councils reserve the right to request the Minister to grant a sub-lease, licence or other right for any reasonable part of the

Part 4A Lands for Community Development purposes and in accordance with the Plan.

- (b) The Minister agrees to not unreasonably refuse to grant such a sub-lease, licence or other right for this purpose where it is in accordance with the NPW Act and the Plan.

7. Management structure

7.1 Functions of the Board

- (a) Care, control and management of the Part 4A Lands are vested in the Board.
- (b) The Board shall manage the Part 4A Lands in accordance with this Lease.

7.2 Roles and responsibilities of the Board

- (a) In carrying out its functions under clause 7.1(a), the Board is to have the following functions:
 - (i) the preparation of a Plan;
 - (ii) the preparation and approval of annual budgets in accordance with clause 15.5;
 - (iii) the supervision of payments from the Part 4A Accounts in accordance with clause 15.7;
 - (iv) to negotiate management agreements in relation to the Land and Waters with owners of land and waters adjoining the Part 4A Lands in accordance with clauses 5.3 and 5.19;
 - (v) considering proposals for the carrying out, by Gumbaynggirr People or other Aboriginal persons, of cultural activities (such as hunting, fishing and gathering) within the Part 4A Lands and of approving, or refusing to approve, the carrying out of those activities (subject to compliance with all applicable laws);
 - (vi) strategic oversight of the management of the Part 4A Lands;
 - (vii) the preparation of operational plans in accordance with clause 6.4, cultural and heritage plans, a staffing strategy

referred to in clause 10.2, and a community capacity building program referred to in clause 10.11;

- (viii) the preparation of policies referred to in clause 8.5(f);
- (ix) the approval of the grant, extension or extinguishment of an interest, lease, licence, franchise, easement, right of way, authority or consent in relation to the Part 4A Lands under the NPW Act prior to their issue by the Minister or the Director General;
- (x) the exercise of the functions of a "park authority" in respect of the Part 4A Lands for the purposes of the NPW Regulation, including the issue of consents under the NPW Regulation;
- (xi) pursuant to section 71BL of the NPW Act, the exercise of the functions of a "public authority" in respect of the Part 4A Lands for the purposes of the *Environmental Planning and Assessment Act 1979* (NSW) and any regulation or planning instrument made under that Act, including functions as a determining authority under Part 5 of that Act when exercising certain functions as a park authority;
- (xii) to conduct regular review of management arrangements and operations;
- (xiii) to provide annual financial reports to the Director-General;
- (xiv) to consent to additions to the Part 4A Lands under Part 4A Division 8 of the NPW Act; and
- (xv) such other functions as this Lease, the NPW Act, the NPW Regulation or other legislation may provide for from time to time.

7.3 Management before the Plan

Prior to there being a Plan in force for the Part 4A Lands, the Board in the exercise of its functions with respect to the care, control and management of the Part 4A Lands, is to consult with and have regard to the advice of the Director-General.

7.4 The Minister and the Director-General

- (a) Subject to clause 7.6, the Minister and the Director-General agree to do all such things as are necessary and within power to ensure that effect is given to decisions of the Board for:
 - (i) the care, control or management of the Part 4A Lands;
 - (ii) the preparation of a Plan; or
 - (iii) payments from the Part 4A Accounts.
- (b) Wherever in this Lease an obligation is placed upon the Director-General, the Minister agrees to issue appropriate directions to the Director-General to ensure the observance of the particular obligation.
- (c) The Director-General reserves the right not to implement or cause to be implemented any decision of the Board if the Board has not authorised the expenditure of sufficient money to give effect to the decision.

7.5 The Regional Manager and Area Manager

- (a) The decisions of the Board with respect to the care, control and management of the Part 4A Lands will be implemented by the Regional Manager giving appropriate instructions to relevant DECCW officers to the extent that this is required to give effect to such decisions.
- (b) The Area Manager is responsible for the day-to-day management of the Part 4A Lands as directed by the Regional Manager and in accordance with the decisions of the Board and the Plan.
- (c) Management operations on the Part 4A Lands will take place in a way which is integrated with the overall responsibilities of the Coffs Coast Area.
- (d) If structural arrangements within the DECCW change, management operations on the Part 4A Lands will be carried out by the unit within DECCW with geographic responsibility for the Part 4A Lands.
- (e) The Director-General, Regional Manager and the Area Manager will use their best endeavours to give effect to the joint management arrangement reflected in this Lease, including committing time to activities that contribute to these arrangements. This may include

DECCW staff mentoring, supervising and training any new Aboriginal staff employed from the Part 4A Accounts, DECCW staff preparing grant applications for community capacity building programs and DECCW staff developing programs with other Government and non Government organisations on joint management issues.

7.6 Direction by the Minister

- (a) The Minister agrees to have regard to the views of the Board prior to giving any direction pursuant to section 12 of the NPW Act in respect of works or activities on the Part 4A Lands.
- (b) To the extent provided by section 71AO of the NPW Act, in the exercise of its functions, the Board is subject to the control and direction of the Minister.
- (c) Notwithstanding subclause (b), the Minister may not give directions to the Board in relation to:
 - (i) the contents of any report, advice, information or recommendation that is to be or may be made or given by the Board; or
 - (ii) any decision of the Board, that is not inconsistent with the NPW Act and the Plan, relating to the care, control and management of Aboriginal heritage and culture within the Part 4A Lands.
- (d) Subject to sub-clause (b), wherever this Lease places an obligation upon the Board, the Minister may issue appropriate directions to the Board in respect of the observance of the particular obligation.

7.7 Joint Management Coordinator

- (a) A Joint Management Coordinator appointed pursuant to clause 10.3(b), will be supervised by the Area Manager in the exercise of that person's day-to-day activities and responsibilities.
- (b) The role of the Joint Management Coordinator will support the Chairperson of the Board and the Regional Manager by undertaking the following tasks:
 - (i) monitor the implementation of the decisions of the Board;
 - (ii) provide reports to the Board on the implementation of the Board's decisions;

- (iii) ensure the Board has appropriate information on which to base decisions;
- (iv) develop and assist in the development of protocols referred to in this Lease, as needed;
- (v) co-ordinate Board meetings as needed;
- (vi) implement communication mechanisms between the Board and the Director-General; and
- (vii) manage the day-to-day organisation of the business of the Board, including but not limited to the taking of minutes, arranging transport, accommodation, meeting venues and the like.

7.8 Management of the Part 4A Lands before a Board is established

- (a) Until a Board is established, the Director-General shall, in accordance with section 71AA of the NPW Act, have the care, control and management of the Part 4A Lands.
- (b) **Interim Advisory Committee**
 - (i) In recognition of the extensive involvement of the Aboriginal Negotiating Panel and the Land Councils' representatives in the development of this Lease, the Director-General will ask the Land Councils, each member of the Aboriginal Negotiating Panel and each person authorised by the native title claim group under section 66B of the *Native Title Act 1993* (Cth) from time to time whether they wish to be involved in consultation and the provision of advice relating to the Part 4A Lands prior to the appointment of the Board. The Land Councils may nominate up to two representatives for each Land Council for this purpose.
 - (ii) Those representatives who accept the offer outlined above shall form an Interim Advisory Committee.
 - (iii) The Parties acknowledge that the purpose of the Interim Advisory Committee is to guide the Director-General in exercising the Director-General's responsibilities for the care, control and management of the Part 4A Lands prior to the appointment of the Board in a way that does not pre-empt

significant decisions which should be left to the Board including decisions about permanent employment, instruments or agreements which have a term of more than 12 months or preparation of the Plan.

- (iv) Until the Board is appointed, the Director-General will consult and seek advice about management of the Part 4A Lands from the Interim Advisory Committee.
- (v) The consultation and advice referred to in this clause includes, but is not limited to, matters relating to employment of temporary staff who are essential to ensure the proper management of the Part 4A Lands; an interim staffing strategy; erection of signs; development of an estimated annual budget and works program; the licensing of commercial activities; assisting with the establishment of interim management direction (that may include preparatory works linked with the future preparation of the Plan); and other matters that the Board would reasonably consider a part of its role under this Lease and the Plan.
- (vi) If a meeting is convened for the purposes of this clause, the Director-General will reimburse each participant for their reasonable costs relating to travel, accommodation and other related out of pocket expenses and (subject to Ministerial approval) sitting fees may be paid.
- (vii) Any costs reimbursed in relation to this clause may be paid from the Recurrent Funds.

7.9 Exercise of statutory powers by employees of Minister on the Part 4A Lands

- (a) The Parties acknowledge that in accordance with section 71AD(1)(h) of the NPW Act, DECCW and the officers, employees and contractors of the Minister, the Director-General and DECCW are (subject to any Plan and to any directions given and supervision and oversight exercised by the Board) entitled to exercise on and with respect to the Part 4A Lands any power, authority, duty or function conferred or imposed on any one or more of them by or under the NPW Act or any other legislation.

- (b) When exercising any power, authority, duty or function conferred or imposed on them under the NPW Act in relation to management of the Part 4A Lands (but subject to the requirements of the NPW Act, this Lease and the Plan), the Director-General and DECCW must have regard to the interests of the Aboriginal Owners of the Part 4A Lands.

7.10 Urgent action

Where urgent action is required, the Minister or the Director-General, as required, may exercise all necessary powers and functions without consulting the Board. The Minister or Director-General, as applicable, must then notify the Board as soon as possible of any action taken and, where the action is of an ongoing nature, have regard to the views of the Board on the continuation or ongoing conduct of that action.

7.11 Rights to participate in consultations

In accordance with section 71AD(2)(b) of the NPW Act, consultations concerning the operation of this Lease are to involve the Director-General and the Board.

7.12 Director-General's exercise of powers

- (a) In carrying out, or exercising, any power or function under any Act with respect to, or impacting on, the Part 4A Lands or any Gumbaynggirr Cultural Heritage relating to the Part 4A Lands, the Director-General will have regard to:
 - (i) this Lease; and
 - (ii) the Land Management Principles.
- (b) Subject to clauses 7.6 and 7.10, the Director-General must not exercise or permit to be exercised, without consulting the Board, any power vested in the Director-General under the NPW Act or any other legislation where such exercise of the power is with respect to, or impacting on:
 - (i) the Part 4A Lands; or
 - (ii) any Gumbaynggirr Cultural Heritage on or relating to the Part 4A Lands.

- (c) The Director-General shall not carry out or cause to be carried out any mandatory requirement under the NPW Act or any other legislation on the Part 4A Lands without giving reasonable notice to, consulting with, and having regard to the views of the Board.

7.13 Direct dealings with third parties

- (a) The Board is to provide the Director-General with a copy of any correspondence to or from the Board with any government instrumentality or department (other than DECCW) or private organisation or person which specifically relates to or impacts on the Part 4A Lands within 10 Business Days of the dispatch or receipt (as appropriate) by the Board of such correspondence.
- (b) The Director-General will provide to the Board a copy of any correspondence with any government instrumentality or department or private organisation or person specifically relating to or impacting on the Part 4A Lands within 14 days of the dispatch or receipt (as appropriate) by the Director-General of such correspondence.
- (c) Matters that fall within clauses 7.13(a) and 7.13(b) include, but are not limited to, draft environmental planning instruments, development applications and requests for consultation or concurrence under the *Environmental Planning and Assessment Act 1979* (NSW), the *Mining Act 1992* (NSW) and the *Petroleum (Onshore) Act 1991* (NSW).

7.14 Consultation about making and amending legislation

- (a) **Notice of legislative amendments**
 - (i) The Minister will ensure that the Board and the Land Councils are given at least four weeks' written notice of the introduction of any Bill or the making of any Regulation which, if enacted, would:
 - (A) solely apply to land subject to Part 4A of the NPW Act, including the Part 4A Lands;
 - (B) substantially affect the care, control or management of the Part 4A Lands; or

- (C) substantially diminish the powers or functions of the Land Councils, Aboriginal Owners or the Board under Part 4A of the NPW Act.
- (ii) The Minister will ensure that the Board and the Land Councils are given at least four weeks' notice of the introduction of any Bill or the making of any Regulation that:
 - (A) is relevant to the Board's care, control and management of the Part 4A Lands; and
 - (B) will be administered by the Minister through DECCW.
- (iii) As part of providing these notices, the Minister will provide a copy of the draft Bill or Regulation if it is available.
- (b) **Minister to consider submissions**

The Minister agrees to consider and provide reasons in reply to any written submissions made by the Board or the Land Councils following the provision of a notice under this clause.

8. Board

8.1 Establishment of the Board

The Parties agree and acknowledge that:

- (a) there is to be one Board for the Part 4A Lands; and
- (b) the Minister will use his or her best endeavours to ensure the Board is appointed within 12 months of the Commencement Date.

8.2 Membership of the Board

(a) Board membership

The Minister shall appoint 13 members to constitute the Board in accordance with the following requirements:

- (i) the majority of the members appointed shall be Aboriginal Owners, and in any event there shall be no less than seven Aboriginal Owners;
- (ii) one member shall be appointed by the nominees of Nambucca Heads LALC;
- (iii) one member shall be appointed by the nominees of Unkya LALC;

- (iv) one member shall be appointed to represent the Nambucca Shire Council in accordance with clause 8.2(c);
- (v) one member shall be an officer of DECCW as nominated by the Director-General in accordance with clause 8.2(d);
- (vi) one member shall be appointed from a panel of persons nominated by a group concerned in the conservation of the region of the Part 4A Lands to represent conservation interests; and
- (vii) one member shall be appointed on the nomination of owners, lessees and occupiers of land adjoining or in the vicinity of the Part 4A Lands.

