

GUNDUNGURRA
INDIGENOUS LAND USE AGREEMENT
(AREA AGREEMENT)

DEED MADE 20 JUNE 2014

PARTIES:

BETWEEN: **ELSIE STOCKWELL AND MERVYN TRINDALL** on their own behalf and on behalf of the **GUNDUNGURRA PEOPLE**

AND **GUNDUNGURRA TRIBAL COUNCIL ABORIGINAL CORPORATION** incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)

AND **GUNDUNGURRA ABORIGINAL HERITAGE ASSOCIATION INC.** incorporated under the *Associations Incorporations Act 2009* (NSW)

AND **BRADLEY RONALD HAZZARD**, Attorney General of New South Wales in his capacity as the State Minister for New South Wales under the *Native Title Act 1993* (Cth)

AND **ANDREW STONER**, Deputy Premier of New South Wales in his capacity as Joint Minister administering the *Crown Lands Act 1989* (NSW)

AND **ROBYN MARY PARKER**, Minister for the Environment on behalf of the State of New South Wales in her capacity as the Minister administering the *National Parks and Wildlife Act 1974* (NSW)

AND **TERRY BAILEY**, Chief Executive of the Office of Environment and Heritage under delegated authority under the *National Parks and Wildlife Act 1974* (NSW)

AND **FIONA SMITH**, Acting Chief Executive of the Sydney Catchment Authority in respect to her functions under the *Sydney Water Catchment Management Act 1998* (NSW)

AND

NICK ROBERTS, Chief Executive Officer of the Forestry Corporation of NSW in his capacity as the delegate of the Forestry Corporation of New South Wales as constituted pursuant to the *Forestry Act 2012* (NSW)

AND

BLUE MOUNTAINS CITY COUNCIL, a body politic of the State of New South Wales by force of s.220 of the *Local Government Act NSW 1993*

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RECITALS

Whereas:

- A. Pamela Stockwell (deceased), Mervyn Trindall and Elsie Stockwell on behalf of the Gundungurra People have in various combinations, lodged six Gundungurra native title Claims for determination of native title under the *NTA* (being Federal Court proceedings NSD6026/98, NSD6044/98, NSD6047/98, NSD6050/98, NSD6057/98 and NSD6060/98).
- B. By the six Gundungurra Native Title Claims, the Applicants in the respective proceedings claimed on behalf of the Gundungurra People (a group of which the Applicants are members), to hold native title in the land and waters in the Application Area.
- C. On the basis of evidence provided by the Gundungurra People, the State of New South Wales acknowledges that the Gundungurra People identify as descendants of the traditional inhabitants of the Agreement Area.
- D. Following some years of negotiation, it became apparent that the Gundungurra Association was particularly interested in being separately represented at meetings. The Gundungurra Association has been embraced by the Applicants and will perform certain functions under this Deed. The Gundungurra Corporation and the Gundungurra Association operate on an equal footing in this Deed. The Gundungurra Corporation and the Gundungurra Association accept that the Applicants have a more formal role under the operation of this Deed. The Parties have agreed to a forum for non-exclusive consultation with respect to State Lands.
- E. The Parties have agreed that the making of this Deed and any activity which occurs pursuant to it or in conformity with information circulated in accordance with subclauses 11.1 or 11.2 hereof does not constitute any admission or recognition by the State of New South Wales that native title exists in any part of the Agreement Area.

The Parties have agreed to enter into this Deed and be bound by its terms and conditions with a view to ongoing cooperation between them.
- F. In exchange for benefits provided under this Deed, including non-exclusive consultation rights, the Applicants have agreed to withdraw the Gundungurra Native Title Claims. Furthermore, the Applicants, the Gundungurra People, the Gundungurra Corporation and the Gundungurra Association have agreed not to lodge any further Native Title Claim for determination of native title in respect of the Agreement Area pursuant to the *NTA*, except in circumstances provided for under this Deed.
- G. Notwithstanding that the Applicants will no longer be registered native title applicants after the withdrawal of the Gundungurra Native Title Claims, the State and BMCC (for certain purposes) have agreed to follow the Alternative Regime outlined in this Deed with respect to certain acts which may in future be proposed to be undertaken within the Agreement Area, being acts which might, if native title exists in a place that would be affected by such a proposed act and is prone to be affected by the proposed act, be future acts.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this Deed, unless the context or subject matter otherwise indicates or requires:

Aboriginal heritage means those plants, animals, materials, objects, places, landscapes, and associated stories, relationships, traditions and customs, which are valued by Aboriginal people in accordance with the body of traditional observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people and includes any such traditions observances customs or beliefs relating to particular persons areas objects or relationships;

Agreement Area means the whole of the area that falls within the outer boundary of the line depicted on the map, and which is described in the technical description, at Schedule A to this Deed;

Alternative Regime means the protocol and procedures provided in clause 14 to this Deed that are to be followed by the State, BMCC, the Gundungurra Corporation and the Gundungurra Association with respect to Post Registration Acts in place of the procedures for the validation of future acts contained in the *NTA*;

Applicants mean each of the individuals comprising the applicant in any of the Gundungurra Native Title Claims;

Application Area means the area covered by the Gundungurra Native Title Claims and that falls within the outer boundary of the line depicted on the map set out in Schedule B;

BMCC means the Blue Mountains City Council;

BMCC Lands means the nominated Crown lands managed by the BMCC located within the Agreement Area as identified in Schedule G;

Chief Executive of the Forestry Corporation of New South Wales has the same meaning as 'Chief Executive' in the *Forestry Act*;

Chief Executive of SCA has the same meaning as 'Chief Executive' in the *SWCM Act*;

Class 1 Post Registration Act means a Post Registration Act which is within the classes of acts listed in subclause 14.4 to this Deed;

Class 2 Post Registration Act means a Post Registration Act which is within the classes of acts listed in subclause 14.7 to this Deed;

Class 3 Post Registration Act means any Post Registration Act that is not a Class 1 Post Registration Act or Class 2 Post Registration Act, and includes the classes of acts set out in subclause 14.18 to this Deed;

Compensation means redress, recompense, compensation, damages, reparations, restitution or any remedy for past conduct of any kind (whether seeking monetary or other relief), where such compensation is paid or payable by the State or requires the State to take or refrain from undertaking any act and such compensation is in respect

of the direct or indirect consequences of the effect of any act or happening on any native title which exists or has at any time in the past existed in the Agreement Area;

Compensation Application means an application for a determination of compensation pursuant to Part 2 Division 5 of the *NTA*;

Consultative Committee means the Gundungurra Consultative Committee established in accordance with Schedule D of this Deed;

Corporations (ATSI) Act means the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth);

Crown Lands Act means the *Crown Lands Act 1989* (NSW);

OEH means the Office of Environment and Heritage within the Department of Premier and Cabinet;

Deed means this Deed and any recital, clause, schedule, annexure or list of parties to this Deed;

Director General (NPWA) has the same meaning as 'Director-General' in the *NPW Act*;

Dispute means any failure to agree, controversy, deadlock or dispute arising out of this Deed or in relation to its application, unless the failure to agree, controversy, deadlock or dispute is of a type that is excluded from being a Dispute by the operation of other clauses of this Deed;

Forestry Act means the *Forestry Act 2012* (NSW);

Forestry Commission means 'The Commission' as defined in the *Forestry Act*;

Forestry Commission Lands means the nominated lands under the control and management of the Forestry Corporation of New South Wales located within the Agreement Area as identified in Schedule G;

Future Act has the same meaning as in the *NTA*;

Gundungurra Association means the Gundungurra Aboriginal Heritage Association Inc ("Association") incorporated under the *Associations Incorporations Act 2009* (NSW) and, in the event that a substitute Association is the subject of notice to the State Minister under subclause 20.6, the Substitute Corporation or Association;

Gundungurra Corporation means the Gundungurra Tribal Council Aboriginal Corporation ("the Corporation") incorporated under the *Corporations (Aboriginal And Torres Strait Islander) Act 2006* (Cth) and, in the event that a substitute Aboriginal and Torres Strait Islander Corporation is the subject of notice to the State Minister under subclause 20.6, the Substitute Corporation;

Gundungurra Native Title Claims means the native title claims filed under the *NTA* by any of the Applicants for the Gundungurra People, as amended, having Federal Court Proceeding numbers NSD6057/98 (filed by Mervyn Trindall on 20 January 1997), NSD6026/98 (filed by Mervyn Trindall and Elsie Stockwell on 11 March 1996), NSD6047/98 (filed by Mervyn Trindall on 27 September 1996), NSD6044/98 (filed by Mervyn Trindall on 20 August 1996), NSD6050/98 (filed by

Mervyn Trindall on 25 November 1996) and NSD6060/98 (filed by Pamela Stockwell (deceased) and Elsie Stockwell on 29 April 1997);

Gundungurra People means those Aboriginal persons and their descendants, collectively and individually, who claim to hold native title in the Agreement Area;

Gundungurra Person means a person who is one of the Gundungurra People;

ILUA means Indigenous Land Use Agreement and has the same meaning as in the *NTA*;

Local Government Act means the *Local Government Act 1993* (NSW);

Minister for the Environment means the Minister administering the *NPW Act*;

National Park Lands means the lands administered under the *NPW Act* located within the Agreement Area as identified in Schedule G;

Native Title Claim means a native title determination application (claimant application) under the *NTA* or any action seeking a determination of native title in any court, made by a person claiming to hold or at one time to have held, native title in, or in relation to, any part of the Agreement Area;

NNTT means the National Native Title Tribunal and has the same meaning as in the *NTA*;

Non-Extinguishment Principle has the same meaning as in the *NTA*;

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

NTA means the *Native Title Act 1993* (Cth);

Party or Parties means a Party or the Parties to this Deed as the case may be;

Post Registration Act means an act occurring on or after the date of Registration of this Deed, which is a future act;

Registered means Registration of this Deed as an ILUA by the Registrar;

Register of Aboriginal and Torres Strait Islander Corporations means the Register of Aboriginal and Torres Strait Islander Corporations kept under section 418.1 of the Corporations (ATSI) Act;

Register of Indigenous Land Use Agreements means the register established and maintained under Part 8A of the *NTA*;

Register of Native Title Claims means the register established and maintained in accordance with Part 7 of the *NTA*;

Registrar means the Native Title Registrar appointed for the purposes of the *NTA*;

Relevant State Instrumentalities means those State instrumentalities listed in Schedule E to this Deed;

Right to Negotiate has the same meaning as in the *NTA*;

SCA means the Sydney Catchment Authority constituted by the *SWCM Act*;

SCA Lands means those lands located within the Agreement Area that are under the management and protection of the SCA, as identified in Schedule G;

Section 29 notice means a notice given under section 29 of the *NTA*;

Section 31 agreement means an agreement made under section 31 of the *NTA*;

State means the State of New South Wales and includes a Minister of the Government and a statutory authority acting on behalf of the State;

State Minister means the New South Wales Minister nominated under the *NTA* being the Attorney General at the time of the making of this Deed;

Substitute Corporation means an Incorporated Aboriginal and Torres Strait Islander Corporation registered on the Register of Aboriginal and Torres Strait Islander Corporations or an Association under the *Associations Incorporations Act* 2009 (NSW) that has been the subject of notice to the State Minister pursuant to subclause 20.7 of this Deed being a corporation or an association with the characteristics of the Gundungurra Corporation or the Gundungurra Association respectively;

SWCM Act means the *Sydney Water Catchment Management Act 1998* (NSW) and Regulations made under that Act;

Validated Act means an act which is validated under subclause 13.1 or subclause 15.1 of this Deed.