(b) Aboriginal Owner Board Members

- (i) The Aboriginal Owner Board Members are to be selected from those Aboriginal Owners who are nominated by themselves or by another Aboriginal Owner with the consent of the nominee.
- (ii) In appointing Aboriginal Owners to the Board, the Minister is to have regard to the gender, cultural affiliations and family groupings of the nominees in an endeavour to ensure that a representative group of members is appointed.
- (iii) In appointing members of the Board, the Minister is to also have regard to the recommendations of any body or group formed by Aboriginal people with a cultural association with the Part 4A Lands.

(c) Local Government Board Member

The Minister agrees that the person appointed to the Board pursuant to clause 8.2(a)(iv) must be an elected member of the Nambucca Shire Council.

(d) DECCW representative on the Board

- (i) The Director-General agrees that the officer of DECCW to be nominated to the Board pursuant to clause 8.2(a)(v) will be the person holding the office of Regional Manager of DECCW for the Region in which the Part 4A Lands are located or another suitable person holding an equivalent or more senior position.

- (ii) The Director-General agrees to nominate an officer of DECCW who has the authority to make decisions on behalf of DECCW for that area to be the deputy to the officer appointed pursuant to clause 8.2(a)(v).

(e) **Appointment of deputies**

- (i) The Minister will appoint a deputy for each Board Member at the time that any Board Member is appointed.
- (ii) In accordance with clause 77 of the NPW Regulation:
 - (A) the person appointed as deputy must be selected from the same categories of persons listed in clauses 8.2(a) to 8.2(d) as the Board Member for whom the person is to deputise;
 - (B) in the absence of a Board Member, the member's deputy may, if available, act in the place of the Board Member;
 - (C) while acting in the place of a Board Member, the deputy has all the functions of the Board Member and is taken to be a member; and
 - (D) a vacancy in the office of a Board Member is taken to be an absence of the Board Member.

(f) **Term of office of Board Members**

- (i) Subject to the NPW Act or NPW Regulation, the ordinary term of appointment for members of the Board will be for four years provided that:
 - (A) In the case of the Board Members appointed pursuant to clauses 8.2(a)(ii) and 8.2(a)(iii), those persons remain members of their respective Land Councils;
 - (B) In the case of the Board Member appointed pursuant to clause 8.2(a)(iv), that person remains an elected member of Nambucca Shire Council;
 - (C) In the case of the Board Member appointed pursuant to clause 8.2(a)(v), that person remains an employee of DECCW;
 - (D) In the case of the Board Member appointed pursuant to clause 8.2(a)(vi), that person continues to be on the panel

of persons nominated by a group concerned in the conservation of the region of the Part 4A Lands to represent conservation interests; and

(E) In the case of the Board Member appointed pursuant to clause 8.2(a)(vii), that person continues to be nominated by owners, lessees and occupiers of land adjoining or in the vicinity of the Part 4A Lands to represent the interests of those people.

(ii) In the event of a Board Member being replaced during a term, the Minister agrees that any new member appointed as a replacement will only be appointed for the unexpired portion of the term of the member being replaced.

(g) Board meeting frequency

Subject to the NPW Act and any applicable NPW Regulation, the Board is to meet at least four times in each financial year.

(h) Board quorum

(i) Subject to any NPW Regulation, a quorum at any meeting of the Board is seven members (including any deputies for any absent members), as long as more than half the number of Board Members counted towards the quorum are Aboriginal Owners appointed pursuant to clause 8.2(a)(i) (or their deputies).

(ii) Subject to any NPW Regulation, any person who is obliged to be temporarily absent from any meeting as a result of the application of clauses 8.6 and 8.7 is to continue to be counted, during that absence, toward the existence of a quorum.

8.3 Board indemnity

- (a) The Minister agrees that the Crown will indemnify all Board Members and deputies when they are acting in good faith in the discharge of their duties (whether acting individually or collectively).
- (b) The Minister and Director-General will use best endeavours to ensure that the Crown complies with this clause 8.3.

8.4 Right to obtain independent advice

- (a) Despite any other clause in this Lease that may imply the contrary, the Parties acknowledge and agree that the Board has an absolute right to

seek independent professional advice from persons who are not employees of DECCW on such topics as the Board sees fit.

- (b) If the Board chooses to seek independent professional advice from persons who are not employees of DECCW, there is no obligation on the Minister or the Director-General to provide the Board with supplementary funding for the purpose of obtaining that advice. This clause does not prevent the Minister nor the Director-General from contributing additional funds upon the request of the Board so that the Board can obtain such independent professional advice.
- (c) The costs of obtaining independent professional advice which relates to the management of the Part 4A Lands may be paid from the Rent Account.

8.5 Board policies, procedures and governance

- (a) The Board must use its best endeavours to develop a document which:
 - (i) establishes meeting and governance procedures for the conduct of its business; and
 - (ii) sets out the roles of the Board and DECCW with respect to the implementation of Board decisions,within one year of its appointment.
- (b) The Board document referred to in clause 8.5(a) must, at a minimum, meet relevant NSW Government guidelines for boards as amended or replaced from time to time.
- (c) The Board document referred to in clause 8.5(a) is to address the following as a minimum and may address any other matters which the Board or the Minister considers appropriate:
 - (i) the functions of the Board,
 - (ii) adherence to the Land Management Principles;
 - (iii) the roles and responsibilities of the Board Members;
 - (iv) coordination between the Board and other management bodies in accordance with clause 5.5;
 - (v) protocols for the passing of resolutions by the Board and voting at meetings;

- (vi) terms and conditions of Board appointment including terms of appointment, remuneration and removal of members and creation of vacancies;
 - (vii) protocols regarding when members are considered to be engaged in official duties;
 - (viii) standards of conduct for Board Members, which would include: due diligence, decision making, conflict of interest (including pecuniary and non-pecuniary interests), fraud, corrupt conduct, acceptance of gifts, hospitality or benefits, use of public resources, the accountability of the Board for public expenditure, and the accountability of the Board for decision making;
 - (ix) public speaking and media contact;
 - (x) the conduct of Board meetings including the location of meetings, quorums, voting, decisions of the Board, the agendas for meetings, the minutes of meetings, attendance at Board meetings, and confidentiality of Board documents and other documents;
 - (xi) evaluation and reporting;
 - (xii) training and corporate governance including cultural awareness training for non-Aboriginal Board Members; and
 - (xiii) the duties of Board Members as Board Members, compared to their role as representatives of the body from which they were nominated.
- (d) The Board document referred to in clause 8.5(a) shall include:
- (i) that the Chairperson is to have a direct role in the monitoring of the implementation of Board decisions;
 - (ii) additional monitoring may include the formation of a sub-committee of the Chairperson, the Area Manager, the Joint Management Co-ordinator (as referred to in clause 7.7) and as required, the Regional Manager; and
 - (iii) such a sub-committee shall report back to the Board at Board meetings.
- (e) The Board document referred to in clause 8.5(a) must not be inconsistent with this Lease.

- (f) The Board must use best endeavours to develop the following policies, as it considers appropriate:
 - (i) a fees policy in accordance with clause 5.10;
 - (ii) a law enforcement policy in accordance with clause 5.14;
 - (iii) education and interpretation policies in accordance with clause 5.15;
 - (iv) negotiation of conservation agreements with neighbouring land owners policy in accordance with clause 5.19;
 - (v) policy about access by Aboriginal people to the Part 4A Lands for hunting or gathering as referred to in clause 11;
 - (vi) ICIP and research policy in accordance with clause 12.1;
 - (vii) protocol in relation to any Aboriginal Remains located on the Part 4A Lands in accordance with clause 13.4; and
 - (viii) specific issues regarding decisions of the Board with respect to Gumbaynggirr Cultural Heritage, including keeping Aboriginal cultural items, cultural information and reports.

8.6 Declaration of non-pecuniary interests by Board Members

- (a) If:
 - (i) a Board Member has a non-pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board; and
 - (ii) that interest appears to raise a conflict with the proper performance of the Board Member's duties in relation to the consideration of the matter;

the Board Member must, as soon as possible after the relevant facts have come to the Board Member's knowledge, disclose the nature of the interest at a meeting of the Board.

- (b) Particulars of any disclosure made under this clause are to be recorded by the Board in the minutes and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
- (c) After a Board Member has disclosed the nature of an interest in any matter, the Board Member must not, unless the Board otherwise

determines, be present during any deliberation of the Board or take part in any decision of the Board, with respect to the matter.

- (d) A contravention of sub-clauses 8.6(a) to 8.6(c) does not invalidate any decision of the Board.
- (e) For the purposes of this clause, consideration by the Board of:
 - (i) matters affecting all Aboriginal Owners without discrimination between any groups of those owners; or
 - (ii) matters affecting all Aboriginal persons with a cultural association with the Part 4A Lands without discrimination between any groups of those persons,

are not to be regarded as giving rise to any non-pecuniary interest for any member of the Board who is an Aboriginal Owner or an Aboriginal person with a cultural association with the Part 4A Lands (as the case may be).

- (f) For the purposes of this clause, consideration by the Board of matters affecting employment issues relating to any DECCW officer or position is not to be regarded as giving rise to any non-pecuniary interest for any Board Member who is a DECCW officer unless that consideration concerns or impacts that officer specifically rather than DECCW employment matters generally.

8.7 Declaration of pecuniary interests by Board Members

- (a) If a Board Member has a direct or indirect pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board, the Board Member must, as soon as possible after the relevant facts have come to the Board Member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (b) A disclosure by a Board Member at a meeting of the Board that the Board Member:
 - (i) is a board member, or is in the employment, of a specified company or other body; or
 - (ii) is a partner, or is in the employment, of a specified person; or
 - (iii) has some other specified interest relating to a specified company or other body or a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under clause 8.7(a) above.

- (c) Particulars of any disclosure made under this clause are to be recorded by the Board in the minutes of the meeting and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
- (d) After a Board Member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines, be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter.
- (e) A person does not breach clauses 8.7(a) and 8.7(d) if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.
- (f) A contravention of clauses 8.7(a) to 8.7(d) does not invalidate any decision of the Board.
- (g) The Minister will direct the Board that for the purposes of this clause, consideration by the Board of:
 - (i) matters affecting all Aboriginal Owners without discrimination between any groups of those owners; or
 - (ii) matters affecting all Aboriginal persons with a cultural association with the Part 4A Lands without discrimination between any groups of those persons,

are not to be regarded as giving rise to any direct or indirect pecuniary interest for any member of the Board who is an Aboriginal Owner or a person with a cultural association with the Part 4A Lands (as the case may be).

- (h) For the purposes of this clause, consideration by the Board of matters affecting employment issues relating to any DECCW officer or position is not to be regarded as giving rise to any direct or indirect pecuniary interest for any Board Member who is a DECCW officer unless that consideration concerns or impacts such officer specifically rather than DECCW employment matters generally.

8.8 Ongoing Board costs

Costs associated with meetings of the Board, including sitting fees, travel costs and training, will be funded from the Rent Account.

8.9 Insurance for volunteers undertaking work approved by the Board

- (a) Where any volunteer, including any member of the Land Councils, undertakes work on or off the Part 4A Lands on projects approved by, and carried out on behalf of, the Board pursuant to this Lease, that volunteer will be covered under the DECCW Miscellaneous Insurance Policy against any injury sustained during or arising from that work as long as the work is undertaken with the prior written approval of the Board.
- (b) DECCW staff will supervise volunteers undertaking work of the type described in clause 8.9(a) only if they have previously been given appropriate training by DECCW staff in the use of relevant equipment and in the principles and practices of occupational health and safety in the workplace.

8.10 Insurance of Board Members and their vehicles whilst on Board duties

- (a) Board Members and their deputies will be covered under the DECCW Miscellaneous Insurance Policy against any personal injury sustained while engaged in official duties both on and off the Part 4A Lands.
- (b) Should an accident occur whilst any Board Member or deputy is using their private vehicle on Board business, the amount claimable for property damage against that the DECCW Miscellaneous Insurance Policy is limited to an amount equal to the basic excess on that vehicle's comprehensive insurance policy.
- (c) Before a Board Member or deputy may claim any amount under clause 8.10(b) the Board Member or deputy must provide DECCW with evidence of comprehensive insurance coverage for the vehicle.

8.11 Public liability insurance

- (a) The Minister and the Director-General agree to maintain public liability insurance for the Part 4A Lands throughout the Term of this Lease and any period of holding over or renewal.
- (b) The Minister agrees to direct the Board to require all licence or permit holders operating on the Part 4A Lands (including the Land Councils) to

have their own public liability insurance policy for their activities with the amount of cover required for such policy to be the amount generally required from time to time for licensees or permit holders operating on lands reserved under the NPW Act, or acquired under Part 11 of the NPW Act, in NSW.

8.12 Indemnity and release of the Land Councils

- (a) The Minister and the Director-General will, in the absence of any wilful or negligent act or omission by the Land Councils, jointly and severally indemnify the Land Councils and keep them indemnified against the following liabilities:
 - (i) all claims, demands, proceedings, losses, injuries or liabilities (including damages and legal costs) arising from the implementation of this Lease over the Part 4A Lands and the Land Council's duties and functions in respect of the Part 4A Lands under the NPW Act, including but not limited to, all actions taken and omissions made by the Board, the Minister or the Director-General and all employees, contractors and agents of them as a result of their carrying out duties and functions under this Lease; and
 - (ii) any successful claim by any third party for any matter arising from this Lease, the care, control or management of the Part 4A Lands by the Director-General and the Board, any direction given by the Minister to the Board, or the vesting of the Part 4A Lands in the Land Councils.
- (b) The Minister and the Director-General release the Land Councils from all claims, actions or costs arising against them in connection with the above liabilities, losses, damages, injuries etc unless they are directly caused by the wilful or negligent act or omission of the Land Councils.

8.13 Workers compensation insurance

- (a) DECCW will remain liable for the arrangement of workers compensation insurance for DECCW employees working on the Part 4A Lands.
- (b) If DECCW apportions payment of workers compensation insurance for DECCW employees to each of the regions for DECCW employees working within that region, those costs will be paid:

- (i) From the Rent Account, for any DECCW employees who are paid from the Rent Account; and
- (ii) From Recurrent Funds, for any DECCW employees who are paid from Recurrent Funds.

8.14 Delegation of powers to the Board

- (a) The Board may request that the Minister or the Director-General prepare an instrument to delegate to the Board specified powers exercised by the Minister or the Director-General.
- (b) The Minister or the Director-General must consult with the Board prior to making any instrument that delegates any powers of the Minister or the Director-General to the Board.

9. Board Facility

9.1 Background to the Facility clause

- (a) On 18 December 2002, the Nambucca Heads LALC, the Unkya LALC, the Minister for Land and Water Conservation, the Minister for the Environment and the Director-General of National Parks and Wildlife entered into the LEC Settlement Agreement, extracts of which are provided in Schedule 11:
- (b) Any defined term in the extracts from the LEC Settlement Agreement has the same meaning as in the LEC Settlement Agreement.
- (c) The Parties acknowledge that the original purpose for establishing the Facility is so that the Board can have a facility in which to attend to its functions and associated matters, in particular the care, control and management of the Part 4A Lands and Community Development, and that this clause in this Lease recognises and gives effect to the Parties' agreed commitment towards the facility in accordance with the provisions of the LEC Settlement Agreement.

9.2 Business Opportunities Analysis

The Parties have agreed to undertake a Business Opportunity Analysis for the purposes of and in accordance with the method set out in this clause 9.2.

(a) Purpose of the BOA

The purpose of undertaking a Business Opportunities Analysis is to provide the Land Councils and the Board with research and information to assist with:

- (i) identifying potential and alternative business opportunities relating to the Part 4A Lands to generate additional revenue for the Board to use in the care, control and management of the Part 4A Lands and Community Development;
- (ii) analysing the feasibility of the preferred business opportunities (including business and financial models to support these opportunities) and provide details about their potential costs and benefits, projections about their potential returns and comments on their potential viability;
- (iii) identifying, analysing and assessing reasonable business and financial models for funding the design, construction, operation and maintenance of a facility and associated infrastructure (including models relating to funding from both government and non-government sources) located on the Part 4A Lands, in the vicinity of the Part 4A Lands or otherwise within the area of the Land Councils for use by the Board in the care, control and management of the Part 4A Lands and Community Development and providing comment about potential rent returns and potential occupancy rates for a facility;
- (iv) considering possible alternatives to a facility reasonably proposed by DECCW or the Land Councils (such as leasing existing premises as an interim or ongoing strategy) and how these or other alternatives may be used to fund construction of a facility located other than on the Part 4A Lands including but not limited to:
 - (A) DECCW entering into an agreement for lease or lease of part of the premises in the facility for use as a field depot;
or

- (B) DECCW, on behalf of the Board, leasing premises for use by the Board from:
 - (1) a local Aboriginal organisation (including either of the Land Councils); or
 - (2) an organisation that implements specific measures for the benefit of the local Aboriginal people,
 - (C) other strategies for ensuring a facility generates potential revenue streams to offset running costs of a facility.
 - (v) identifying possible locations for a facility on the Part 4A Lands or otherwise, including on land that is currently owned by the LALCs or the Minister which could potentially be donated to this project; and
 - (vi) considering and assessing the overall costs of and the cost of each stage required to acquire the land (if land is to be acquired for a facility), design and construct a facility as well as the operational costs after establishing a facility.
- (b) **Preparation of the BOA**

Within three months of the Commencement Date, a project steering committee comprising of up to four representatives authorised by the Interim Advisory Committee and one DECCW representative (the **Project Steering Committee**) will be formed to appoint a suitably qualified independent consultant (the **BOA Consultant**) and oversee the preparation of a detailed BOA by the BOA Consultant.

The Parties agree that DECCW will engage the BOA Consultant on the following basis:

- (i) the Project Steering Committee will develop a project brief that gives prompt and reasonably detailed instructions to the BOA Consultant regarding preparation of the BOA;
- (ii) the Project Steering Committee will give a copy of the project brief to the Interim Advisory Committee, the Land Councils and DECCW;
- (iii) the BOA Consultant is to provide a copy of the draft BOA to the Project Steering Committee within a reasonable time

period from the date the BOA Consultant is engaged to prepare the BOA;

- (iv) the Project Steering Committee will provide a copy of the draft BOA to the Interim Advisory Committee, the Land Councils and DECCW and, may meet with the Interim Advisory Committee or the Land Councils to discuss particular aspects of the draft BOA;
- (v) the Project Steering Committee will meet about the draft BOA and have one month from date of receipt of the BOA (or such other timeframe as they agree) to review the draft BOA and provide to the BOA Consultant any relevant comments and feedback regarding the draft BOA;
- (vi) the BOA Consultant will consider the comments and feedback received impartially and in good faith and carry out any additional research and work reasonably required in order to address any issues raised;
- (vii) the scope and reasonable costs of any additional work will be agreed by the Project Steering Committee and must not exceed the project budget specified in paragraph (ix);
- (viii) the BOA Consultant must provide a copy of the final BOA to the Project Steering Committee within one month from the date of receipt of the Project Steering Committee's comments and feedback (or such other timeframe as agreed by the Project Steering Committee);
- (ix) DECCW will pay for the BOA Consultant's reasonable costs and disbursements connected to the BOA, being an amount up to \$30,000 in total, including any additional work required as a result of the review of the draft BOA; and
- (x) DECCW will table a copy of the final BOA at the first meeting of the Board.

(c) Consideration of the BOA in good faith

- (i) Subject to clause 9.2(b), the Board must:
 - (A) consider the BOA in good faith;

- (B) meet with DECCW to discuss the BOA and the recommendations in the BOA; and
- (C) consider whether a more detailed feasibility study should be prepared about one or more options identified in the BOA

before deciding on the appropriate facility (if any) to be established and deciding on the business opportunities (if any) they wish to implement in relation to the Part 4A Lands.

- (ii) The Board may, after considering the BOA in relation to establishing a facility and any additional detailed feasibility study it has requested, decide in its absolute discretion to take further steps as described in this clause to establish a facility provided:
 - (A) the Board has an approved a budget to fund those further steps; and
 - (B) such a facility is consistent with the Board's role of having care, control and management of the Part 4A Lands and Community Development.

9.3 Scoping, planning, design, construction and maintenance of the Facility

(a) Application of this clause

- (i) This clause applies only if the Board decides that a facility should be constructed on the Part 4A Lands, in the vicinity of the Part 4A Lands or otherwise within the area of the Land Councils for use by the Board.
- (ii) Nothing in this clause prevents either Land Council from considering the establishment of a facility as an independent commercial project separate to the process described in this clause. If a Land Council proposes to develop such a project it must notify the Board in writing as soon as possible after commencing investigation of the feasibility of building such a facility.

(b) Assistance and resources that will be provided by the Director-General and the Minister

- (i) If requested by the Board, the Minister and the Director-General undertake that they will take all steps necessary to ensure (subject to funding being secured) the establishment of a facility on the Part 4A Lands, or in the vicinity of the Part 4A Lands or otherwise within the area of the Land Councils for use by the Board for, amongst other things, attending to its functions and associated matters.
- (ii) If requested by the Board, these steps will include but are not limited to providing the following in-kind assistance and resources:

 - (A) providing constructive feedback and commentary about any business models for a facility identified in the BOA;
 - (B) providing reasonable resources and expertise to assist in the identification, scope and assessment of potential locations for a facility that are consistent with the proposed purpose of that facility;
 - (C) making best efforts to obtain funding through funding applications within all levels of government on behalf of the Board, or supporting applications by the Land Councils to secure funding for a detailed feasibility study and planning advice about any short-listed locations;
 - (D) making best efforts to obtain funding through funding applications within all levels of government on behalf of the Board, or supporting applications by the Land Councils to secure funding for the purchase of land (if the Land Councils are of the view that it is not appropriate to establish a facility on land already owned by the Land Councils or the Minister) on which a facility is to be built;
 - (E) reasonable assistance with the actual purchase of land on which a facility is to be constructed, such as valuation and conveyancing assistance but only if the land is to be bought by the Minister;

- (F) support and sympathetic consideration of any application for rezoning or planning consent made to the relevant planning authority by the Land Councils in relation to the land;
- (G) making best efforts to obtain funding through funding applications within all levels of government on behalf of the Board, or supporting applications by the Land Councils to secure funding for:
 - (1) the detailed design and planning approval;
 - (2) construction and fitout; and
 - (3) project management of (1) and (2), of a facility;
- (H) providing project management of the contract to construct and fitout of a facility, if such a facility is to be solely built using funds from the Part 4A Accounts or from funds otherwise sourced within or managed by DECCW; and
- (I) reasonable assistance with the maintenance of such a facility, subject to any ownership and leasing arrangements that will apply to a facility after it has been constructed.

9.4 Annual meeting to discuss progress of the establishment of a facility

If the Board has decided to take further steps to establish a facility:

- (a) this item must be listed on the Board agenda at least once every 12 months;
- (b) the Board must discuss the progress of the further steps;
- (c) the Board may request DECCW to prepare a full and complete written report on progress with establishing a facility; and
- (d) the Board must identify any further steps to be taken to progress with establishing a facility in accordance with this clause.

9.5 Time period within which facility must be completed

If the Board decides to establish a facility, the Parties will work cooperatively together with the Board to establish such a facility and

infrastructure within ten years from the date of the Board's decision (or such other timeframe as agreed by the Parties).

10. Employment, education, training and community capacity building

10.1 Employment principles

In relation to the Part 4A Lands, the Parties support the following principles:

- (a) Employment opportunities must recognise the interconnectedness of the Gumbaynggirr People with the estuarine ecosystem comprising their traditional country.
- (b) Promotion of the employment of young Gumbaynggirr People throughout the operational levels of park management.
- (c) Senior positions should be filled by Gumbaynggirr People wherever reasonably practicable.

10.2 Staffing strategy

- (a) The Director-General and the Board will work cooperatively together to develop a staffing strategy which establishes positions for the management of the Part 4A Lands including Aboriginal identified positions.
- (b) The Director-General and the Board may agree that positions in addition to the 2.6 positions established in accordance with clause 10.3 may be funded from the Rent Account.
- (c) Proposed amendments to the staffing strategy (including those relating to the employment of DECCW staff from the Rent Account) must be submitted by the Board as part of the DECCW forward estimates process.
- (d) When developing the staffing strategy, the Parties will discuss job description, selection criteria, grading, salaries, succession planning and career development of positions to be funded from the Part 4A Accounts.

10.3 Positions for local Aboriginal people

- (a) The Director-General will create and maintain up to 2.6 equivalent new full-time Aboriginal identified positions as determined in the staffing strategy which are funded from Recurrent Funds. The

positions will have responsibilities relating to the administration or day-to-day care, control or management of the Part 4A Lands.

- (b) If the Board decides, one of the positions may be a Joint Management Co-ordinator whose duties must include, amongst other duties, those listed in clause 7.7(b).
- (c) The positions that are created may be filled as permanent, temporary, cadet or trainee positions as determined by the Board and the Director-General.
- (d) The Director-General must specify as an essential criteria for the appointment or employment of any permanent Aboriginal identified position that will take part in the administration or care, control or management of the Part 4A Lands, that the person have knowledge and a Cultural Association with the local area and local Aboriginal people.
- (e) If no suitable applicants are available for any permanent Aboriginal identified position who meet the essential criteria specified in clause 10.3(d), the position may be re-advertised as an Aboriginal identified position with the essential criteria in clause 10.3(d) removed; an Aboriginal identified position at a lower grade; a trainee position; or a temporary identified or non-identified position. Where a position is temporarily filled in this way, towards the conclusion of any such temporary contract the Director-General will discuss with the Board whether the position should be re-advertised as an Aboriginal identified position and whether the essential criteria specified in clause 10.3(d) will be required.
- (f) The Director-General must consult with the Interim Advisory Committee under this clause prior to creating and filling any positions referred to in this clause 10.3 which are to be interviewed before the appointment of the Board.

10.4 Application of the *Public Sector Employment and Management Act 2002* (NSW)

All positions established under the staffing strategy (regardless of the funding source for that position), are subject to the *Public Sector Employment and Management Act 2002* (NSW) and will be employees of DECCW.