- 1.2 In this Deed, words and expressions that are defined in the *NTA* have the same meaning as in that Act unless otherwise defined in this Deed.
- 1.3 In this Deed unless the context or subject matter otherwise indicates or requires:
 - (a) the word person includes a body corporate or a statutory corporation;
 - (b) words denoting the singular number include the plural and vice versa;
 - (c) a reference to a 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;
 - (d) 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;
 - (e) a reference to a recital, clause, schedule, or annexure is a reference to a recital, clause, schedule or annexure to this Deed;
 - (f) a reference to an agreement, unless the context infers otherwise, is a reference to this Deed (and, where applicable, any of its provisions) as amended, notated, supplemented or replaced from time to time; and
 - (g) a reference to a Minister, authority, body, delegate or person includes the Minister, authority, body, delegate or person for the time being performing the functions performed by that Minister, authority, body, delegate or person at the date this Deed was made.

- 1.4 In this Deed the Table of Contents and headings are for the convenience of reference and do not affect interpretation.
- 1.5 The Parties intend that this instrument shall have effect as a Deed.
- 1.6 The Parties further intend that this instrument shall have effect as an ILUA (area agreement) under Subdivision C, Division 3 of Part 2 of the *NTA*.
- 1.7 The Parties intend and agree that this instrument shall be of no force or effect until executed by all of the intended Parties and shall come into effect upon and by virtue of its execution by the last of the intended Parties. A reference to the making of this Deed or the date it is made shall be construed as a reference to the date upon which this Deed is executed by the last of the intended Parties to execute it.

2. OBJECTS OF THIS DEED

- 2.1 The objects of this Deed are as follows:
 - (a) to resolve the Gundungurra Native Title Claims by agreement;
 - (b) to stipulate the limited circumstances in which Native Title Claims can be brought in future;
 - (c) to enable the Gundungurra People to consent to the undertaking in the Agreement Area of certain acts which may be future acts;
 - (d) to provide the Gundungurra People with the opportunity to provide input into the management of certain State lands within the Agreement Area;
 - (e) to record and confirm the validity of certain past acts and future acts which have taken place prior to the making of this Deed;
 - (f) to enable the Gundungurra People to receive certain procedural rights of certain classes of acts (Class 1 Post Registration Acts and Class 2 Post Registration Acts), that the State proposes to undertake in the Agreement Area;
 - (g) to record the consent of the Gundungurra People to the undertaking by the State of various acts (Class 3 Post Registration Acts) in the Agreement Area; and
 - (h) to provide for the withdrawal of the Gundungurra Native Title Claims.

3. LAND AND WATERS COVERED BY THIS DEED

- 3.1 This Deed covers all of the lands and waters within the Agreement Area.

4. COMMENCEMENT

- 4.1 The Parties agree that all clauses within this Deed shall commence on the date of making this Deed unless otherwise stated in the clause.
- 4.2 If, for whatever reason, details of this Deed are not entered on the Register of Indigenous Land Use Agreements within a period of twenty-four (24) calendar

months from the date of making of this Deed (or such further period as the State Minister and the Applicants agree in writing), the Deed shall expire and cease to have any effect.

5. TERM

5.1 The Parties agree that the term of this Deed shall have continuing effect until one of the following events occurs:

- (a) it expires in accordance with subclause 4.2;
- (b) it is terminated in accordance with clause 18 or clause 20;
- (c) it is terminated by the agreement in writing of all the Parties.

5.2 Subject to subclauses 4.2 and 17.7 and clauses 18 and 20, this Deed shall continue to operate and have effect while details of the agreement contained in this Deed remain entered on the Register of Indigenous Land Use Agreements.

6. AUTHORITY AND WARRANTIES

6.1 The Applicants, the Gundungurra Corporation and the Gundungurra Association represent and warrant to the other Parties to this Deed that they believe that the Gundungurra People are the only persons who hold or who may hold native title in relation to the Agreement Area.

Section 251A Authorisation

6.2 The Applicants, the Gundungurra Corporation and the Gundungurra Association represent and warrant that at a properly convened and notified authorisation meeting, all of the persons who hold or may hold native title in relation to any of the lands and waters in the Agreement Area authorised the making of this Deed in accordance with the provisions of section 251A of the *NTA*.

Authority to Execute and Perform Obligations Under this Deed

Authority of the Applicants

6.3 The Applicants represent and warrant to the other Parties to this Deed that they are authorised to execute this Deed for and on behalf of the Gundungurra People and to bind the Gundungurra People by the terms of this Deed.

Authority of the Gundungurra Corporation

6.4 The Gundungurra Corporation represents and warrants to the other Parties to this Deed that:

- (a) under its Constitution it has the power to enter into this Deed and perform its obligations under it; and
- (b) the parties who have executed this Deed on behalf of the Corporation have the authority to do so.

Authority of the Gundungurra Association

- 6.5 The Gundungurra Association represents and warrants to the other Parties to this Deed that:
- (a) under its Constitution it has the power to enter into this Deed and perform its obligations under it; and
 - (b) the parties who have executed this Deed on behalf of the Association have the authority to do so.

Binding Effect of Execution

- 6.6 The Applicants, the Gundungurra Corporation and the Gundungurra Association acknowledge and agree that they shall be bound by the making of this Deed, and subject only to the terms of this Deed they, as holders of native title in the Agreement Area (if any), shall remain bound by its terms, notwithstanding:
- (a) any lapse, expiration, revocation or cessation of the authorisation referred to in subclause 6.2; or
 - (b) the authorisation by the Gundungurra People (or any group comprising or including some Gundungurra People) of any other person to commence a Native Title Claim or a Compensation Application pursuant to the *NTA* in respect of any land in the Agreement Area; or
 - (c) any other resolution or decision of the Gundungurra People (or any group comprising or including some Gundungurra People).

7. REGISTRATION OF THIS DEED AS AN ILUA

- 7.1 The Parties agree that in accordance with section 24CG(1) of the *NTA*, the State Minister shall apply for this Deed to be Registered as an ILUA to which Subdivision C of Division 3 of Part 2 of the *NTA* applies.
- 7.2 The Applicants agree to provide the State Minister within two (2) weeks following the date of making of this Deed, statements in accordance with section 24CG(3)(b)(i) and (ii) of the *NTA*:
- (a) to the effect that all reasonable efforts have been made (including consulting all representative Aboriginal and Torres Strait Islander bodies for the area) to ensure that all persons who hold or may hold any native title in relation to the Agreement Area have been identified and all of the persons so identified have authorised the making of the Deed; and
 - (b) setting out the grounds on which the Registrar should be satisfied that the above requirements of the *NTA* are met.
- 7.3 The Parties agree that they shall use their best endeavours to provide all reasonable assistance to the State Minister to have the agreement comprised by this Deed Registered.

8. CONTRACTUAL EFFECT OF DEED REGISTERED AS AN ILUA

- 8.1 The Parties acknowledge that, pursuant to section 24EA of the *NTA*, while details of the agreement comprised by this Deed are entered on the Register of Indigenous Land Use Agreements, this Deed has effect as if:
- (a) it were a contract among the Parties; and
 - (b) all persons holding native title in relation to any of the land or waters in the Agreement Area, who are not Parties to this Deed, are bound by the terms of the Deed in the same way as the Applicants, the Gundungurra Corporation and the Gundungurra Association.
- 8.2 The Parties acknowledge that while details of the agreement comprised by this Deed are entered on the Register of Indigenous Land Use Agreements, this Deed will have the additional effects conferred by sections 24EB and 24EBA of the *NTA*, including the effects on Compensation provided by those sections.

9. NATIVE TITLE

Native Title Claimed by Indigenous Party

- 9.1 All Parties to this Deed accept that the Applicants claim, on behalf of the Gundungurra People, native title in the land and waters covered by this Deed.
- 9.2 The State acknowledges that the Gundungurra People identify themselves as the successors of the traditional owners of the Agreement Area or of people who lived and/or held native title in the Agreement Area at the time of sovereignty.
- 9.3 Nothing in this Deed has the effect of extinguishing any native title rights and interests (if any) within the Agreement Area. The Non-extinguishment Principle will apply to a Post Registration Act unless the act is carried out under a provision of the *NTA* which extinguishes native title.

No Recognition of Native Title by Non-Indigenous Parties

- 9.4 The Parties acknowledge that:
- (a) nothing in this Deed;
 - (b) the mediation of the Gundungurra Native Title Claims;
 - (c) other negotiations between the Parties preceding the making of this Deed;
 - (d) the making of this Deed;
 - (e) any activity which occurs pursuant to the terms of this Deed; and
 - (f) any activity that is undertaken in conformity with the requirement for the circulation of information in accordance with subclauses **11.1** or **11.2**

constitutes any admission or recognition by the State that native title exists in the land and waters covered by the Deed and cannot be used in any way in the prosecution of the Gundungurra Native Title Claims or any other Native Title Claim under the *NTA* that may be lodged by any current or future members of the

Gundungurra People in respect of any part of the land and waters covered by this Deed.

Withdrawal of Native Title Claim

- 9.5 Within two (2) calendar months after the day this Deed is Registered, the Applicants shall discontinue any Native Title Claims in the Federal Court of Australia in relation to the Agreement Area.
- 9.6 The Parties consent to the withdrawal of any Native Title Claims discontinued in accordance with subclause 9.5 from the Register of Native Title Claims.
- 9.7 The State Minister will assist the Applicants in preparing all the necessary documents and making all necessary applications to the Federal Court of Australia for the purpose of fulfilling the obligations imposed on the Applicants under subclause 9.5.
- 9.8 The Parties agree not to seek an order from the Federal Court of Australia for payment of their costs by the Applicants or the Gundungurra Corporation, arising out of, or in connection with, the withdrawal of the Gundungurra Native Title Claims.

No Further Native Title Claim

- 9.9 Subject only to the exceptions specified in subclauses 9.10 to 9.16 of this Deed, the Applicants (in their capacity as authorised representatives of the Gundungurra People), the Gundungurra Corporation and the Gundungurra Association agree that after the date of the making of this Deed:
 - (a) no Gundungurra person holding or claiming to hold native title rights and interests in the Agreement Area shall by Native Title Claim seek a determination of native title in relation to any part of the Agreement Area; and
 - (b) they will not provide any assistance to any Aboriginal person, or any other person, corporation or other entity seeking to make any Native Title Claim in relation to any part of the Agreement Area; and
 - (c) they will use their reasonable endeavours to assist the State Minister in any way the State Minister may reasonably require with respect to any Native Title Claim made contrary to the terms of this Deed in relation to any part of the Agreement Area.