10.5 Selection procedures

- (a) Subject to sub-clause 10.5(b), the Board is entitled to one person nominated by them to be a member of any selection committee convened to consider applicants for appointment to a position with DECCW where the duties and functions of the position require the officer to be responsible for, or to be substantially involved in, the administration or day-to-day care, control or management of the Part 4A Lands.
- (b) The Board or the Interim Advisory Committee are entitled to nominate the majority of persons on any selection committee convened to consider applicants for appointment to a position with DECCW that is:
 - (i) funded from the Rent Account (whether or not the position is an Aboriginal identified position); or
 - (ii) an Aboriginal identified position where the duties and functions of the position must require the officer to be responsible for, or to take part in the day-to-day care, control or management of the Part 4A Lands.

10.6 Implementation of *Aboriginal Employment and Development Strategy*

The Minister undertakes, including with respect to the Part 4A Lands, to use the Minister's best endeavours to implement the *Aboriginal Employment and Development Strategy 2002–2006* (which replaced the *Aboriginal Employment and Training Plan 1991–1996*) and to implement any plan replacing that strategy and, in particular, any timetable set out in such a plan.

10.7 Training of DECCW officers

- (a) The Director-General must ensure that persons employed by DECCW in the administration or care, control or management of the Part 4A Lands or whose duties of employment will substantially involve them in the administration or care, control or management of the Part 4A Lands, receive training in their work.
- (b) The training of persons pursuant to this clause may take the form of on-the-job training, mentoring, or attendance at structured internal courses of study provided by the Director-General or attendance at

an external course of study determined by the Director-General in consultation with the Board.

- (c) The training of persons whose employment is funded from Recurrent Funds must be provided and paid from Recurrent Funds.
- (d) The training of persons whose employment is funded from the Rent Account must be provided by the Director-General, subject to any additional costs being paid from the Rent Account.

10.8 General training for Board Members

- (a) The Director-General will provide Board Members and any deputies with training to assist them in undertaking their functions as Board Members as soon as possible after their appointment.
- (b) As a minimum, Board training will address:
 - (i) the obligations and duties of the Board;
 - (ii) the issues listed in clauses 7.2 and 8.5;
 - (iii) their legislative responsibilities under land management legislation (including legislative responsibilities under the NPW Act, *Rural Fires Act 1974*, *Noxious Weeds Act 1993*, *Rural Lands Protection Act 1998*, *Pesticides Act 1999*, *Heritage Act 1977* and *Wild Dog Destruction Act 1921*); and
 - (iv) their responsibilities in relation to recruitment and employment issues.
- (c) The Board will at least once a year assess the training needs of Board Members, including in the areas listed in clauses 7.2 and 8.5, and will arrange for appropriate training to be undertaken.
- (d) The Minister and the Director-General must use their best endeavours to ensure that Board Members have access to appropriate DECCW training courses.
- (e) Board Members and Interim Advisory Committee members must have access to appropriate DECCW training courses subject to availability of places and the Board meeting any additional costs.

10.9 Cultural awareness training for the Board and DECCW officers

- (a) The Minister agrees that all persons appointed to the Board and their deputies, who are not Aboriginal Owners, will be required to undertake

an appropriate short course of cultural awareness training to be run by or approved by the Board as soon as practicable after appointment of those persons.

- (b) The reasonable cost of cultural awareness training for Board Members and deputies will be met from the Rent Account.
- (c) All DECCW officers who are not Aboriginal Owners of the Part 4A Lands who are appointed to or are to act for any continuous period longer than two months in:
 - (i) the position of Regional Manager; or
 - (ii) any DECCW positions located on or exclusively or predominantly involved in the management of the Part 4A Lands,will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board as soon as practicable after that appointment.
- (d) The reasonable agreed cost of cultural awareness training for DECCW officers referred to in clause 10.9(c) will be paid from Recurrent Funds or, if agreed by the Board, paid from other DECCW sources.

10.10 Contracts and services

- (a) This clause applies to the procurement of all goods, services and works by quotation, contract, tender, expression of interest or other manner consistent with Government practice for the care, control or management of the Part 4A Lands where there is no preferred Government supplier which must be used for those goods, services or works.
- (b) The Director-General must create and maintain a register of suitably skilled or qualified organisations or individuals who are:
 - (i) local Aboriginal organisations, (including the Land Councils), Aboriginal owned or controlled enterprises, or local Aboriginal people; or
 - (ii) organisations that will implement specific measures for the benefit of local Aboriginal people,that are able to provide goods, services and works in accordance with this clause.

- (c) The Board may recommend the Director-General set conditions for the procurement of goods, services and works for the care, control or management of the Part 4A Lands.
- (d) To the fullest extent possible, the Board will consider setting conditions as referred to in this clause 10.10 that give preference to:
 - (i) the Land Councils, local Aboriginal organisations, Aboriginal owned or controlled enterprises, or local Aboriginal people; or
 - (ii) organisations that will implement specific measures for the benefit of local Aboriginal people.
- (e) When issuing the conditions of tendering for more substantial or ongoing works or services on the Part 4A Lands, the Director General agrees to ask tenderers to provide information about:
 - (i) whether they are an Aboriginal organisation, Aboriginal owned or controlled enterprise, or local Aboriginal people or have employed local Aboriginal people over a period of time;
 - (ii) any measures which the tenderer intends to implement for the benefit of local Aboriginal people (including extending employment opportunities to Aboriginal people, training or otherwise enhancing the business skills of Aboriginal people and providing economic benefits to Aboriginal communities) as part of the contract;
 - (iii) examples of how similar measures have been implemented in past contracts undertaken by that tenderer; and
 - (iv) any other information that is relevant to the evaluation of any additional conditions included in the tender conditions on the recommendation of the Board.
- (f) To the extent permitted by law and in accordance with applicable Government policies, when assessing tenders the Director-General agrees to give preferential weighting (in accordance with the applicable tendering and evaluation criteria in the conditions of tendering) to those conditions recommended by the Board under this clause 10.10.

- (g) The Board may nominate a representative on any tender evaluation committee established by the Director-General that considers tenders for goods, services or works on the Part 4A Lands.

10.11 Community capacity building, training and other opportunities

- (a) The Board may establish a community capacity building program for the education and skills development training of Aboriginal people in skills relevant for employment in DECCW and for the management of, and activities associated with, the Part 4A Lands using the Rent Account and assistance referred to under clauses 10.11(c) to 10.11(e).
- (b) If requested by the Board, the Director-General will assist the Board in the establishment of a community capacity building program relating to the Part 4A Lands.
- (c) Assistance offered by the Director-General will be for the education and skills development of Aboriginal people in areas relevant to the care, control and management of the Part 4A Lands and other areas relating to the Part 4A Lands.
- (d) Such assistance may be: financial assistance, unpaid opportunities to participate in park management and training programs such as Aboriginal sites surveys and management programs, wildlife surveys, specialist assistance with relevant external funding applications and traineeship programs, volunteer and work experience programs.
- (e) The Director-General and the Board agree to cooperatively seek opportunities for training programs provided by other organisations to complement or extend programs funded by the Board or the Director-General.

10.12 Occupational health and safety

The Parties and the Board shall comply with all relevant legislation and DECCW policies relating to occupational health and safety.

11. Traditional cultural use

11.1 Protection of traditional activities

- (a) **Reservation of Gumbaynggirr People's rights to use**
 - (i) The Parties acknowledge that the Cultural Values of the Part 4A Land include the use of the Part 4A Land in accordance with the traditions of the Gumbaynggirr People.
 - (ii) The Gumbaynggirr People have the following rights:
 - (A) the right to enter upon and use the Part 4A Lands in accordance with the traditions of the Gumbaynggirr People; and
 - (B) the right to engage in the traditional use of any area of the Part 4A Lands for ceremonial purposes.
- (b) **Reservation of Aboriginal Owner's and other Aboriginal people's rights to use**
 - (i) Aboriginal Owners of the Part 4A Lands, and any other Aboriginal people who have the consent of the Aboriginal Owner Board Members, are entitled (subject to the NPW Act and any other Act applying to the Part 4A Lands and any Plan) to enter and use the Part 4A Lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal Owners.
 - (ii) The above reservations are subject to the NPW Act, any other Act or the Plan, and the directions or decisions of the Board.
 - (iii) The Board shall develop a policy relating to this clause 11.

12. Indigenous Cultural & Intellectual Property, research and related matters

12.1 Board policy

- (a) The Board must develop a policy concerning the:
 - (i) ownership, use, licensing and management of ICIP; and

- (ii) conduct of research, or commercial activities on the Part 4A Lands,
(for the purposes of this clause 12, the **Board Policy**).
- (b) The Board Policy (and any amendment thereto) must be approved by:
 - (i) the Land Councils; and
 - (ii) the Director-General, if the Board Policy or any amendment relates to the assignment or licensing of ICIP or Intellectual Property Rights in any Research Data that is made by or under the direction or control of the Minister or the Director General after the Commencement Date,
before it comes into force.
- (c) The Board Policy must deal with:
 - (i) the circumstances in which the ownership of any ICIP or Intellectual Property Rights in any Research Data created after the Commencement Date that vests in DECCW may be assigned or licensed to the Land Councils on behalf of the Aboriginal Owners;
 - (ii) the procedure for negotiating agreements between the Board and the Minister, the Director-General or a third party, in respect of any ICIP or Research Data;
 - (iii) the conditions that will attach to any licences granted in accordance with clause 12.3(b);
 - (iv) the treatment (including the use) of:
 - (A) images of Gumbaynggirr Cultural Heritage and artefacts, art, rituals, ceremonies and sacred sites on or derived or removed from the Part 4A Lands;
 - (B) images of Gumbaynggirr People who are deceased; and
 - (C) traditional knowledge, including, without limitation, stories, legends, folklore, rituals, songs, dance, laws, general practices and customs, and scientific, agricultural, technical and ecological knowledge of the

Gumbaynggirr People or derived from the
Part 4A Lands; and

- (v) any conditions that must be imposed with respect to the conduct of any research or commercial activities on the Part 4A Lands.
- (d) To the extent that the Board is required to make any decisions or determinations:
 - (i) in relation to ICIP;
 - (ii) in connection with clauses 12.2, 12.3 and 12.4; and
 - (iii) which fall outside the scope of the Board Policy,the Board must obtain the prior consent of the Land Councils to such decisions or determinations. Such consent shall not be unreasonably withheld or delayed and such consent will be deemed to have been given by the Land Councils if the Land Councils do not notify the Board within 30 days of receipt of notice of the application for approval.
- (e) When exercising functions under this clause 12 the Land Councils acknowledge that they must act with the agreement of the Aboriginal Owner Board Members pursuant to section 71BG of the NPW Act.

12.2 Ownership of existing and future ICIP and Intellectual Property Rights in Research Data

- (a) All right, title and interest in and to any ICIP subsisting in any traditional art or designs relating to or connected with the Part 4A Lands shall, to the extent it is vested in DECCW immediately prior to the Commencement Date, be vested in the Land Councils on behalf of the Aboriginal Owners on and from the Commencement Date.
- (b) All right, title and interest in and to any Intellectual Property Rights in any Research Data generated by current or former employees, contractors, or agents of DECCW shall, to the extent it is vested in DECCW immediately prior to the Commencement Date, be vested in the Land Councils on behalf of the Aboriginal Owners on and from the Commencement Date.
- (c) To the extent that the right, title and interest in and to any other ICIP

is vested in DECCW immediately prior to the Commencement Date and within the administration of the Minister or the Director-General, this Lease transfers such ICIP to the Land Councils on behalf of the Aboriginal Owners.

- (d) The ownership of all right, title and interest in and to any:
 - (i) ICIP; or
 - (ii) Intellectual Property Rights subsisting in any Research Data or generated as a result of or in connection with any commercial activities conducted on the Part 4A Lands,
that is created or generated on or after the Commencement Date and which, but for the operation of this clause would have vested in DECCW (**Future ICIP**), will be determined:
 - (iii) in accordance with the Board Policy; or
 - (iv) if there is no Board Policy in respect of the ownership of Future ICIP:
 - (A) at the direction of the Board, with the agreement of a majority of the Aboriginal Owners Board Members and Land Council representatives on the Board who are present and entitled to vote on that issue at the relevant Board meeting; or
 - (B) if the Board has not been formed, on a case by case basis by the Minister and the Director-General acting reasonably, and in consultation with the Interim Advisory Committee.
- (e) At the reasonable request of any Party, each Party must do anything necessary or desirable (including the execution of any deeds or assignments) to give full effect to this clause 12.2 and the transactions contemplated by it.

12.3 Use of ICIP and Intellectual Property Rights in Research Data

- (a) The Minister and the Director-General will not use any ICIP or Intellectual Property Rights in any Research Data (in this clause 12.3, the **Relevant Rights**) vested in the Land Councils except in accordance with this clause 12 and the Board Policy.