Exceptions Specified to Lodge a Native Title Claim

- 9.10 After the making of this Deed and notwithstanding the terms of subclause 9.9 of this Deed, a Native Title Claim may be lodged by the Gundungurra People in relation to the whole or part of the Agreement Area only in accordance with subclauses 9.11 to 9.16.
- 9.11 Following the lapse of a period of five (5) years from the date this Deed is Registered, the Gundungurra Corporation and/or the Gundungurra Association may submit material to the State Minister to be assessed by the State Minister as to whether on the material submitted, the State Minister is satisfied that the material:

- (a) meets the State's requirements as to the sufficiency of cogency, particularity and evidence required for the recognition of native title in relation to the Agreement Area or part or parts thereof; or
 - (b) is of a sufficient standard to enable a further ILUA which recognises native title to be negotiated by the Parties with respect to the Agreement Area or part or parts thereof.
- 9.12 The State Minister shall not be required to consider material submitted pursuant to subclause 9.11 if:
- (a) the material submitted is not identified in a written statement from the submitting party which confirms that the material so identified is the totality of material that the State Minister is required to consider,
 - (b) a previous request under subclause 9.11 has been made of the State Minister within three (3) years prior to the submission of that material.
- 9.13 If, in respect of the whole or any part of the Agreement Area, the State Minister does not advise the Gundungurra Corporation and/or the Gundungurra Association that he is satisfied that the material supplied pursuant to subclause 9.11 meets the State's requirements in either subclauses 9.11(a) or 9.11(b) within a period of eighteen (18) calendar months from the date on which the totality of the evidence is provided, a Native Title Claim may be lodged.
- 9.14 A Native Title Claim may be lodged in response to a Section 29 notice in respect to any land within the Agreement Area provided:
- (a) the Native Title Claim is made only in respect to the land specified in the Section 29 notice;
 - (b) the Native Title Claim is lodged within three months from the notification day in the Section 29 notice;
 - (c) the Native Title Claim is withdrawn once a Section 31 agreement or an arbitral body determination of the kind referred to in section 38 of the *NTA* concerning the act identified in the Section 29 notice is made; and
 - (d) the Native Title Claim is withdrawn if it is not entered on the Register of Native Title Claims.
- 9.15 A Native Title Claim may be lodged in response to a non-claimant application lodged in respect of any land within the Agreement Area provided:
- (a) the Native Title Claim is made only in respect to the land specified in the non-claimant application;
 - (b) the Native Title Claim is lodged within the period specified under the notice given under section 66 of the *NTA* in respect to the non-claimant application;
 - (c) the Native Title Claim is withdrawn once the non-claimant application is withdrawn (unless otherwise agreed by the State Minister); and
 - (d) the Native Title Claim is withdrawn if it is not entered on the Register of Native Title Claims.

- 9.16 A Native Title Claim may be lodged under circumstances other than those specified in subclauses 9.11 to 9.15 only if the lodgement is agreed to in writing by the State Minister prior to the claim being lodged and the Native Title Claim is in conformity with any limitations or conditions specified by the State Minister as being conditions of his agreement.
- 9.17 In any determination of Compensation payable (if any) with respect to a Compensation Application, Compensation shall be determined having regard only to the effect (if any) of the act upon native title (if any) in existence immediately before the act.

10. INPUT INTO MANAGEMENT OF LANDS AND WATERS WITHIN AGREEMENT AREA

- 10.1 This clause and Schedule D apply only to the lands and waters within the Agreement Area that:

(a) are:

- (i) National Park Lands;
- (ii) SCA Lands;
- (iii) the Forestry Corporation of New South Wales Lands; or
- (iv) BMCC Lands,

unless the Gundungurra Corporation, Gundungurra Association and the relevant land manager otherwise agree to include additional land to Schedule G.

- 10.2 The Parties agree to the provisions of Schedule D in order to provide the Gundungurra People with an opportunity to be consulted with respect to the management of the National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands and the BMCC Lands that are listed in or added to Schedule G.
- 10.3 Notwithstanding clause 10.1 or any other provision of this agreement, representatives of each of BMCC, the Gundungurra Association and the Gundungurra Corporation shall meet, no later than the date that is two (2) years after the date of this agreement, to review:
- (a) the operation of this agreement, including the operation of the Consultative Committee; and
 - (b) whether lands managed by BMCC in accordance with the Crown Lands Act, located within the Agreement Area, should be added to the list of the BMCC Lands or whether the list of the BMCC Lands should be otherwise amended.
- 10.4 The review referred to in clause 10.3 shall continue to be undertaken at successive two (2) year intervals, calculated by reference to the date on which the first review is undertaken. Each successive review meeting shall consider the matters identified in sub-clauses 10.3(a) and 10.3(b), or such other matters as BMCC, the Gundungurra Association and the Gundungurra Corporation agree from time to time to include within the scope of the review.

- 10.5 The Parties agree that nothing in this Deed affects the management and operation of the National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands and BMCC Lands except to the extent specifically provided for in this Deed.

11. INFORMATION TO BE PROVIDED TO RELEVANT STATE INSTRUMENTALITIES

- 11.1 The State Minister will use all reasonable endeavours to circulate information to Relevant State Instrumentalities that exercise functions and powers with respect to State land and waters within the Agreement Area to the effect that the Gundungurra People are appropriate Aboriginal people to be engaged to provide cultural heritage advice in relation to the Agreement Area.
- 11.2 The State Minister will use all reasonable endeavours to notify the Relevant State Instrumentalities that exercise functions and powers with respect to State lands and waters within the Agreement Area that members of the Gundungurra People are appropriate Aboriginal people for consultation or appointments to relevant statutory boards or committees within the Agreement Area.
- 11.3 Nothing in this Deed constitutes an agreement by the State that the Gundungurra People are the only Aboriginal people to be engaged to provide cultural heritage advice in relation to the Agreement Area.
- 11.4 Nothing in this Deed constitutes an agreement by the State that the Gundungurra People are the only Aboriginal people to be consulted or appointed as set out in subclause 11.2 in relation to the land and waters within the Agreement Area.
- 11.5 The State Minister shall endeavour to circulate the information specified in subclause 11.1 and 11.2 within six (6) calendar months from the date this Deed is Registered.

12. COMPENSATION

- 12.1 The making of this Deed does not provide any entitlement to compensation for:
- (a) the doing of Future Acts under this Agreement, any Past Act or Intermediate Period Act attributable to the State or to BMCC in relation to land and waters within the Agreement Area; or
 - (b) any consequential impairment or effect on the continued existence, enjoyment or exercise of any Native Title in relation to land and waters within the Agreement Area.

13. FUTURE ACTS

- 13.1 The Parties agree that the undertaking of all Future Acts affecting the Agreement Area after 1 January 1994 and before the date this Deed is Registered, are valid to the extent of any invalidity that may exist by reason of the existence of native title.

- 13.2 The Parties acknowledge and agree that after the date of the making of this Deed and before the date that this Deed is Registered the provisions of Division 3 of Part 2 of the *NTA* remain applicable with respect to the Agreement Area.
- 13.3 The Parties agree that the Alternative Regime set out in clause 14 of this Deed will apply to any Post Registration Act that is undertaken in the Agreement Area from the date this Deed is Registered. Any Future Act not covered by the Alternative Regime will be dealt with under the *NTA*.
- 13.4 The Parties acknowledge that this clause and the Alternative Regime only apply to land within the Agreement Area that has not been the subject of a previous exclusive possession act as defined in section 23B of the *NTA*, noting that Part 4 of the *Native Title (New South Wales) Act 1994* confirms past extinguishment of native title.
- 13.5 The Parties agree that nothing in this Deed is intended to interfere with any Ministerial discretion or any statutory roles, duties or functions of the Parties as in force from time to time.

14. ALTERNATIVE REGIME

- 14.1 The Parties acknowledge that this clause only applies to land within the Agreement Area and only has effect with respect to acts which occur after the date this Deed is Registered.
- 14.2 The Parties agree that in the event that a proposed act affects land outside the Agreement Area as well as land within the Agreement Area, for the purposes of this clause the act shall be treated as only affecting land outside the Agreement Area and as such the Alternative Regime shall not apply.
- 14.3 The Parties agree that to the extent that a future act falls within more than one category of Post Registration Act, that future act is covered by the Post Registration Act with the greater procedural rights.

Authorisation of Class 1 Post Registration Acts

- 14.4 The Parties agree that the following Classes of Post Registration Acts lawfully undertaken in the Agreement Area are Class 1 Post Registration Acts:
- (a) A compulsory acquisition of the whole or any part of any native title rights and interests (if any) under a law of the State that permits compulsory acquisition, to which the Right to Negotiate applies;
 - (b) The grant of a freehold estate.
- 14.5 The Parties agree that Class 1 Post Registration Acts will be subject to the provisions of the *NTA*.

Authorisation of Class 2 Post Registration Acts

- 14.6 The Applicants, the Gundungurra Corporation and the Gundungurra Association consent to the undertaking by the State or BMCC of Class 2 Post Registration Acts, being those acts that fall within the classes of acts set out in clause 14.7.

- 14.7 The Parties agree that the following classes of Post Registration Acts lawfully undertaken in the Agreement Area comprise Class 2 Post Registration Acts:
- (a) the compulsory acquisition of all interests including native title rights and interests where the Right to Negotiate does not apply;
 - (b) the grant of a lease or licence other than a lease or licence to which subdivisions G, H, and I of the *NTA* applies;
 - (c) construction or establishment of Public Works;
 - (d) preparation, adoption and implementation of a plan of management for any part of the Agreement Area.
- 14.8 The Parties agree to follow the procedures outlined in subclauses 14.9 to 14.17 to this Deed in relation to those acts that the State or BMCC proposes to undertake that are Class 2 Post Registration Acts.
- 14.9 The State or BMCC shall use all reasonable endeavours to give notice in writing to the Gundungurra Corporation and the Gundungurra Association of a Class 2 Post Registration Act that the State or BMCC proposes to undertake in the Agreement Area before the doing of the Class 2 Post Registration Act.
- 14.10 The State or BMCC shall provide the Gundungurra Corporation and the Gundungurra Association with a minimum of twenty-eight (28) days from the date notice is given pursuant to subclause 14.9 in which to provide a comment to the State or BMCC regarding the proposed Class 2 Post-Registration Act.
- 14.11 A notice issued by the State or BMCC pursuant to subclause 14.9 must include the following information:
- (a) a description and location of the land to be affected by the Class 2 Post-Registration Act;
 - (b) details of the Class 2 Post-Registration Act;
 - (c) the date on which the notice is issued; and
 - (d) the date by which the Gundungurra Corporation and/or the Gundungurra Association must provide any comment.
 - (e) The name and contact details of the person to whom any comment should be made.
- 14.12 Any comment made by the Gundungurra Corporation or the Gundungurra Association in response to a notice issued by the State or BMCC pursuant to subclause 14.8 must:
- (a) be in writing; and
 - (b) be provided to the State or BMCC by the date specified in the notice.
- 14.13 Despite subclause 14.10, in a matter of urgency, the State or BMCC may shorten the period within which the Gundungurra Corporation and the Gundungurra Association must provide any comment.

- 14.14 Nothing in this clause requires the Gundungurra Corporation or the Gundungurra Association to provide any comment to the State or BMCC.
- 14.15 The grant of a lease or licence under this clause will be subject to the Non-Extinguishment Principle.
- 14.16 Any decision made by the State or BMCC to proceed with an act for which notice has been given pursuant to subclause 14.8 and for which a comment has been provided in accordance with subclause 14.12, will not constitute a Dispute for the purposes of this Deed and cannot be capable of triggering the dispute resolution procedures in clause 17 of this Deed.
- 14.17 It is the parties' intention that the consent by the Applicants, the Gundungurra Corporation and the Gundungurra Association in subclause 14.6 includes agreement that subdivision P (the right to negotiate) Division 3 Part 2 of the *NTA* is not intended to apply to any Class 2 Post Registration Act.

Authorisation of Class 3 Post Registration Acts

- 14.18 The Parties agree that the following classes of Post Registration Acts lawfully undertaken or any interest (including a lease, licence, permit or authority) granted to undertake any of the following classes of Post Registration Acts in the Agreement Area comprise Class 3 Post Registration Acts:

- (a) an act done in good faith in the Agreement Area so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the previous reservation of the Agreement Area would have had, or an act done under or in accordance with the current reservation;
- (b) grant of an easement or right of way;
- (c) construction, maintenance and repair of signage and plaques;
- (d) fire suppression and fire prevention management activities, including hazard reduction burning and temporary closure within the Agreement Area for fire suppression or fire prevention purposes;
- (e) environmental assessment or protection activities including research, survey and monitoring of species, clearing or spraying of noxious or introduced species, regeneration, rehabilitation, actions in relation to a biosecurity incident and acts carried out in accordance with plans with objectives including any of these acts;
- (f) excavation or clearing necessary for public health and safety;
- (g) construction of a track or other access;
- (h) maintenance of existing roads, tracks, boardwalks, platforms, bridges and fire trails including gravel extraction, grading, sediment control, gravelling, tree lopping and clearing;
- (i) construction, maintenance and repair of fences and gates;
- (j) maintenance, operation and repair of Public Works;
- (k) maintenance, cleaning, operation and repair of existing Public Works;

- (l) replacement of existing Public Works with similar or upgraded works within the same area of the existing Public Works or with a minor realignment;
- (m) removal of existing Public Works;
- (n) any urgent management activities that are required or desirable for public health and safety;
- (o) renewal or re-grant of existing interests which confer rights or interests substantially the same as rights or interests which have previously affected the area covered by the renewal or re-grant;
- (p) re-establishment of timber plantations as Forestry Corporation of New South Wales Forestry Corporation of New South Wales is authorised to do under the *Plantations and Reafforestation Act 1999* (NSW);
- (q) any accepted normal management practices in plantation and native forests management, including land preparation such as post harvest burning, planting, weed control, road construction, road maintenance, thinning, harvesting, transport and sale of logs;
- (r) any other act described in section 24KA of the *NTA*;
- (s) any other act that is similar to any one or more of the acts in the above paragraphs or any other act relating to the care, control and management of the Agreement Area;
- (t) the exercise by the SCA of its statutory functions as set out in the *Sydney Water Catchment Management Act 1998*; and
- (u) the exercise by BMCC of its statutory functions under the *Local Government Act 1993* and the *Crown Lands Act 1989* so far as they relate to its role as reserve trust manager.

14.19 The Parties consent to the undertaking of Class 3 Post Registration Acts and the Applicants, the Gundungurra Corporation and the Gundungurra Association agree they shall have no procedural rights in relation to the undertaking of the Class 3 Post Registration Acts. The Parties agree that the Non Extinguishment Principle applies to Class 3 Post Registration Acts.

14.20 The Parties agree that a non-claimant application, ILUA or other agreement or notice need not be lodged, made, undertaken or given by the State or by BMCC in relation to Class 3 Post Registration Acts.

14.21 The Parties agree that the consent in 14.19 and 14.20 above is intended to satisfy the requirements of section 24EB(1)(b) NTA.

14.22 Any acts carried out within the Agreement Area will be done so consistent with the identification and management of Aboriginal objects and places.

15. VALIDATION OF PUBLIC WORKS

- 15.1 The Parties agree that any Public Works constructed or established within the Agreement Area and prior to the date this Deed is Registered, are valid to the extent of any invalidity that may exist by reason of the existence of native title.

16. APPLICATIONS FOR INCLUSION IN SCHEDULE 14 OF *NPW ACT*

- 16.1 The Parties agree that this Deed does not prohibit applications being made by any Gundungurra Person or group of Gundungurra Persons under Part 4A of the *NPW Act* for any land reserved under that Act within the Agreement Area to be added to Schedule 14 of the *NPW Act*.
- 16.2 The Parties agree that this Deed does not have the effect of giving priority to any Gundungurra Person or group of Gundungurra Persons in relation to any application made in accordance with the provisions of Part 4A of the *NPW Act* by any Gundungurra Person or group of Gundungurra Persons in respect to land within the Agreement Area.

17. DISPUTE RESOLUTION PROCEDURE

- 17.1 A Party shall not commence court proceedings in respect of a Dispute arising out of this Deed unless it has complied with this clause.
- 17.2 A Party complaining that a Dispute has arisen must give notice to the other Party or Parties with which it has a Dispute setting out the details of the Dispute and must provide a copy of that notice to the other Parties to this Deed. During the twenty-eight (28) day period after notice is given pursuant to this subclause, or a longer period if otherwise agreed in writing, the Parties involved in the Dispute shall use their best endeavours to resolve the Dispute, which may include holding a conference to discuss the Dispute if appropriate.
- 17.3 If the Dispute has not been resolved within the period specified in subclause 17.2, the Parties to the Dispute must meet and use their best endeavours to resolve the Dispute within a further fourteen (14) days.
- 17.4 If the Parties involved in the Dispute are unable to resolve the Dispute in accordance with the provisions of subclauses 17.2 and 17.3, any of the Parties involved in the Dispute can request that the Dispute be mediated in accordance with the mediation rules of the Law Society of New South Wales:
- (a) by a mediator agreed upon by the Parties to the Dispute; or
 - (b) if the Parties to the Dispute are unable to agree on a mediator within seven (7) days after the end of the period referred to in subclause 17.3, if the current President of the New South Wales Law Society is agreeable to making such a nomination, a mediator nominated by that President.
- 17.5 The role of any mediator appointed pursuant to subclause 17.4 is to assist in negotiating a resolution of the Dispute and a mediator may not make a decision that is binding on a Party unless that Party has so agreed in writing.

- 17.6 The Parties to the Dispute shall co-operate fully with the mediator and use their best endeavours to resolve the Dispute.
- 17.7 In the event that the Dispute is not settled by mediation within sixty (60) days of the appointment of a mediator or within such other time as is agreed in writing between the Parties to the Dispute, any Party to the Dispute may:
- (a) make a written request to the State Minister to terminate or suspend the operation of this Deed in accordance with subclause 20.1; or
 - (b) commence proceedings in a court of competent jurisdiction, unless any other provision of this Deed is applicable.
- 17.8 A Party to this Deed may be excused from the obligation of participating in the dispute resolution procedures referred to in subclauses 17.2 to 17.5 of this Deed if the Party does not have a direct interest in the subject matter of the Dispute.
- 17.9 Any information or documents disclosed by a Party under this clause shall be kept confidential and shall not be used except to attempt to resolve the Dispute.
- 17.10 Each Party must bear its own costs of complying with this clause and the Parties to the Dispute must equally bear the costs of any mediator engaged.
- 17.11 Subclauses 17.1 to 17.7:
- (a) do not apply to subclause 4.2 and clause 18; and
 - (b) do not affect the rights or the exercise of those rights by the State Minister under clauses 18 and 20.

18. CONTINUATION OF THE EFFECT OF THIS DEED

- 18.1 Following the lapse of ten (10) years from the date this Deed is Registered, the State Minister may by notice in writing seek a confirmation and a warranty from the Gundungurra Corporation and/or the Gundungurra Association that the Gundungurra People have, by decisions made in accordance with a process of the kind referred to in section 251A of the *NTA*:
- (a) authorised, consented to and approved of the continuing operation of this Deed by a decision made in accordance with such a process;
 - (b) authorised, consented to and approved of the continuation of the Gundungurra Corporation and/or the Gundungurra Association in the roles provided for them in this Deed; and
 - (c) affirmed that they believe that they are the only persons who hold or may hold native title in relation to the Agreement Area.
- 18.2 The State Minister may, after 10 (ten) years issue such a notice, but must not issue more than one notice in accordance with subclause 18.1 per calendar year.
- 18.3 A notice issued by the State Minister in accordance with subclause 18.1 must:
- (a) be sent to the Gundungurra Corporation and/or the Gundungurra Association; and

- (b) describe the information sought; and
 - (c) specify the date by which the Gundungurra Corporation and/or the Gundungurra Association must respond; and
 - (d) provide the Gundungurra Corporation and/or the Gundungurra Association a minimum of two (2) calendar months from the date of the notice to respond.
- 18.4 A response from the Gundungurra Corporation and/or the Gundungurra Association to a notice issued by the State Minister in accordance with subclause 18.1 must:
- (a) be in writing and in the form specified in the notice from the State Minister; and
 - (b) be provided to the State Minister by the date specified in the notice so long as that date is a minimum of two (2) calendar months from the date of the notice; and
 - (c) provide all information sought by the State Minister in the notice, and address any requirements set out in the notice; and
 - (d) identify decisions made in accordance with a process of the kind referred to in section 251A of the *NTA* on a date or dates no more than six months prior to the date specified in the State Minister's notice.
- 18.5 The State Minister must consider any response provided by the Gundungurra Corporation and/or the Gundungurra Association that is in accordance with subclause 18.4.
- 18.6 If the State Minister:
- (a) does not receive a response from the Gundungurra Corporation and/or the Gundungurra Association that is in accordance with subclause 18.4; or
 - (b) is not satisfied that the response provides confirmation and a warranty that the Gundungurra People have made decisions of the kind referred to in subclause 18.1 (a), (b) and (c) in accordance with a process of the kind referred to in section 251A of the *NTA*,
- the State Minister may, by notice in writing, terminate or suspend the operation of this Deed in accordance with subclause 20.1.
- 18.7 The State Minister shall consult with the Minister for the Environment and other Parties as the State Minister considers necessary prior to terminating or suspending the operation of this Deed in accordance with subclause 20.1.
- 18.8 The State Minister may after twenty (20) years from the date this Deed is Registered, terminate the whole of this Deed provided that prior to terminating the Deed the State Minister notifies the Gundungurra Corporation, the Gundungurra Association and the Consultative Committee in writing of his intention to terminate this Deed and gives them an opportunity to comment in writing within the timeframe specified in the State Minister's notice.