- (b) The Land Councils may grant licences relating to the use of any Relevant Rights that are vested in the Land Councils, on behalf of the Aboriginal Owners.
- (c) Subject to clauses 12.3(d) and (e), the Land Councils are under no obligation to grant licences relating to the use of the Relevant Rights that are vested in the Land Councils, on behalf of the Aboriginal Owners.
- (d) Subject to clauses 12.3(e) and (g), the Land Councils agree to grant royalty-free licences to the Minister and/or the Director-General, in respect of the use of any Relevant Rights that are vested in the Land Councils, on behalf of the Aboriginal Owners:
 - (i) upon request;
 - (ii) in accordance with the Board Policy; and
 - (iii) only to the extent that such licence is required solely for:
 - (A) the purpose of promoting the Part 4A Lands or the national park system; or
 - (B) the management of the Part 4A Lands, for a non-commercial purpose, in accordance with the NPW Act, the NPW Regulation, this Lease, the Plan and any other law or written policy of the Board.
- (e) Any licences granted by the Land Councils in accordance with clause 12.3(b) must:
 - (i) comply with the requirements for such licences set out in the Board Policy; or
 - (ii) where there is no Board Policy or the Board Policy does not address the requirements for licences granted in accordance with clause 12.3(b), be at the discretion of the Land Councils.
- (f) The Board shall maintain an up-to-date register of licences granted to the Minister and/or Director-General in accordance with this clause.
- (g) After the Commencement Date the Minister and the Director-General must not, in relation to the Part 4A Lands, knowingly engage, or cause others to engage, in the following activities:

- (i) publishing any images of Gumbaynggirr Cultural Heritage and artefacts, art, rituals, ceremonies, and sacred sites that is or are on or derived or removed from the Part 4A Lands;
- (ii) publishing any images of Gumbaynggirr People who are deceased;
- (iii) recording (in any form) traditional knowledge, including without limitation, stories, legends, folklore, rituals, songs, dance, laws, general practices and customs, and scientific, agricultural, technical and ecological knowledge of the Gumbaynggirr People or derived from the Part 4A Lands;

unless the Minister and/or the Director-General:

- (iv) complies with the Board Policy; or
- (v) if there is no Board Policy in respect of the relevant matters in (i) - (iii), the Director-General and/or the Minister must:
 - (A) if the matter relates to (ii), first obtain the express written permission of the deceased person's next of kin; or
 - (B) if the matter relates to (i) or (iii):
 - (1) first obtain the express written permission of the Board and agree to comply with any terms and conditions imposed by the Board with respect to the conduct of the above activities; or
 - (2) if the Board has not been formed, act reasonably and in consultation with the Interim Advisory Committee.
- (h) The Parties acknowledge that clause 12.3(g) applies regardless of who owns the Intellectual Property Rights with respect to the relevant material referred to in clauses 12.3(g)(i) - (g)(iii).

12.4 Control of research and ICIP associated with research

- (a) The Parties acknowledge that, consistent with its role as a park authority under the NPW Regulation and in giving concurrence for certain decisions by the Minister and the Director-General under the NPW Act, the Board has the power to control research into the natural or cultural values of the Part 4A Lands by:

- (i) approving whether research is conducted on the Part 4A Lands;
 - (ii) deciding what conditions may apply to the conduct of that research, including conditions or restrictions on the researcher(s) that the Board considers appropriate in order for the research to be conducted in a manner that is consistent with Aboriginal customary law and values;
 - (iii) negotiating and attaching conditions about the management or ownership of any Intellectual Property Rights, including any ICIP, generated as a result of or in connection with that research, including:
 - (A) that the research will not be conducted for commercial purposes or the findings used for commercial purposes without the consent of the Board;
 - (B) the grant of sub-licences to the Board to use the Intellectual Property Rights created by the research; and
 - (C) providing a copy of any published findings of the research to the Board.
- (b) The Minister and/or the Director General agree to carry out all research in relation to the Part 4A Lands:
- (i) in accordance with the Board Policy; or
 - (ii) if there is no Board Policy, or the Board Policy does not address how research in relation to the Part 4A Lands must be carried out, the Minister and/or the Director-General must:
 - (A) carry out such research with the consent, authority or at the direction of the Board; or
 - (B) if the Board has not been formed:
 - (1) act reasonably, in consultation with the Interim Advisory Committee, in carrying out such research; and
 - (2) ensure that the research is not conducted for commercial purposes and that no resulting Research Data is used for commercial purposes

without the consent of the Land Councils.
Notwithstanding the foregoing, the Parties agree that the Minister and/or the Director General may use the Business Opportunities Analysis for the purposes set out in clause 9.2.

13. Gumbaynggirr Cultural Heritage

13.1 General notification and declaration of sites

- (a) If the Director-General is notified under section 91 of the NPW Act of the existence of any new Aboriginal Cultural Material on the Part 4A Lands, the Director-General must, as soon as practicable and, in any event, within 20 Business Days of becoming aware of such an existence, notify the Board of the location and nature of the new Aboriginal Cultural Material.
- (b) If the Board or the Land Councils notify the Minister of a place located on the Part 4A Lands, or on or in the Land and Waters that is or was of special significance with respect to Aboriginal culture that the Board or Land Councils wish to have declared as an Aboriginal Place, the Minister must consider whether that place should be declared an Aboriginal Place pursuant to section 84 of the NPW Act.

13.2 Notice of application which may interfere with Gumbaynggirr Cultural Heritage

- (a) Upon receipt of an application for the grant, variation or revocation of any Permit under Part 6 of the NPW Act in connection with any Gumbaynggirr Cultural Heritage, the Director-General must give Notice of the application to:
 - (i) the Land Councils; and
 - (ii) the Board,and invite them to comment on:
 - (iii) the significance of the Gumbaynggirr Cultural Heritage the subject of the application;
 - (iv) the consultation and/or research conducted by the applicant in relation to the Gumbaynggirr Cultural Heritage the subject of the application;

- (v) whether the application for the grant, variation or revocation of the Permit should be granted; and
 - (vi) in the case of an application for the grant or variation of a Permit, what terms, conditions or restrictions should be imposed on the Permit if it is granted or varied.
- (b) The Director-General must not grant, vary or revoke any Permit under Part 6 of the Act in relation to the Part 4A Lands other than with the approval of the Board.
- (c) Upon receipt of an appeal against the decision of the Director General not to grant a Permit or against a condition or restriction of a Permit under section 90(3) of the NPW Act in connection with any Gumbaynggirr Cultural Heritage, the Minister must give Notice of the appeal to:
 - (i) the Land Councils; and
 - (ii) the Board,
 and invite them to provide further comment as to whether the appeal should be granted and what (if any) directions should be given by the Minister if the appeal is granted.
- (d) A Notice provided under clauses 13.2(a) or 13.2(c) must attach a copy of the application or appeal and any supporting documentation.

13.3 Alternative procedures may be agreed

The Parties and the Board may agree in writing that the requirements of clause 13.2 be waived, varied or replaced with an alternative procedure, in relation to a particular Permit or class of Permit.

13.4 Protocol in relation to Aboriginal Remains

- (a) The Director-General and the Board must develop within two years of the Commencement Date, a protocol in relation to any Aboriginal Remains located in the Part 4A Lands (for the purposes of this clause 13.4, the ***Aboriginal Remains Protocol***).
- (b) The Aboriginal Remains Protocol must set out:
 - (i) the procedures to be followed when Aboriginal Remains are discovered on the Part 4A Lands or on or in the Land and Waters;

- (ii) the circumstances in which Aboriginal Remains will be removed and/or repatriated; and
 - (iii) the management of Aboriginal Remains that will not be removed and/or repatriated.
- (c) The Aboriginal Remains Protocol will come into effect upon being endorsed by the Director-General and the Board.

13.5 Transfer of Aboriginal Objects

- (a) The Parties agree that, if directed to do so in writing by the Aboriginal Owners (being Aboriginal Owners entitled to possession, custody and control of the Aboriginal Cultural Material in accordance with Aboriginal tradition pursuant to section 85A(1)(a) of the NPW Act) of any Aboriginal Cultural Material located on the Part 4A Lands the Director-General will transfer that Aboriginal Cultural Material (to the extent that the Aboriginal Cultural Material may not have already been vested in the Land Councils) to the Land Councils (on behalf of the Aboriginal Owners) pursuant to section 85A of the NPW Act, subject to the following conditions:
 - (i) the Aboriginal Cultural Material will be deemed to be part of the Part 4A Lands from the date of the transfer; and
 - (ii) subject to the NPW Act, the Board will have care, control and management of the Aboriginal Cultural Material on behalf of the Aboriginal Owners.
- (b) The Director-General will not exercise functions under section 85A of the NPW Act in respect of Aboriginal Cultural Material without first having sought, received and considered advice from the Aboriginal Owners referred to in paragraph (a) above, the Land Councils and the Board.
- (c) Nothing in this clause affects the right of any person to take such legal action as they may be entitled to at common law or under any law of New South Wales or the Commonwealth to protect any Gumbaynggirr Cultural Heritage.

13.6 Repatriation of Aboriginal Objects

- (a) Within 12 months of the Commencement Date, the Director-General will review DECCW's holdings of unprovenanced Aboriginal Cultural

Material to identify whether any Aboriginal Cultural Material of the Gumbaynggirr People is held by DECCW.

- (b) If any Aboriginal Cultural Material is identified by this review, the Director-General will discuss with the Interim Advisory Committee or the Board (if it is appointed within that time) a process for the repatriation of the Aboriginal Cultural Material to Gumbaynggirr Country.
- (c) This clause does not prevent the Director-General from discussing the repatriation of any Aboriginal Cultural Material identified as part of this review with any other relevant Aboriginal organisation in accordance with DECCW's Repatriation Policy and Guidelines.
- (d) If any Aboriginal Cultural Material is repatriated to the Part 4A Lands as a part of this review, the Aboriginal Cultural Material is deemed to be part of the Part 4A Lands from the date of its transfer under the NPW Act.

13.7 Identification of reports and documents held outside of DECCW about Gumbaynggirr People

- (a) Within 12 months of the Board's appointment, the Director-General will discuss with the Board whether funding is available from the Part 4A Accounts to engage a consultant to conduct a literature review of reports and other records (such as photographs) about the Gumbaynggirr People in relation to the Land and Waters held by relevant agencies and organisations outside of DECCW (such as other government agencies, universities and AIATSIS).
- (b) If funding is available for this project to proceed, the Director-General agrees that DECCW will provide resources to select an appropriate consultant and oversee the consultant's work at no cost to the Board.

14. Good faith

Where this Lease provides that the Parties must consult with each other on a particular matter or where a Party must make a decision or determination under the provisions of this Lease, each Party agrees that it will consider in good faith any relevant matters raised by the other Parties and will act properly and reasonably in relation to the consultation or the making of that decision or determination.

15. Income and finances

15.1 Establishment and management of the Part 4A Accounts

(a) Establishment of separate accounts

- (i) The funds for the Part 4A Lands are to be managed through the following separate accounts held by DECCW on behalf of the Board:
 - (A) the Rent Account, into which is paid:
 - (1) rent paid by the Minister under clause 15.2(a); and
 - (2) money received in respect of matters in section 138(1)(b) of the NPW Act, including revenue from fees, licences and permits referred to in clauses 5.10 and 5.18;
 - (B) Recurrent Funds provided to DECCW by NSW Treasury;
 - (C) Asset Acquisition Funds provided to DECCW by NSW Treasury;
 - (D) gifts, devises or bequests accepted on behalf of the Aboriginal Owners under clause 15.4(a);
 - (E) external grants referred to in clause 15.4(b) for the care, control or management of the Part 4A Lands; and
 - (F) any other accounts approved by Director-General and the Board.
- (ii) The Director-General agrees that each account will be separately identified within DECCW's accounting system.

(b) Money received in relation to the Part 4 Lands

The Director-General agrees that any money received in accordance with section 138(1)(b) of the NPW Act in respect of the Part 4 Lands will be kept in the Part 4A Accounts and applied in relation to the Land and Waters.

(c) Structure for identifying funds in each account

When determining the structure for accounting for funds, the Board is to conform to the general accounting practices and standards adopted by DECCW.

(d) **Accrual of money in the accounts**

- (i) Funds paid into the Rent Account may accrue from year to year.
- (ii) Recurrent Funds and Asset Acquisition Funds cannot be accrued from year to year, unless expressly authorised by NSW Treasury.
- (iii) Funds received as external grants or gifts, bequests and devises may be accrued in accordance with the terms of the grant or gift, bequest or devise.

(e) **Payment of interest into accounts**

DECCW agrees to credit to the Rent Account, on a pro rata basis, interest paid by NSW Treasury in relation to funds held in the Rent Account.

15.2 Rent

(a) **Amount of rent**

The Minister will pay rent of \$260,000 per annum (subject to adjustment pursuant to clause 15.2(i) and to review pursuant to clause 15.2(j)).

(b) **Purpose of rent**

The Parties agree that the amount of rent payable by the Minister under this Lease compensates the Land Councils for the fact that they do not have the full use and enjoyment of the Part 4A Lands.