19. VARIATION OF AGREEMENT

- 19.1 Subject to subclause 19.2 this Deed and its schedules may be varied only by agreement in writing of all the Parties, unless the terms of a schedule provide additional means for its variation.
- 19.2 After the date this Deed is Registered, the agreement of the Applicants is not required to vary the Deed pursuant to subclause 19.1 once the Gundungurra Native Title Claims have been withdrawn.
- 19.3 In the event that this Deed is varied, the Parties will use their best endeavours to provide all reasonable assistance to enable the State Minister to obtain registration of the varied agreement on the Register of Indigenous Land Use Agreements.
- 19.4 Any amendments made to the contact details of the Parties listed in Schedule F of this Deed does not constitute a variation of this Deed for the purposes of this clause.

20. TERMINATION OR SUSPENSION OF OPERATION OF THIS DEED

- 20.1 If any of the events referred to in subclauses 20.2 to 20.6 or subclause 18.6 or subclause 17.7 occur the State Minister may by notice in writing:
- (a) terminate the operation of the Deed; or
 - (b) terminate the operation of the Deed as to particular land within the Agreement Area; and/or
 - (c) suspend the operation of the Deed in respect to particular land within the Agreement Area from such date as the State Minister shall specify and for such period or until the happening of such event or events as the State Minister may specify, whereupon during the period of such suspension the State Minister shall not be obliged to fulfil obligations under the Deed with respect to land over which the operation of the Deed has been suspended; and/or
 - (d) suspend the operation of the Deed in respect to the performance of particular obligations arising from the Deed from such date as the State Minister shall specify and for such period or until the happening of such event or events as the State Minister may specify, whereupon during the period of such suspension the State Minister shall not be obliged to fulfil such obligations under the Deed as are suspended.
- 20.2 If:
- (a) in contravention of subclause 9.5 of this Deed, the Applicants do not withdraw the Gundungurra Native Title Claims from the Register of Native Title Claims; or
 - (b) a breach of the provisions of subclause 9.9 occurs,
- the State Minister may terminate or suspend the operation of this Deed in accordance with subclause 20.1.

20.3 If a Native Title Claim is lodged pursuant to the provisions of subclauses 9.11 to 9.13 of this Deed the State Minister may terminate or suspend the operation of this Deed in accordance with subclause 20.1.

20.4 If a Native Title Claim is lodged pursuant to subclause 9.14 and the claim is not:

- (a) withdrawn following the execution of a Section 31 agreement concerning the act identified in the Section 29 notice;
- (b) withdrawn following an arbitral body determination of the kind referred to under section 38 of the NTA concerning the act identified in the Section 29 notice; or
- (c) withdrawn if the Native Title Claim is not entered on the Register of Native Title Claims within four months after the notification date in respect of the application,

the State Minister may terminate or suspend the operation of this Deed in accordance with subclause 20.1.

20.5 If a Native Title Claim is lodged pursuant to subclause 9.15 and the claim is not:

- (a) withdrawn once the non-claimant application is withdrawn; or
- (b) withdrawn if the Native Title Claim is not entered on the Register of Native Title Claims within four months after the notification date in respect of the application,

the State Minister may terminate or suspend the operation of this Deed in accordance with subclause 20.1.

20.6 If the Gundungurra Corporation or the Gundungurra Association:

- (a) is the subject of an order for its winding up by any of the courts listed in paragraph 694-35(1) of the *Corporations (ATSI) Act*, pursuant to paragraph 526-1 of that Act or Division 3 of Part 6 of the *Associations Incorporation Act 2009*; or
- (b) is the subject of a resolution that it be wound up voluntarily pursuant to paragraph 526-20 of the *Corporations (ATSI) Act* or Division 3 of Part 6 of the *Associations Incorporation Act 2009*;
- (c) resolves to appoint a different corporation (being an Aboriginal and Torres Strait Islander Corporation) or a different association as the case may be to discharge the functions of the Gundungurra Corporation or the Gundungurra Association under this Deed to discharge its functions under this Deed; or
- (d) is deregistered pursuant to Part 12-2 of the *Corporations (ATSI) Act*,

the State Minister may terminate the operation of this Deed unless written notice is given that a Substitute Corporation is registered on the Register of Aboriginal and Torres Strait Islander Corporations or incorporated under the *Associations Incorporation Act, 2009* within six (6) calendar months from the earliest date the Gundungurra Corporation and/or the Gundungurra Association is either wound up or makes a resolution of the type referred to in (c) above or is deregistered.

- 20.7 The notice referred to in subclause 20.6 is to be given by the Substitute Corporation and shall include evidence that:
- (a) the substitute is a Substitute Corporation as defined in this Deed; and
 - (b) the Substitute Corporation has agreed in writing to be bound by this Deed in place of the Gundungurra Corporation and/or the Gundungurra Association.
- 20.8 From the date of winding up or the passage of a resolution of the type referred to in subclause 20.6(c) or deregistration, until the date that written notice is provided to the State Minister in accordance with subclauses 20.6 and 20.7, the obligations of the State Minister under this Deed shall be suspended.
- 20.9 Except as provided for in clause 18 and this clause 20 no breach of the terms of this Deed by any Party will give any other Party a right to terminate this Deed, but a Party may exercise any right or remedy otherwise available to it in respect of the breach.
- 20.10 If this Deed is terminated, all past acts, intermediate period acts, Validated Acts and future acts undertaken to the date of termination of the Deed (including any acts undertaken during any period during which obligations are suspended) remain validated notwithstanding that the Deed is terminated and no claim for compensation is revived notwithstanding the termination of this Agreement.

21. THE GUNDUNGURRA CORPORATION AND THE GUNDUNGURRA ASSOCIATION

- 21.1 The Gundungurra Corporation and the Gundungurra Association both warrant that together they have the authority and consent of the Gundungurra People to enter this Deed and agree to its terms for and on behalf of the Gundungurra People.
- 21.2 The Gundungurra Corporation and the Gundungurra Association both warrant that under their respective Constitutions, all persons who are Gundungurra People who are at least fifteen (15) years of age are entitled to be members of the Gundungurra Corporation OR the Gundungurra Association and that all members shall be entitled to attend and participate in the respective meetings of the Gundungurra Corporation or the Gundungurra Association.
- 21.3 The Gundungurra Corporation and the Gundungurra Association both warrant that under their respective Constitutions, all Gundungurra People who are at least fifteen (15) years of age and who apply for membership in the manner required by the *Corporations (ATSI) Act* and/or the Constitutions of either of the Gundungurra Corporation and the Gundungurra Association, will not unreasonably be denied membership by the directors of the Gundungurra Corporation or the Gundungurra Association.
- 21.4 The Gundungurra Corporation and the Gundungurra Association agree that their respective Constitutions will not be altered or amended to exclude any members of the Gundungurra People who are at least fifteen (15) years of age from membership of the Gundungurra Corporation or the Gundungurra Association.

21.5 The Gundungurra Corporation and the Gundungurra Association both warrant that each has the authority and consent of its members to:

- (a) consult other persons or bodies;
- (b) enter into deeds and agreements;
- (c) exercise procedural rights; and
- (d) accept notices,

for and on behalf of the Gundungurra People.

21.6 The Gundungurra Corporation and the Gundungurra Association both agree to seek the written consent of the State Minister and of each other prior to amending their respective Constitutions in any way which affects the following matters:

- (a) definition of Gundungurra People;
- (b) objects;
- (c) membership;
- (d) the performance of the role and functions of the Gundungurra Corporation or the Gundungurra Association by another person or corporation;
- (e) governing committee;
- (f) voting rights; or
- (g) any other matter that may affect the way in which the rights and duties in this Deed are exercised or carried out.

21.7 The State Minister shall respond to both the Gundungurra Corporation and the Gundungurra Association as soon as practicable and shall not unreasonably withhold consent in relation to any reasonable request made pursuant to subclause 21.6.

21.8 The Gundungurra Corporation and the Gundungurra Association both agree to amend their respective Constitutions to provide that a change to their Constitutions regarding the matters listed in subclause 21.6 of this Deed shall not have any effect unless, prior to the consideration and passage of any resolution to change its Constitution, the written consent of the State Minister and the consent of the other entity has been sought and received in relation to the proposed change.

22. NOTICES

Method of giving notices

22.1 The Parties agree that if under this Deed any notice is required to be given or any document, information, certificate or statement is required to be provided to any Party, such notice, document, information, certificate or statement shall be in writing and shall be sent by pre-paid post, email or by facsimile transmission to that Party's last known address, email or facsimile transmission number.

Receipt of Notices

22.2 A notice shall be deemed duly given or made in the case of:

- (a) delivery in person, when delivered;
- (b) delivery by post, on the second business day after posting;
- (c) delivery by email, when received by the server of the recipient; or
- (d) delivery by facsimile, upon the transmission report being printed by the sender's facsimile machine that the document has been sent to the recipient's facsimile machine number.

Schedule F

22.3 For the purposes of subclause 22.1, Schedule F contains a list of postal addresses, telephone numbers, email addresses and facsimile transmission numbers for the Parties that are current as at the date of making this Deed.

Change of contact details

22.4 The Parties agree that where the contact name, postal address, telephone number, email or facsimile transmission number of a Party listed in Schedule F changes, that Schedule may be amended to include the new contact details of that Party, in accordance with the following procedure:

- (a) the Party whose contact details have changed must notify all Parties to this Deed in writing as soon as practicable of the new contact details as they will be recorded in Schedule F and
- (b) the Party whose contact details have changed must notify the NNTT in writing of the new contact details as soon as practicable and request the NNTT to amend Schedule F by inserting the new contact details.

23. GENERAL

Governing Law

23.1 This Deed is governed by and shall be construed in accordance with the law in force in the State of New South Wales and any proceeding arising from or in relation to this Deed must be commenced in New South Wales, including any proceeding commenced in the Federal Court of Australia which must be commenced in the New South Wales Registry.

Entire Agreement

23.2 This Deed constitutes the entire agreement between the Parties and supersedes any prior agreement between the Parties.

Other Agreement

23.3 Nothing in this Deed prevents any of the Parties from making any other agreement in relation to the Agreement Area so long as any other agreement is not inconsistent with this Deed or the *NTA*.

Severability

- 23.4 If part or all of any clause of this Deed is void, illegal or unenforceable, that part may be severed from this Deed and the remaining provisions of this Deed shall continue in force.

Implementation

- 23.5 If a provision of this Deed requires a Party to do something by a specific date or within a specific period, the Party concerned will not, without reasonable excuse, breach that obligation.
- 23.6 Each Party may request the assistance, other than financial assistance, of any other Party if the assistance will be reasonably necessary to give effect to this Deed and the matters contemplated by it.
- 23.7 Any assistance requested pursuant to subclause 23.6 of this Deed should not be unreasonably withheld.

Waiver

- 23.8 The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right.
- 23.9 A power or right may only be waived in writing by the Party who possesses the right or power that is to be waived.

Legal and Other Costs

- 23.10 The Parties agree that each Party shall pay its own legal and other costs in connection with the preparation and completion of this Deed and anything required to be done or suffered by them under this Deed.

Legal Advice

- 23.11 The Applicants, the Gundungurra Corporation and the Gundungurra Association acknowledge that they have had the benefit of independent legal advice in relation to this Deed.

IN WITNESS of their agreement the Parties have hereunder signed their names and affixed their seals:

Executed as a Deed

Signed sealed and delivered by Elsie Stockwell as
Registered Native Title Claimant on behalf of the
Gundungurra People

X
(E. Stockwell)

in the presence of:

X

Signature of Witness

Name of Witness **IAN FERGUSON**

Signed sealed and delivered by Mervyn Trindall
as Registered Native Title Claimant on behalf of
the Gundungurra People

in the presence of:

Signature of Witness

Name of Witness **Paul Veaves**

The Common seal of the Gundungurra ~~Tribal~~
~~Council~~ Aboriginal ~~Corporation~~ **Heritage Association Inc**
was hereunto affixed in the presence of:

Signature of Witness

Name and Position of Witness **Sharyn Halls**
~~Secretary~~ **Secretary**



The Common seal of the Gundungurra ~~Aboriginal~~
~~Heritage Association Inc.~~ **Tribal Council**
~~Aboriginal Corporation~~
was hereunto affixed in the presence of:

Signature of Witness

Name and Position of Witness **DAWN HARRIS**
DIRECTOR



SHARON BROWN
DIRECTOR

Bradley Ronald Hazzard

Signed sealed and delivered by ~~Gregory Eugene Smith~~, Attorney-General, in his capacity as the State Minister for New South Wales under the *Native Title Act 1993* (Cth)

in the presence of:

Signature of Witness

Name of Witness EMMA LITTOES

Signed sealed and delivered by Andrew Stoner, Deputy Premier of New South Wales in his capacity as Joint Minister administering the *Crown Lands Act 1989* (NSW)

in the presence of:

Signature of Witness

Name of Witness Bree Price

Signed sealed and delivered by Robyn Mary Parker, Minister for the Environment, on behalf of the State of New South Wales in her capacity as the Minister administering the *National Parks and Wildlife Act 1974* (NSW)

in the presence of:

Signature of Witness

Name of Witness

~~Signed sealed and delivered by Sally Barnes, Chief Executive of the Office of Environment and Heritage under delegated authority for and on behalf of Chris Eccles, Director General of the Department of Premier and Cabinet in his capacity as the Director General under the *National Parks and Wildlife Act 1974* (NSW)~~

in the presence of:

Signature of Witness

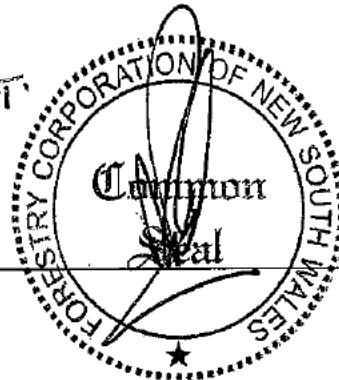
Name of Witness

Signed for and on behalf of the Sydney Catchment Authority pursuant to section 10(2) of the *Sydney Water Catchment Management Act 1998* by its Acting Chief Executive Fiona Smith in the presence of:

Signature of Witness

Name of Witness **KENNETH PHILLIP ELLIOTT**

Signed sealed and delivered by Nick Roberts, Chief Executive Officer of the Forestry Corporation of NSW constituted under the *Forestry Act 2012*



Signature of Witness

Name of Witness

The Common seal of

BLUE MOUNTAINS CITY COUNCIL

ABN 52 699 520 223B

was affixed to this agreement, in accordance with a resolution of the Council passed at the meeting on 17 September 2013 (Minute No. 326), in the presence of:

R K Greenwood, General Manager



Mark John Greenhill, Mayor of the City of Blue Mountains

Schedule A to the Gundungurra Indigenous Land Use Agreement: Agreement Area



- Gundungurra ILUA
- Hawkesbury River Sub-Catchment Area
- Hawkesbury River Sub-Sub-Catchment Area



Latitude and Longitude based on Geocentric Datum of Australia 1994
Non Projection

Agreement boundary data compiled by the NNTT from data sourced from DOL (NSW).
Nested Catchments dataset with a minimum area threshold of 50 square kilometres created by the Centre for
Resource and Environmental Studies Australia's River Basins 1997 data © Commonwealth of Australia (Geoscience
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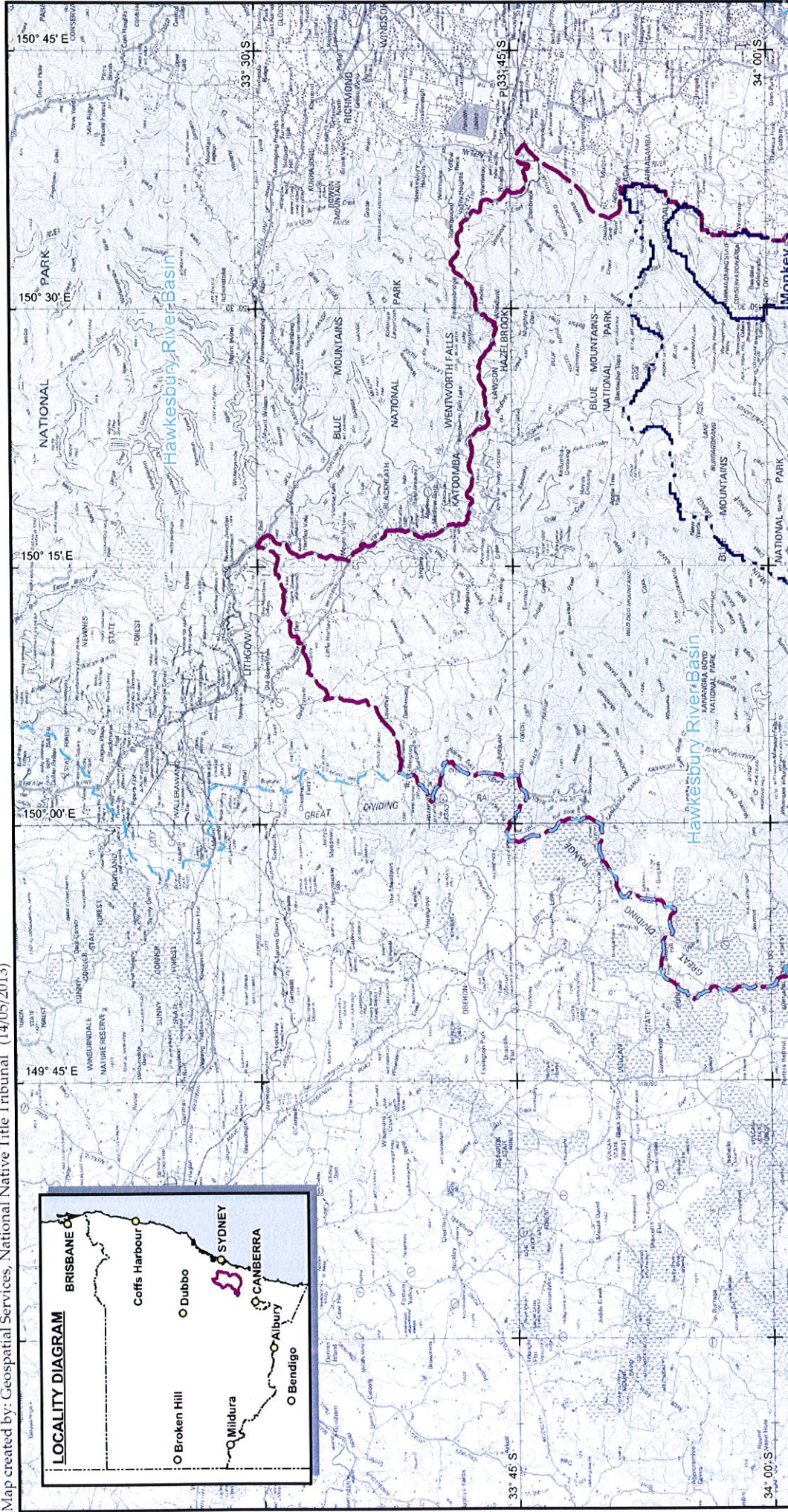
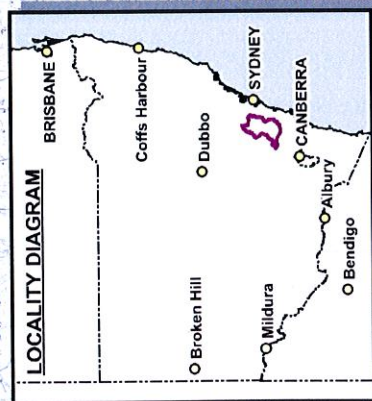
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claims, expenses, losses, damages and costs arising directly or indirectly from your use of the information and the
use of the information you obtained by any third party.

Map created by: Geospatial Services, National Native Title Tribunal (14/05/2013)



Technical Description – Gundungurra ILUA

The area subject to this agreement covers all the lands and waters within the external boundary described below:

External Boundary Description

Commencing at Longitude 150.013306° East, Latitude 34.696098° South, being a point on the southern boundary of Native Title Determination Application NSD6060/98 - Gundungurra Tribal Council Aboriginal Corporation 6 (NC1997/007) and extending generally north westerly passing through the following coordinate points.

Longitude ° East	Latitude ° South
149.987177	34.694838
149.969884	34.683834
149.947426	34.668337
149.917250	34.652430
149.879844	34.633644
149.809671	34.600867
149.770232	34.591193
149.738979	34.591193
149.676972	34.587253
149.662870	34.587410
149.656120	34.581160
149.633070	34.571870
149.622910	34.578890
149.599490	34.583060
149.587338	34.577993
149.573850	34.580980
149.559265	34.592100
149.557850	34.609360
149.556032	34.612005
149.544935	34.608503
149.506467	34.594141
149.488901	34.581806
149.429000	34.546475

Then north easterly to a point on the western boundary of the Hawkesbury River Basin (also being the Great Dividing Range) at Latitude 34.535702° South; then generally northerly along that river basin boundary to Latitude 33.637600° South; then easterly to the centreline of the Jenolan Cave Road at Longitude 150.054670° East; then generally north easterly along the centreline of that road to its intersection with the centreline of Coxs River; then south easterly along the centreline of that river to the intersection with the centreline of River Lett at Latitude 33.550210° South; then generally north easterly along the centreline on that river to its source at Longitude 150.269530° East, Latitude 33.501020° South; then north easterly to a point on the northern boundary of Native Title Determination Application NSD6060/98 - Gundungurra Tribal Council Aboriginal Corporation 6 (NC1997/7) at Latitude 33.499417°

South, being a point northwest of the township of Bell; then generally southerly, generally easterly, again generally southerly and generally easterly along the northern and eastern boundaries of that native title determination application to intersect the prolongation northerly of the eastern boundary of Lake Burragorang Sub-Catchment Area at Latitude 33.858274° South; then southerly along that prolongation to the northernmost eastern corner of that sub-catchment area; then generally southerly, generally south westerly, again generally southerly, generally westerly, again generally south westerly and generally south easterly along eastern boundaries of that sub-catchment area, Monkey Creek Sub-Catchment Area, again Lake Burragorang Sub-Catchment Area, the south eastern boundary of Sub-Sub-Catchment Area Dc50 80,501 of Little River Sub-Catchment Area, eastern boundary of Nattal River Sub-Catchment Area, eastern boundary of Wingecarribee Sub-Catchment Area to intersect the southern boundary of Sub-Sub-Catchment Area Dc50 81,427 of Wingecarribee Sub-Catchment Area to intersect the southern boundary of again Native Title Determination Application NSD6060/98 - Gundungurra Tribal Council Aboriginal Corporation 6 (NC1997/7) at Longitude 150.99967° East, being a point south east of Moss Vale; then generally south westerly along the southern boundary of that native title determination application back to the commencement point.