(c) **Matters considered in negotiating rent**

The Parties have had regard to the following matters as required by section 71AE(4) of the NPW Act, in reaching agreement on the rent to be paid:

- (i) the nature, size and location of the Part 4A Lands and the nature of the infrastructure and improvements on the Part 4A Lands;
- (ii) the nature of the ownership rights in the Part 4A Lands that the Land Councils possess;
- (iii) the provisions of the NPW Act and this Lease;

- (iv) the extent to which the cultural significance of the Part 4A Lands to the Gumbaynggirr People restricts the use that may be made of the Part 4A Lands under this Lease;
 - (v) the arrangements contained in the NPW Act and this Lease for the care, control, management and development of the Part 4A Lands;
 - (vi) the amount of rent payable under leases of lands adjoining or in the vicinity of the Part 4A Lands; and
 - (vii) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the Part 4A Lands.
- (d) **Amount of rent in first year of the Lease**
- (i) The first payment of rent under this Lease is to be a proportionate amount of the rent for the full year calculated by the proportion of the number of days after the Commencement Date up to and including the following 30 June, compared to the days in the year from the preceding 1 July to the following 30 June.
 - (ii) The first payment of rent under this Lease is to be paid by the Minister within two months of the Commencement Date.
- (e) **Amount of rent in final year of the Lease**
- The final payment of rent under this Lease is to be a proportionate amount of the rent for the full year calculated by the proportion of the number of days after the 1 July prior to the date of expiry of the Lease until and including the date of expiry compared to the days in the year from the preceding 1 July to the following 30 June.
- (f) **Payment of rent to be annual**
- The rent is to be paid by the Minister annually for the period commencing 1 July that year to 30 June the following year (except as provided in clauses 15.2(d) and 15.2(e)).
- (g) **Date rent due**
- The rent is to be paid by the Minister in advance by 31 July of each year except in the first year of this Lease when clause 15.2(d)(ii) applies.

(h) **Account for payment of rent**

The rent is to be paid by the Minister into the Rent Account.

(i) **Adjustment of rent during term of the Lease**

- (i) The rent is to be adjusted during the Term of this Lease on each 1 July after the Commencement Date, to the amount obtained by multiplying the annual rent payable for the year last concluded by the fraction A/B where:

A = the annual CPI figure most recently published prior to the 1 July on which the rent is to be adjusted; and

B = the annual CPI figure last published prior to 1 July of the year immediately preceding the year under review (provided that no adjustment shall be made if the operation of this clause would lead to a reduction in the amount of the rent payable).

- (ii) If the Commencement Date is more than twelve months after the date of signing of the Lease by the Land Councils, the rent specified under clause 15.2(a) must be adjusted by multiplying the rent of \$260,000 by the fraction A/B where:

A = the quarterly CPI figure most recently published prior to the Commencement Date; and

B = the quarterly CPI figure most recently published prior to the date of the earlier signing of the Lease by either Land Council.

(j) **Review of rent**

- (i) The amount of rent payable under this Lease is to be reviewed when this Lease is reviewed in accordance with clause 4.4(e).
- (ii) Despite any other provision in this Lease, any valuation reports relating to the review of rent under this clause are to have had regard to the factors listed in 15.2(c).
- (iii) If, during a review of the Lease, the Parties fail to reach an agreement on any revision to the rent to be paid, the matter shall be referred for dispute resolution in accordance with clause 16.

- (iv) As the conditions of the initial Lease have been negotiated in anticipation of the addition of Added Lands being made as soon as practicable after the Commencement Date, the Parties agree not to request a review of the rent following the addition of Added Lands.
- (v) Nothing in clause 15.2(j)(iv) prevents the triggering of section 71BE of the NPW Act in relation to any addition of Additional Lands.

(k) Report about changes in market conditions

Prior to each lease review under clause 4.4(e)(i), the Director-General will commission a report about whether the market conditions have changed in a way that substantially varies from the CPI adjustments made to the rent under this Lease. The report is to be funded from Recurrent Funds and is to be provided to the Parties and the Board. This report may inform the Parties about whether further re-negotiation of the rent is appropriate.

(l) Costs of any additional advice about rent re-negotiation

- (i) If any Party or the Board decides that further re-negotiation of the rent is appropriate, any Party or the Board will bear its own costs in obtaining any further advice, for example the costs of a valuation report, as part of the rent re-negotiation.
- (ii) If requested by either of the Land Councils, the Board shall meet the reasonable costs incurred by the Land Councils under this clause 15.2(l)(i).

15.3 Recurrent Funds and Asset Acquisition Funds

(a) Recurrent Funds

- (i) On the Commencement Date, the Director-General will allocate a total of \$290,000 per annum during the Initial Period as Recurrent Funds for the management of the Part 4A Lands. This money is to be used on an ongoing annual basis for:
 - (A) the creation and maintenance of up to 2.6 new equivalent full time Aboriginal identified positions referred to in clause 10.3;

- (B) the ordinary costs of the plan of management referred to in clause 6.3(a); and
 - (C) other operational costs in relation to the Part 4A Lands.
 - (ii) After the Initial Period, the Recurrent Funding for the management of the Part 4A Lands will be adjusted to reflect any budgetary changes that apply to DECCW as a whole. Whilst the Recurrent Funding allocation for the Part 4A Lands may rise or fall with that of DECCW, the level of funding for the Part 4A Lands relative to that available for other reserves in the North Coast Region will be maintained. To achieve this, the Director-General will ensure that after the Initial Period, the Director-General will maintain the Recurrent Funding for the Part 4A Lands at a level that preserves its proportion within the total Recurrent Funding allocated to reserves in the North Coast Region at the Commencement Date.
 - (iii) The Regional Manager will ensure that the Board is fully informed on the annual budgetary process, and that a Board representative (other than the Regional Manager) is given the opportunity to actively participate in the regional budget allocation process.
 - (iv) If structural arrangements within DECCW change, the proportion to be maintained in clause 15.3(a)(ii) will be calculated using the total Recurrent Funds for the DECCW region with responsibility for the Part 4A Lands.
 - (v) For the purpose of implementing this clause, at the end of the Initial Period, the Board, the Land Councils and the Director-General will meet to identify the Recurrent Funds for the Part 4A Lands.
- (b) **Asset Acquisition Funds**
- (i) At the Commencement Date, the Director-General will provide as a one-off, in-kind contribution a fire unit and a boat up to a combined total replacement value of \$30,000 for primary use on the Part 4A Lands.

- (ii) Applications for Asset Acquisition Funds, to be expended after the Commencement Date, may be made on behalf of the Board in accordance with existing DECCW procedures.
- (iii) The Director-General acknowledges there may be a need for the expenditure of Asset Acquisition Funds to make initial improvements at the Part 4A Lands as a result of the Part 4A Lands being newly created reserves under the NPW Act.
- (iv) The Director-General agrees to work with the Board to develop appropriate asset acquisition proposals for incorporation into the DECCW forward estimates processes.

15.4 Other revenue sources

(a) Accepting gifts etc on behalf of the Board

- (i) The Minister will take all steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Aboriginal Owners in respect of the Part 4A Lands is transferred to the nominated Land Council on their behalf.
- (ii) The Minister agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Part 4A Lands or the Board is credited to the Part 4A Accounts (if in monetary form) or transferred to the Land Council (on behalf of the Aboriginal Owners) to be dealt with as directed by the Board (if in non-monetary form).

(b) Application by the Board for external funding

- (i) The Board may apply to bodies other than DECCW or the NSW Treasury for external funds to be expended for the care, control or management of the Part 4A Lands.
- (ii) Any external grants provided to the Board as a result of such an application by the Board shall not be counted by the Director General as an offset to any funds which should otherwise be provided as Recurrent Funds or Asset Acquisition Funds.
- (iii) Any external grants must be expended for the purposes for, and subject to any conditions attached to, their provision to the Board.

15.5 Development of annual budget proposals

- (a) The Board, after consultation with the Regional Manager, will prepare and submit to the Director-General an annual budget estimate and works plan for the next financial year in accordance with DECCW's financial management framework, which requires the submission of budgets 12 months prior to the commencement of the applicable financial year. The budget estimate and works plan should identify what funds the Board has and the source of funds to be expended in that year.
- (b) The Minister and the Director-General agree that this estimate will be included in any relevant budget submission to the NSW Treasury.
- (c) The Director-General will assist the Board to develop their budget estimates and works plan.
- (d) The Director-General will implement the agreed works plan in accordance with the Board-approved budget and provide reports to the Board at each meeting on expenditure and works progress.

15.6 Financial supervision by the Board

- (a) The Board must cause proper accounts and records to be kept in relation to all of its operations.
- (b) The Minister may direct the Board to establish a budget management framework that includes:
 - (i) preparing an annual budget and monitoring expenditure and revenue against the budget;
 - (ii) preparing quarterly reports;
 - (iii) preparing an annual financial report that is provided to the Director-General; and
 - (iv) preparing budgets and reports in accordance with DECCW's financial management and budget standards in place at the time.
- (c) The financial year and accounting period for the Board will be from 1 July each year to the following 30 June except in the first year of this Lease when it will be from the Commencement Date until the following 30 June.

- (d) The financial dealings of the Board and the operation of the Part 4A Accounts will be subject to the scrutiny of DECCW's ongoing internal audit program in the same manner and to the same extent as the scrutiny given to the accounting processes and financial dealings of the Region within which the Part 4A Lands are located.
- (e) The Minister may direct the Board to accept the scrutiny of DECCW's internal auditors.
- (f) No costs for internal audit services provided for in this clause will be charged to the Part 4A Accounts.
- (g) In the absence of a direction to the contrary from the Minister, the Board may choose to use auditors other than DECCW's auditors to meet the Board's obligations.
- (h) The Minister may direct the Board to use DECCW's external auditors for the purposes of complying with the Board's obligations pursuant to section 71AQ of the NPW Act.
- (i) Should the Board choose to use DECCW's external auditors for the purposes of complying with the Board's obligations pursuant to section 71AQ of the NPW Act or the Minister directs pursuant to sub-clause 15.6(h) that it do so, and DECCW apportions and charges costs to each of DECCW's regions for those audit services, the recovery of such costs from the Part 4A Accounts shall be on the same basis as any such recovery from the budget of any other region within the Parks & Wildlife Group of DECCW and the Parties expressly agree that there shall be no disadvantage in this regard because the Part 4A Lands are held by the Land Councils under Part 4A of the NPW Act.
- (j) The Minister may direct the Board to comply with DECCW's Accounting Manual in the administration of the Part 4A Accounts and other accounting and financial administration practices.
- (k) In circumstances in which there may be insufficient members to form a Board, pending appointment of new Board Members by the Minister, the Director-General will cause the financial administration of the Part 4A Accounts to be consistent with the obligations of a Board pursuant to section 71AQ of the NPW Act and this clause during such period.

- (l) The Director-General will prepare and adopt financial delegations for the implementation of Board decisions. These delegations will be consistent with DECCW financial delegations. The Director-General will ensure financial delegations are adhered to in the implementation of Board decisions.

15.7 Expenditure

(a) Expenditure from the Part 4A Accounts

- (i) All payments made from the Part 4A Accounts are to be made by authorisation of the Board and not otherwise.
- (ii) Funds kept in the Part 4A Accounts must be applied for the management of the Part 4A Lands (including the preparation of the Plan) and in accordance with the Plan.
- (iii) Rent and other funds in the Part 4A Accounts may be used for capital items, recurrent expenses, community development, acquisition of land for addition to the Part 4A Lands and for such other purposes that comply with this Lease and section 139(5) of the NPW Act.
- (iv) The Parties acknowledge that management of the Part 4A Lands may require activities to be undertaken outside the Part 4A Lands and that funds from the Rent Account may, subject to this Lease, the NPW Act and the Plan, be applied to such activities, including activities on the Land and Waters.

(b) Payment of money from the Rent Account for projects

- (i) At least \$50,000 per annum is to be allocated from the Rent Account for projects agreed between the Board and the Director-General relating to the Part 4A Lands, including cooperative management, Community Development, park establishment type matters, additional costs for the plan referred to in clause 6.3(b) but not including ongoing Board costs referred to in clause 8.8.
- (ii) If the rent is to be adjusted as a result of the application of the CPI formula in clause 15.2(i), the amount allocated for projects as a proportion of the rent must be adjusted in the same proportion.

- (iii) As part of the five year lease review under clause 4.4(e), the amount allocated to projects must be reviewed.

15.8 Payment of DECCW staff from the Rent Account

- (a) The Board may choose to authorise the payment from the Rent Account, or from other funds available to the Board, for the appointment of additional DECCW staff identified in the staffing strategy referred to in clause 10.2 to be involved in the care, control and management of the Part 4A Lands.
- (b) The Board is to pay DECCW staff salaries from the Rent Account for those DECCW positions whose recruitment is the responsibility of the Board pursuant to clause 10.3(a) (other than the DECCW positions funded from Recurrent Funds as provided for in clause 10.5(a)) with such payment reflecting the extent to which each position services the Part 4A Lands.

15.9 Tax

(a) Future liability for Commonwealth or State taxes

- (i) Should the Land Councils become liable to pay any Commonwealth or State taxes or charges solely as a result of the Part 4A Lands being vested in the Land Councils (rather than being retained by the Crown), the Minister agrees that the State shall meet the costs of such taxes, charges or local government rates in addition to any other monies payable pursuant to this Lease or pursuant to the normal budgetary allocations by DECCW for the management of the Part 4A Lands.
- (ii) Should the Land Councils become liable to pay any Commonwealth or State taxes or charges as a result of all lands reserved pursuant to the NPW Act being liable to pay such Commonwealth or State taxes or charges or local government rates, the Parties agree that the cost of such Commonwealth or State taxes or charges or local government rates will be met by the Board.

16. Disputes

16.1 Preliminary steps for resolution of disputes between a Land Council and the Minister or a Land Council and the Director-General

If there is a dispute between a Land Council and the Minister or the Land Council and the Director-General that arises out of or in connection with this Lease:

- (a) in the first instance, the Chairperson of the Land Council will seek to resolve the matter in issue with the Regional Manager;
- (b) if such discussion is not able to resolve the matter in issue, the Chairperson of the Land Council will seek to resolve the matter in issue with the Branch Director; and
- (c) if such further discussion is not able to resolve the matter in issue, the process set out in clause 16.6 is to be followed.