Note:

Reference Datum

Geographical coordinates have been provided by the NNTT Geospatial Unit and are referenced to the Geocentric Datum of Australia (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

Data Reference and source

- Agreement boundary data compiled by National Native Title Tribunal.
- Native Title Determination Application NSD6060/98 - Gundungurra Tribal Council Aboriginal Corporation 6 (NC1997/7) as accepted for registration on 21 June 2000.
- Nested Catchments dataset with a minimum area threshold of 50 square kilometres created by the Centre for Resource and Environmental Studies Australia's River Basins 1997 data © Commonwealth of Australia (Geoscience Australia) 1997.
- Road, River and Creek data sources from Topographic vector data is © Commonwealth of Australia (Geoscience Australia) 2003.

Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, National Native Title Tribunal (14/05/2013).

McGraw-Hill
Higher Education



Schedule B to the Gundungurra Indigenous Land Use Agreement:

Application Area



- NSD6026/98 (NC96/7)
- Gundungurra Tribal Council Aboriginal Corporation 1
- NSD6044/98 (NC96/27)
- Gundungurra Tribal Council Aboriginal Corporation 2
- NSD6047/98 (NC96/30)
- Gundungurra Tribal Council Aboriginal Corporation 3

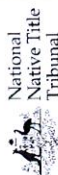
- NSD6050/98 (NC96/36)
- Gundungurra Tribal Council Aboriginal Corporation 4
- NSD6057/98 (NC97/4)
- Gundungurra Tribal Council Aboriginal Corporation 5
- NSD6060/98 (NC97/7)
- Gundungurra Tribal Council Aboriginal Corporation 6

Application boundary data compiled by the NNTT from data sourced from DOL (NSW).

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NOTE: Topographic images should be used as a guide only.

Map created by: Geospatial Services, National Native Title Tribunal (14/05/2013)



0 20

KILOMETRES

Latitude and Longitude based on Geocentric Datum of Australia 1994

Non Projection

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Map created by: Geospatial Services, National Native Title Tribunal (14/05/2013)



SCHEDULE C

NOT USED

SCHEDULE D

Consultative Committee

1. PARTICIPANTS TO THE CONSULTATIVE PROCESS

1.1 The following persons are the Participants for the purposes of this Schedule:

GUNDUNGURRA TRIBAL COUNCIL ABORIGINAL CORPORATION
incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth);

GUNDUNGURRA ABORIGINAL HERITAGE ASSOCIATION INC.
incorporated under the *Associations Incorporations Act 2009* (NSW);

ROBYN MARY PARKER, Minister for the Environment on behalf of the State of New South Wales and in her capacity as the Minister administering the *National Parks and Wildlife Act 1974* (NSW);

FIONA SMITH, Chief Executive of the Sydney Catchment Authority in respect to her functions under the *Sydney Water Catchment Management Act 1998* (NSW);

NICK ROBERTS, Chief Executive Officer of the Forestry Corporation of New South Wales in his capacity as the delegate of the Forestry Corporation of New South Wales as constituted pursuant to the *Forestry Act 2012* (NSW);

BLUE MOUNTAINS CITY COUNCIL, a body politic of the State of New South Wales by force of s.220 of the *Local Government Act NSW 1993*.

2. OBJECTS

2.1 The objects of this Schedule are:

- (a) to outline an arrangement between the Participants for the protection and conservation of Aboriginal heritage and cultural values within the SCA Lands, National Park Lands and BMCC Lands;
- (b) to achieve greater input by the Gundungurra People into management programs of the SCA, OEHL and the BMCC relating to the protection and conservation of the SCA Lands, National Park Lands and BMCC Lands;
- (c) to achieve greater input by the Gundungurra People into the management of the Forestry Commission Lands;

- (d) to establish the Consultative Committee for improved consultation and exchange of information between the Gundungurra People, the SCA, OEH, the Forestry Corporation of New South Wales and the BMCC;
- (e) to establish a framework of consultation that is consistent with the objectives, management principles and strategies for the National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands and BMCC Lands as provided for under the *NPW Act*, the *SWCM Act*, the *Forestry Act*, and the *Crown Lands Act* and *Local Government Act* respectively;
- (f) to facilitate access by the Gundungurra People to the National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands and BMCC Lands pursuant to any protocols agreed to by the Consultative Committee.

3. ESTABLISHMENT OF THE CONSULTATIVE COMMITTEE

- 3.1 Within a period of ninety (90) days from the date on which this Deed is Registered a Consultative Committee shall be established in accordance with clause 4 of this Schedule which shall be empowered to operate and fulfil its functions under this Deed.
- 3.2 The Consultative Committee to be constituted in accordance with subclause 3.1 of this Schedule shall be named the "Gundungurra Consultative Committee" ("the Consultative Committee").
- 3.3 The first meeting of the Consultative Committee shall be held not more than thirty (30) days after the Consultative Committee is established.
- 3.4 A nominee of the Director South Region Crown Lands Division of the DPI is to commence the meeting process by notifying all Participants of the details of the first meeting, including the meeting location.
- 3.5 A nominee of the Director South Region Crown Lands Division of the DPI is to call for the Participants to advise of the nominees to the Consultative Committee before the first meeting is held. (Each Participant is to inform each other Participant, in writing, of its nominees before the first meeting - subject to clarification).

4. COMPOSITION OF THE CONSULTATIVE COMMITTEE

Compulsory Requirements

- 4.1 The Consultative Committee shall consist of at least nine (9) persons and not more than fifteen (15) persons.
- 4.2 The membership of the Consultative Committee shall at all times consist of at least one person nominated by each of the Participants referred to in clause 1 to this Schedule.
- 4.3 The Consultative Committee shall, subject to there being sufficient members of the Gundungurra People willing to be appointed, be comprised of a majority of Gundungurra Persons.

- 4.4 A nominee to the Consultative Committee accepts the nomination when that nominee signs a written declaration (in the form of the declaration at Annexure A to this Schedule) to the effect that the nominee:
- (a) accepts the nomination; and
 - (b) agrees to be bound by the terms of this Schedule.

Initial Composition

- 4.5 The Consultative Committee shall initially be comprised of eleven (11) persons nominated as follows:
- (a) three (3) Gundungurra Persons nominated by the Gundungurra Corporation;
 - (b) three (3) Gundungurra Persons nominated by the Gundungurra Association;
 - (c) two (2) officers or employees of OEH nominated by the Director General (NPWA);
 - (d) one (1) officer or employee of SCA nominated by the Chief Executive of SCA;
 - (e) one (1) officer or employee of the Forestry Corporation of New South Wales nominated by the Chief Executive of the Forestry Commission; and
 - (f) one (1) officer or employee of the BMCC nominated by BMCC.
- 4.6 The persons referred to in subclause 4.5 shall be nominated by the Participants within a period of sixty (60) days from the date on which this Deed is Registered.
- 4.7 The Consultative Committee is established when all of the individuals referred to in subclause 4.5 have been nominated and have accepted their nomination in accordance with subclause 4.4.

Adjustments to the Size or Composition of the Consultative Committee

- 4.8 The Participants may agree to alter the composition of the Consultative Committee or to increase or decrease the membership of the Consultative Committee provided that the requirements contained within subclauses 4.1 to 4.3 remain satisfied.
- 4.9 The Participants referred to in clause 1 to this Schedule may agree to invite the following persons ("**Invited Participants**") to the Consultative Committee:
- (a) any State department or agency (other than those referred to in subclause 4.5 (c), (d) and (e) that is or becomes responsible for the care, control, management or protection of State lands within the Agreement Area, or
 - (b) any Aboriginal person invited by the Gundungurra Corporation or the Gundungurra Association
- and the Participants may subject any such invitation to any reasonable conditions.
- 4.10 The Participants agree that unless agreed by the Participants such Invited Participant shall have no voting rights.
- 4.11 Members of the Consultative Committee shall remain members for a period of 3 years. At least 90 days before a member's term is due to expire, the Participant by which the member had been nominated will advise the Consultative Committee, by

notice in writing to the secretary of the Consultative Committee, of the person who has accepted nomination to be the next member.

- 4.12 A Participant may also, subject to the terms of this Schedule, appoint a nominee to the Consultative Committee in place of any member who is unable or unwilling to continue to act in that capacity or is no longer employed in the relevant government department or agency.

5. PROCEDURE OF CONSULTATIVE COMMITTEE

- 5.1 Subject to this Deed, the procedure for calling meetings of the Consultative Committee and for the conduct of business at those meetings shall be determined by the Consultative Committee provided that such procedures shall make reasonable provision for the giving of adequate notice of meetings to all members of the Consultative Committee.
- 5.2 The Secretary appointed under clause 8 must circulate an agenda for each Consultative Committee meeting to each Participant and each sitting member of the Consultative Committee no less than 14 days before the meeting is scheduled to occur, unless the Participants agree to a shorter period.
- 5.3 Any duly convened meeting at which a quorum is present shall be competent to transact any business of the Consultative Committee.
- 5.4 The Consultative Committee shall determine the number of persons that are required to form a quorum, provided that the quorum is required to have:
- (a) a minimum of at least five (5) persons;
 - (b) a majority of Gundungurra Persons; and
 - (c) at least one (1) nominee of each Participant whose business is on the agenda for the meeting.
- 5.5 Any member of the Consultative Committee may at any time request the Secretary of the Consultative Committee to convene a meeting of the members on reasonable notice (which shall have regard where appropriate to the subject matter under consideration).

Frequency and Location of Meetings

- 5.6 Unless otherwise agreed, the Consultative Committee shall meet a minimum of three (3) times a year.
- 5.7 Subject to this Deed, the Consultative Committee shall meet on dates and times and at locations determined by the Consultative Committee.
- 5.8 All meetings of the Consultative Committee where the members attend the meeting in person shall be held at a location in the vicinity of the Agreement Area.
- 5.9 Participation in a meeting of the Consultative Committee may be by telephone where the members consider that it would be expedient or appropriate to do so or where the urgency of the business to be transacted or considered would prevent one or more of the members from attending the meeting in person.