16.2 Preliminary steps for resolution of disputes between the Land Council and the Board

If there is a dispute between a Land Council and the Board that arises out of or in connection with this Lease:

- (a) in the first instance, the Chairperson of the Land Council will seek to resolve the matter in issue with the Chairperson of the Board;
- (b) the Land Councils and the Minister agree that the Minister will direct the Board that, in the first instance, the Chairperson of the Board will seek to resolve the matter in issue with the Chairperson of the Land Council; and
- (c) if such discussion is not able to resolve the matter in issue, the process set out in clause 16.6 is to be followed and the Minister will direct the Board to do so in all such circumstances.

16.3 Preliminary steps for resolution of disputes between the Land Councils

If there is a dispute between the Land Councils that arises out of or in connection with this Lease:

- (a) in the first instance, the Chairperson of each Land Council will seek to resolve the matter in issue; and

- (b) if such discussion is not able to resolve the matter in issue, the process set out in clause 16.6 is to be followed.

16.4 Definitions

For the purposes of this clause, **Authorised Person** means in relation to:

- (a) the Board, the Chairperson of the Board;
- (b) a Land Council, the Chairperson of the Land Council;
- (c) the Minister and the Director-General, the Regional Manager in the first instance and the Branch Director in the second instance.

16.5 Notice of dispute or difference

If after complying with clauses 16.1 to 16.3 (whichever is relevant), a dispute or difference (called a **Dispute**) between:

- (a) the Board and either or both of the Minister or the Director-General;
- (b) the Land Councils and either or both of the Minister or the Director-General; or
- (c) the Board and either or both of the Land Councils,

remains, then either party shall promptly give the other party written Notice identifying, and giving details of, the Dispute.

16.6 Negotiate in good faith

- (a) Within 10 Business Days of a party receiving the Notice referred to in clause 16.5, the Authorised Persons of each party involved in the Dispute, the subject of the Notice referred to in clause 16.5, must meet and, in good faith, attempt to resolve the Dispute.
- (b) If the Dispute has not been resolved within a reasonable timeframe and in any event no longer than 40 Business Days, the parties may agree to refer the dispute to mediation in accordance with clause 16.7.

16.7 Mediation

Mediation of the dispute shall:

- (a) be conducted by the person or body agreed to by the parties or, failing agreement within 20 Business Days of the parties agreeing to refer the Dispute to mediation, as nominated by the President for the time being of the Australian Commercial Disputes Centre;

- (b) be conducted in accordance with such rules as may be agreed to by the parties or, failing agreement within 20 Business Days of the parties agreeing to refer the Dispute to mediation, as nominated by the person or body agreed or nominated to conduct the mediation;
- (c) be at the cost and expense of the parties equally (except that each party shall pay its own advisers, consultants and legal and other fees and expenses) unless the parties otherwise agree; and
- (d) if not earlier resolved, be continued for a period expiring on the date being 20 Business Days after the nomination of the mediator (or such other period as the parties may agree) after which the parties may at any time after that date refer such dispute to arbitration under clause 16.8.

16.8 Arbitration

- (a) If, within 20 Business Days (or any other period agreed to in writing between the Authorised Persons) after the appointment of a mediator under clause 16.7:
 - (i) the Dispute is not settled by mediation under clause 16.7; or
 - (ii) no agreement is reached to refer the Dispute to mediation under clause 16.6(b),
 either Authorised Person may by written notice to the other refer the dispute to arbitration in accordance with, and subject to, section 71BJ of the NPW Act.
- (b) The arbitration will be conducted and held in accordance with the laws of New South Wales.
- (c) The results of the arbitration shall be binding on the parties.
- (d) The arbitration shall include any issues of compensation to any Party to this Lease or the Board as a result of the matter in dispute.
- (e) The Parties agree that, in conducting any arbitration, the arbitrators are to have regard to:
 - (i) the preservation of the rights and interests of any Native Title holders;
 - (ii) the views on the matter expressed by the Aboriginal Owner Board Members;

- (iii) the Plan;
- (iv) the preservation and protection of traditional ways of life, culture and tradition;
- (v) the interests, proposals, opinions and wishes of the Gumbaynggirr People and other Aboriginal people with a cultural association with the Part 4A Lands in relation to the management, use and control of the Part 4A Lands;
- (vi) the growth and development of the Gumbaynggirr People's social, cultural and economic structures;
- (vii) freedom of access to the Part 4A Lands by the Gumbaynggirr People and other Aboriginal people with a cultural association with the Part 4A Lands and their freedom to carry out on the Part 4A Lands rites, ceremonies and other activities in accordance with their tradition;
- (viii) the preservation of the natural environment;
- (ix) the continuing management of the Part 4A Lands under Part 4A of the NPW Act;
- (x) the use of the Part 4A Lands for tourist and educational activities;
- (xi) the duties, functions and responsibilities of the Minister in relation to the Part 4A Lands; and
- (xii) in respect of any dispute regarding rent review, the factors listed in 15.2(c).

17. Miscellaneous

(a) Governing law

This Lease is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales.

(b) Parties must give full effect to document

- (i) Each Party must do all things reasonably necessary to ensure that its employees, agents, sub-contractors and invitees do everything to ensure that the Party's obligations under this Lease are fulfilled.

- (ii) Each Party must ensure that none of its employees, agents, subcontractors or invitees do any act or omission that prevents that Party from fulfilling its obligations under this Lease.

(c) **Waiver of rights**

- (i) A right or entitlement under this Lease may only be waived in writing, signed by the Party giving the waiver, and:
 - (A) no other conduct of a Party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
 - (B) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (ii) the exercise of a right does not prevent any further exercise of that right or of any other right.

(d) **Entire agreement**

- (i) This Lease contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Lease and has no further effect.
- (ii) Any right that a person may have under this Lease is in addition to, and does not replace or limit, any other right that the person may have.

(e) **Severance**

Any provision of this Lease which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this Lease.

(f) **Inconsistency with other documents**

If this Lease is inconsistent with any other document or agreement between the Parties, this Lease prevails to the extent of the inconsistency.

(g) **Counterparts**

This Lease may be executed in counterparts.

(h) **Stamp duty**

The Minister must pay any stamp duty on this Lease and must ensure that the Lease is submitted for stamping.

Signed in my presence by the lessee who is personally known to me.

I certify that the person(s) signing
opposite, with whom I am
personally acquainted or as to
whose identity I am otherwise
satisfied, signed this instrument in
my presence:

A handwritten signature consisting of a single, fluid, curved line.

I certify that the person(s) signing
opposite, with whom I am
personally acquainted or as to
whose identity I am otherwise
satisfied, signed this instrument in
my presence:

Handwritten initials or marks, including a vertical line, a small dash, and two slanted lines.

Certified correct for the purposes of the *Real Property Act 1900* (NSW) by the corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below:

Corporation: Nambucca Heads Local Aboriginal Land Council

Authority: Schedule 2 cl 17 of the *Aboriginal Land Rights Regulation 2002* (NSW), prescribed pursuant to s52F *Aboriginal Land Rights Act 1983* (NSW) and cl 29 *Aboriginal Land Rights Regulation 2002* (NSW)

Certified correct for the purposes of the *Real Property Act 1900* (NSW) by the UNKYA COUNCIL corporation named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below:

Corporation: Unkya Local Aboriginal Land Council

Authority: Schedule 2 cl 17 of the *Aboriginal Land Rights Regulation 2002* (NSW), prescribed pursuant to s52F *Aboriginal Land Rights Act 1983* (NSW)

Schedule 1

Proclamation relating to the Added Lands

Proclamation

under the

National Parks and Wildlife Act, 1974

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 71BC of the *National Parks and Wildlife Act, 1974*, do, by this my proclamation reserve the land specified in the Schedule below, as part of the area leased under Part 4A of that Act as an addition to **Gaagal Wanggaan (South Beach) National Park**.

Signed and sealed at Sydney, this day of 2010.

By Her Excellency's Command,

FRANK SARTOR, M.P.,

Minister for Climate Change and the Environment

GOD SAVE THE QUEEN!

SCHEDULE

Land District – Taree; LGA – Nambucca

County Raleigh, Parish Congarinni, about 12.87 hectares, being Lots 224, 233, 234, 237 to 246 inclusive in DP755539 and Lot 7313 in DP1149441: DECCW/07/19718.

Schedule 2

Commencement and execution dates

Item	Date
Commencement Date	DO NOT DATE
Execution Date	

Schedule 3

Reservation instruments for the Part 4A Lands and the Creek Bed

Reservation of the Part 4A Lands:

NATIONAL PARKS AND WILDLIFE ACT, 1974

Notice of Reservation of a National Park

I, Professor MARIE BASHIR, AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council,

- (a) reserve the land described in the Schedule below, as national park, being land that the Minister administering the *National Parks and Wildlife Act, 1974*, is satisfied is of sufficient natural conservation value to justify its reservation; and
- (b) assign the land described in the schedule below the name **Gaagal Wanggaan (South Beach) National Park**, being the name recommended by the Aboriginal negotiating panel appointed in accordance with s.71G of the *National Parks and Wildlife Act, 1974*

This notice is published pursuant to Part 4A, Division 4 of the *National Parks and Wildlife Act, 1974*, and in particular s.71U, as applied by s.71AB(2) of that division, and s.71Y.

Signed and Sealed at Sydney this day of , 2010.

MARIE BASHIR,
Governor

By Her Excellency's Command,

FRANK SARTOR, M.P.,
Minister for Climate Change and the Environment

GOD SAVE THE QUEEN!

SCHEDULE

Description

Land District – Taree; LGA – Nambucca

County Raleigh, Parishes Congarinni & Nambucca, about 428 hectares, being Lots 7310, 7311, 7312, 7314 and 7315 in DP1149441 and Lots 112, 235 & 236 in DP755539: DECCW/07/19718

Reservation of the Creek Bed:

NATIONAL PARKS AND WILDLIFE ACT 1974

Notice of Reservation of a National Park

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, reserve the land described in the Schedule below, as part of **Gaagal Wanggaan (South Beach) National Park**, under the provisions of Section 30A(1) of the *National Parks and Wildlife Act, 1974*.

SIGNED and SEALED at Sydney this day of , 2010.

MARIE BASHIR,
Governor

By Her Excellency's Command,

FRANK SARTOR, M.P.,
Minister for Climate Change and the Environment

GOD SAVE THE QUEEN!

SCHEDULE

Land District – Taree; LGA – Nambucca

County Raleigh, Parishes Congarinni & Nambucca, about 194 hectares, being that part of the bed of Warrell Creek within the following boundary: commencing at the north west corner of Lot 7314 DP1149441 then bounded by Lot 7314 aforesaid, Lot 7312 DP1149441, Lot 224 DP755539, Lot 7313 DP1149441, Lot 7312 aforesaid, Lot 7310 DP1149441, Lot 7311 DP1149441, Lot 7310 aforesaid, Lot 112 DP755539, Lot 7310 aforesaid, then the westerly prolongation of the southern boundary of Lot 7310 aforesaid to its intersection with the eastern boundary of Lot 157 DP755539, then north by the eastern boundary of Lot 157 aforesaid, Lot 1 DP127676, Lot 113 DP755539, Lot 1 aforesaid, road reserve, Lot 50 DP755539, road reserve, Lot 232 DP755539, road reserve, Lot 187 DP755539, road reserve, Lot 593 DP591448 and Lot 555 DP1072228 to a point described as the junction of lines 25 & 26 in DP1072228 sheet 3, then by a line from aforesaid point to the junction of lines 73 & 79 in DP1072228 Sheet 3, then bounded by Lot 557 DP1072228 to the junction of lines 76 & 77 in DP1072228 Sheet 3, then by a line from aforesaid point to the junction of lines 80 & 81 in DP1072228 Sheet 4, then bounded by Lot 558 DP1072228 to the junction of lines 86 & 87 in DP1072228 Sheet 4, then by a line from aforesaid point to the junction of lines 100 & 109 in DP1072228 Sheet 4, then bounded by Lot 559 DP1072228 to the junction of lines 103 & 104 in DP1072228 Sheet 4, then by a line from aforesaid point to the most northerly point of Lot 7015 DP1149441, then southerly by the western boundary of Lot 7315 aforesaid to the point of commencement; inclusive of all land above mean high water mark within the area so described but exclusive of Lots 557, 558 & 559 of DP1072228: DECCW/07/19718

Schedule 4

Cultural Landscape Management

The Parties acknowledge that:

- (a) The Part 4A Lands are to be viewed as consisting of, as well as forming part of, a broader cultural landscape;
- (b) The Gumbaynggirr People derive economic and social benefits from the resources contained in the Land and Waters, yet seek to live within the carrying capacity of these resources;
- (c) Cultural Landscape Management involves the following:
 - (i) respect for Gumbaynggirr People's Cultural Values;
 - (ii) recognition of Gumbaynggirr People's Cultural Values, Gumbaynggirr Traditional Ecological Knowledge and resource management practices with a view to promoting environmentally sound and sustainable development and land uses;
 - (iii) recognition of traditional and direct dependence on renewable resources and ecosystems, including sustainable harvesting;
 - (iv) protection of the Part 4A Lands from activities that are environmentally, socially or culturally unsound; and
 - (v) the Parties seeking ways to integrate Gumbaynggirr People's knowledge and practices into non-Aboriginal science and technology methods and processes.
- (d) Cultural Landscape Management includes an acknowledgement that:
 - (i) other areas in the vicinity of the Part 4A Lands have Cultural Values to the Gumbaynggirr People and cultural importance which are directly related to the Cultural Values of the Part 4A Lands; and
 - (ii) it is important to integrate the management of the Part 4A Lands with the management of those areas referred to in sub-clause (d)(i).

Schedule 5

List of Existing Interests

- (a) Notification in Government Gazette dated 28 June 1985, page 3181 (Easement for sewer pipeline);
- (b) Notification in Government Gazette dated 28 June 1985, page 3181 (Easement for access);
- (c) Notification in Government Gazette dated 28 June 1985, page 3181 (Easement for water supply); and
- (d) A 20 metre wide easement in favour of Country Energy to be created on or in the vicinity of the land identified in purple on the LEC Settlement Agreement map.

Schedule 6

Gumbaynggirr Traditional Ecological Knowledge

The Parties acknowledge that:

- (a) Gumbaynggirr People have been developing, conserving and using in a sustainable way, the natural resources of their cultural area for millennia; and
- (b) Gumbaynggirr People have particular expertise and intimate knowledge of the Land and Waters, in particular they have expertise and knowledge about the ecosystems, ecological processes and cultural aspects which influences ecosystem function, species and conservation processes of the Land and Waters;
- (c) Gumbaynggirr Traditional Ecological Knowledge is a legitimate knowledge system;
- (d) Gumbaynggirr Traditional Ecological Knowledge provides a strong basis for sustainable ecosystem management because:
 - (i) the quality of the information and interpretative systems possessed by local Indigenous peoples after having lived as part of an ecosystem for many generations; and
 - (ii) the strength of local Indigenous peoples' commitment to sympathetic ecosystem management that results from having such knowledge;
- (e) Gumbaynggirr Traditional Ecological Knowledge will be incorporated into any planning or management documents for the Part 4A Lands and have an important role in the implementation of any conservation strategies and policies on the ground;
- (f) as permitted by law, future conservation strategies for the Part 4A Lands must be consistent with Gumbaynggirr Traditional Ecological Knowledge;
- (g) the Minister and the Director-General shall promote the wider application of Gumbaynggirr knowledge and practices beyond the Lands and Waters and to incorporate their knowledge of biological resources and processes to all areas impacting on the ecosystems present at the locale of the Lands and Waters;

- (h) to the extent reasonably practicable, the Minister and the Director-General in consultation with the Board will incorporate Gumbaynggirr Traditional Ecological Knowledge in the management of the Land and Waters; and
- (i) the limits of eco-systems of the Part 4A Lands and their carrying capacity for different activities, including:
 - (i) access and use by Aboriginal and non-Aboriginal people; and
 - (ii) the issuing of permits under the NPW Act and NPW Regulation, should be determined with reference to both Gumbaynggirr Traditional Ecological Knowledge and scientific knowledge.

Schedule 7

Holistic Management

The Parties acknowledge that the movement of species, nutrients, cultural attributes and other environmental flows are not limited by artificial tenure and land/water boundaries.

The Parties agree that Holistic Management of the Part 4A Lands involves:

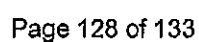
- (a) providing a comprehensive and integrated approach to management that makes efficient use of resources and ensures human activities are managed with regard to the cultural, ecological and biological capacity of the surrounding Land and Waters;
- (b) using an ecosystem approach to land and resource management that will conserve or increase the cultural and natural values and resource base of the Part 4A Lands; and
- (c) a commitment to ongoing identification, characterisation and monitoring of ecosystems, species, genetic resources and Cultural Values of the Part 4A Lands.

In implementing this Lease, the matters that must be considered in the Holistic Management of the Part 4A Lands, in conjunction with the other relevant Government agencies include (but not limited to):

- (a) protection of sites and resources of cultural significance;
- (b) recreational and commercial fishing;
- (c) boating access to Warrell Creek including types and speed of craft;
- (d) recreational uses of Warrell Creek including water-skiing and jet skiing;
- (e) four wheel drive access to South Beach and the Inter-Tidal Zone;
- (f) camping;
- (g) seasonal and day visitation to beaches and the shores and waters of Warrell Creek;
- (h) bank erosion;
- (i) identification of cultural areas and environmentally sensitive areas requiring control of visitation from land or waters;
- (j) signage;

- (k) waste disposal; and
- (l) protection and management of culturally significant species and their habitat.

Map of the Land Claims



Schedule 9

Rights and Interests asserted in the Native Title Claim and the DNA

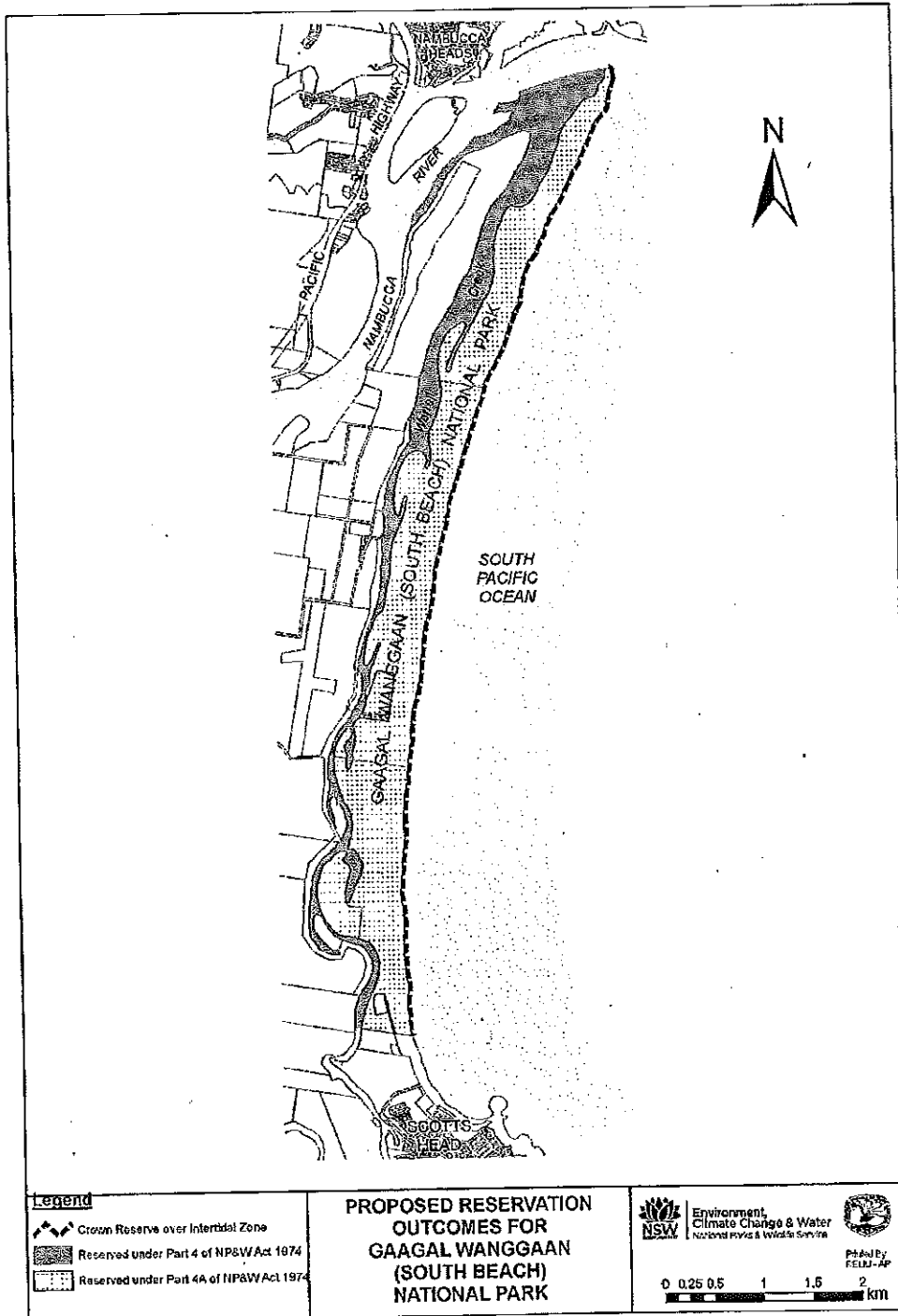
The rights and interests asserted in accordance with traditional laws and customs by the Gumbaynggirr People in relation to the land and waters, as set out in the Native Title Claim and the Draft Negotiations Agreement, are as follows:

- (a) the right to speak for the land and waters;
- (b) the right to be on the land;
- (c) the right to hunt on the land and waters;
- (d) the right to gather and use the products of the land such as food, medicinal plants, timber, stone and water (other than minerals and petroleum wholly owned by the Crown);
- (e) the right to be on and in the waters;
- (f) the right to fish in the waters;
- (g) the right to gather shellfish and other freshwater and marine fauna and products (other than minerals and petroleum wholly owned by the Crown);
- (h) the right to live on the land;
- (i) the right to camp on the land;
- (j) the right to erect shelters on the land;
- (k) the right to move about the land and waters;
- (l) the right to maintain and carry out traditional burning and fire management practices on the land;
- (m) the right to engage in cultural and social activities on the land;
- (n) the right to carry out ritual practices on the land;
- (o) the right to teach the physical and spiritual attributes of places on the land and waters;
- (p) the right to access, maintain and protect sites of significance on the land and waters;

- (q) the right to make decisions about the use and enjoyment of the land and waters, and to make decisions in relation to proposed actions in relation to the land and waters;
- (r) the right to control the access of others to the land and waters;
- (s) the right to control the use and enjoyment by others of the resources of the land and waters (other than minerals and petroleum wholly owned by the Crown);
- (t) the right to prevent the disclosure, otherwise than in accordance with traditional laws and customs, of tenets of spiritual beliefs and practices which relate to areas within the subject land and waters; and
- (u) the right to be acknowledged as the owners of the land and waters in accordance with traditional laws and customs.

Schedule 10

Map of Gaagal Wanggaan (South Beach) National Park



Schedule 11

LEC Settlement Agreement extracts about the facility

"Objectives

5. The parties agree that the objectives of this Agreement are as follows:

Ensuring the meaningful participation and input by the Aboriginal people of the Nambucca Valley in the future management, rehabilitation and conservation of the lands to be held and controlled as a result of this Agreement under Part 4A of the NPW Act, from the commencement of the proposed lease(s) through at least the following:

- 5.9.2 *subject to funding being secured, the establishment of a facility and associated infrastructure on the site of or in the vicinity of those lands (such site to be determined between the parties) for use by the Board of Management referred to in clause 5.5.5 above for attending to its functions and associated matters...*

The establishment of an Aboriginal owned Nature Reserve or National Park over certain lands

13. *In respect of the lands shown by blue edge and green edge on Map "A":*

- 13.4. *the National Parks Minister and the Land Councils agree that the content of the negotiations referred to in clause 13.1 of this Agreement will include, along with the matters prescribed under Division 5 of Part 4A of NPW Act, the matters set out in the First Schedule to this Agreement and agree that they will each negotiate in good faith in an attempt to reach agreement regarding each of the matters listed in the First Schedule...*

Resources to be provided to the proposed Nature Reserve or National Park

21. *The National Parks Minister and the NPWS Director-General undertake that, upon the reservation of the lands referred to in clause 13 of this Agreement, they will take all steps necessary to ensure the following:*

- 21.2. *subject to funding being secured, the establishment of a facility and associated infrastructure on the site of or in the vicinity of those lands (such site to be determined between the parties during the course of the*

lease negotiations referred to in clause 13.1 of this Agreement) for use by the Board of Management referred to in clause 5.5.5 of this Agreement for attending to its functions and associated matters.

- 23. In relation to the facility for the Board of Management referred to in clause 21.2 of this Agreement, the NPWS Director-General agrees to provide reasonable resources and expertise from within the NPWS to assist in the selection of the most suitable site for the location of the facility and associated infrastructure and agrees to discuss with the Land Councils regarding the provision of capital and other resources for the planning, design, construction and maintenance of the facility and associated infrastructure as a part of the lease negotiations referred to in clause 13.1 of this Agreement.*
- 24. The parties to this Agreement acknowledge that the lands which may be agreed upon as a suitable site for the facility for the Board of Management as referred to in clause 23 of this Agreement may not be permitted to be used for such a purpose under any Environmental Planning Instruments applicable to those lands under the Environmental Planning and Assessment Act 1979. In the event that the Land Councils, whether together or separately, make an application for a rezoning or for any planning consent in respect of any lands so identified, the National Parks Minister and the Director-General of the NPWS agree that they will give sympathetic consideration to supporting any application for such appropriate rezoning or consent, recognising that the Board of Management may require such a facility in order to properly function as contemplated and desired by the parties.*

FIRST SCHEDULE

The matters referred to in clause 13.4 of the Agreement which the parties have agreed, to the extent lawfully possible, will be negotiated in good faith as a part of the lease negotiations referred to in clause 13.1 of the Agreement include:

- 4. The allocation by the Minister for the Environment, the NPWS Director-General and/or other agencies or organisations of financial resources and expertise towards the planning, design, construction, maintenance and repair for the facility for the Board of Management as referred to in clause 21.2 of the Agreement."*