Non-attendance at Meetings

- 5.10 Provided that notice is given, a member of the Consultative Committee need not attend, if, in the opinion of the relevant Participant, the matters to be discussed at that meeting do not require the attendance of that member.

6. DECISIONS OF THE CONSULTATIVE COMMITTEE

- 6.1 Wherever possible, a decision of the Consultative Committee shall be reached by consensus of the members of the Consultative Committee.
- 6.2 In the event that consensus cannot be reached, a decision supported by a majority of votes cast at a meeting of the Consultative Committee at which a quorum is present shall be the decision of the Consultative Committee.
- 6.3 Minutes shall be kept of proceedings and decisions of the Consultative Committee.

7. CHAIRPERSON OF THE CONSULTATIVE COMMITTEE

- 7.1 The Consultative Committee shall elect a Chairperson to the Consultative Committee.
- 7.2 The person elected to the position of Chairperson pursuant to subclause 7.1 must be a Gundungurra Person who has been appointed to the Consultative Committee.

8. SECRETARY OF THE CONSULTATIVE COMMITTEE

- 8.1 OEH shall, in consultation with other Participants, appoint a Secretary ("the Secretary") to the Consultative Committee.
- 8.2 The person appointed to the position of Secretary pursuant to subclause 8.1 is not to be a person who has already been appointed to the Consultative Committee for that term.
- 8.3 The Secretary may be an officer or employee of a Participant or another person.
- 8.4 OEH shall give due regard to the recommendations of the Consultative Committee with respect to the appointment of the Secretary and shall give consideration to the appointment of a Gundungurra Person provided that person has sufficient expertise to carry out the functions of a Secretary as provided in subclause 8.5.
- 8.5 The functions of the Secretary of the Consultative Committee shall include:
- (a) providing formal notice of meetings of the Consultative Committee to members of the Consultative Committee in a timely manner, such notice is to identify any matters of which the Secretary is aware are likely to fall for consideration at the meeting;
 - (b) receiving and responding to correspondence received by the Consultative Committee in a timely manner;
 - (c) maintaining the accounts and records of the Consultative Committee;
 - (d) opening and closing meetings of the Consultative Committee;
 - (e) recording the names of members in attendance and the names of any members absent from each meeting of the Consultative Committee;

- (f) taking minutes of the meeting of the Consultative Committee as instructed by the Committee;
- (g) executing documents on behalf of the Consultative Committee when authorised and required by the Committee to do so;
- (h) preparing the report required under subclause 9.8; and
- (i) attending to other administrative matters that relate to the operation of the Consultative Committee when directed to do so by the Consultative Committee.

9. ROLE AND RESPONSIBILITIES OF THE CONSULTATIVE COMMITTEE

Power of the Consultative Committee to Make Recommendations

- 9.1 The Consultative Committee may make recommendations to the Director General (NPWA), the Chief Executive of SCA, the Chief Executive of the Forestry Commission, the BMCC, and any Invited Participant, concerning the care, control, management and protection of National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands, BMCC Lands or other State lands within the Agreement Area. These recommendations may include:
- (a) management plans including plans of management, conservation management plans, master plans and strategic operational plans such as fire and pest management plans;
 - (b) policies and procedures relating to the protection, conservation and presentation of Aboriginal heritage, which may include objects and remains;
 - (c) land use and operational policies, procedures and protocols, including those relating to access for cultural and heritage purposes and practices; wildlife management; use of cultural resources; Aboriginal commercial activity such as ecotourism and sale of artefacts; asset management and construction; discussion of exemption from national park and Sydney Catchment Authority fees;
 - (d) educational and interpretative policies, procedures and publications, including the appropriate use of Gundungurra language and place names and references to Aboriginal communities and traditional lands in materials published by OEH, the SCA and the BMCC;
 - (e) employment and contracting policies and procedures, including in relation to the granting of tour guiding licences;
 - (f) research and survey policies and procedures; and
 - (g) such other matters concerning the SCA Lands, National Park Lands, Forestry Corporation of New South Wales Lands and BMCC Lands as agreed by the Participants.
- 9.2 In making recommendations pursuant to subclause 9.1, the Consultative Committee shall have regard to and abide by the statutory framework and adopted policy framework (including any plans of management) in force from time to time that

relate to the management of National Park Lands, SCA Lands, Forestry Corporation of New South Wales Lands and BMCC Lands within the Agreement Area.

- 9.3 The Participants shall consider and take into account, where appropriate and reasonable to do so, all recommendations made by the Consultative Committee. Where a recommendation made by the Consultative Committee is not acted upon, the agency to which the recommendation was directed shall use its best endeavours to provide written reasons within 30 days explaining why the recommendation was not adopted.
- 9.4 The time period set out in clause 9.3 will not apply where a response to a recommendation made to BMCC requires a resolution of the elected body of Council. If such a recommendation is not acted upon, BMCC shall use all reasonable endeavours to provide written reasons within 30 days of the first Council meeting following the relevant Consultative Committee meeting, explaining why the recommendation was not adopted.
- 9.5 Within ninety (90) days after the Consultative Committee is constituted, the Consultative Committee will commence development of a 5 year strategic plan to guide, prioritise and report on the business of the Consultative Committee. The strategic plan is to be finalised within twelve (12) months from the date of the first meeting of the Consultative Committee.
- 9.6 The strategic plan developed in accordance with subclause 9.5 shall be reviewed by the Consultative Committee in May each year and a report shall be prepared to the Director General (NPWA), the Chief Executive of SCA, Chief Executive of the Forestry Corporation of New South Wales and the BMCC in June each year on the plan's implementation.

Power of the Consultative Committee to Request Information

- 9.7 The Consultative Committee may make a written request for access to documents or other information held by the Participants that relate to SCA Lands, National Park Lands, Forestry Corporation of New South Wales Lands and BMCC Lands.

Reporting Obligations

- 9.8 At least once every twelve months the Consultative Committee shall forward a report in writing to the Participants containing the following information:
- (a) details of the frequency of meetings of the Consultative Committee held over the preceding period of twelve (12) months;
 - (b) the members who attended each of those meetings;
 - (c) the members who were absent from each of those meetings without leave of the Consultative Committee or without being excused by the Consultative Committee or without reasonable excuse for not attending;
 - (d) other information considered relevant by the Consultative Committee to be included in the report; and

- (e) such other information as may be requested from time to time by the Participants and which the Consultative Committee determines to be appropriate to put in the report.

10. RESPONSIBILITIES OF THE PARTICIPANTS

- 10.1 The Participants acknowledge that the Director General (NPWA), the Chief Executive of SCA, the Chief Executive of the Forestry Corporation of New South Wales and BMCC may constitute other consultative or advisory committees and may consult with any other person or persons in relation to the care, control, management and protection of National Park Lands, SCA Lands, Forestry Corporation of New South Wales Lands and BMCC Lands respectively.

Sharing of Information

- 10.2 Subject to subclause 10.3 to 10.5 the Participants agree to share information at meetings of the Consultative Committee regarding the National Park Lands, SCA Lands, Forestry Corporation of New South Wales Lands and BMCC Lands, including information relating to:
- (a) the natural and cultural heritage values and socio-economic values of those lands;
 - (b) current and revised drafts of plans of management and policies and procedures related to the lands and to the management of the natural and cultural heritage of those lands;
 - (c) other planning instruments;
 - (d) future proposals, works, publications and other activities such as the granting of tour licences within those lands; and
 - (e) employment, training, tendering and funding opportunities for activities within those lands.
- 10.3 A Participant who has received a written request pursuant to subclause 9.7 shall, so far as is reasonably practicable, comply with the request.
- 10.4 A Participant who is the subject of a request under subclause 9.7 may refuse to give access to any document that:
- (a) is not required to be disclosed under the *Government Information (Public Access) Act 2009* (NSW);
 - (b) is subject to any privacy laws;
 - (c) is subject to privilege;
 - (d) contains information that was provided in confidence; or
 - (e) if disclosed, might place any person in a position of commercial disadvantage.
- 10.5 A Participant who is the subject of a request under subclause 9.7 may refuse to give access to any document where it may be culturally inappropriate to provide the document to other Consultative Committee members.

11. FUNDING OF THE CONSULTATIVE COMMITTEE

- 11.1 Subject to subclause 11.2 and 11.3, OEH and SCA shall jointly meet the following costs and expenses:
- (a) the costs (excluding sitting fees) that are reasonably required for the administration of the Consultative Committee;
 - (b) any expenses reasonably incurred by members of the Consultative Committee who are Gundungurra People in the performance of their duties as members of the Consultative Committee; and
 - (c) the reasonable travel and ancillary costs (including meal and accommodation costs where considered necessary by the Deputy Chief Officer (NPWS) and the Chief Executive of SCA) of members of the Consultative Committee who are Gundungurra People to attend meetings of the Consultative Committee.
- 11.2 OEH is responsible for payment of sitting fees to members of the Consultative Committee who are Gundungurra People for a maximum of four meetings per calendar year of the Consultative Committee.
- 11.3 Any remuneration provided to members of the Consultative Committees who are Gundungurra People under this clause must be provided in accordance with the Premier's Guidelines for Remuneration of Boards and Committees or equivalent guidelines that may be in place at the relevant time.

12. INSURANCE OF CONSULTATIVE COMMITTEE MEMBERS

- 12.1 Each Participant agrees to have appropriate insurance coverage in place for any personal injury or other damage sustained by its appointee when acting in good faith in the discharge of its duties as a member of the Consultative Committee, and also to ensure that any Invited Participant is similarly covered. Each Participant agrees to provide evidence of such insurance at the request of the Consultative Committee.

13. CROSS-CULTURAL AWARENESS

- 13.1 OEH, SCA, the Forestry Corporation of New South Wales and BMCC shall work with the Consultative Committee to develop an induction course that covers awareness of the cultural values of the Gundungurra People and the terms of this Deed to be provided to any officer or employee of OEH, SCA, the Forestry Corporation of New South Wales and BMCC who is responsible for or substantially involved in the day to day care, control, management and protection of the respective lands.
- 13.2 The Director General (NPWA), the Chief Executive of SCA and the Chief Executive of the Forestry Corporation of New South Wales shall provide information regarding the objectives and interests of the Gundungurra Corporation (as provided by the Gundungurra Corporation) and the Gundungurra Association to their officers and employees who have a role within the Agreement Area.

14. TRAINING AND CAPACITY BUILDING

Training

- 14.1 The State shall provide, and the Gundungurra People on the Consultative Committee agree to participate in, governance training in relation to the functions and role of the Consultative Committee.
- 14.2 The Consultative Committee shall work with the Gundungurra People on the Consultative Committee to prepare a training plan annually for the purposes of subclause 14.1.
- 14.3 OEH, SCA, the Forestry Corporation of New South Wales and BMCC shall endeavour to provide opportunities to the Gundungurra People who are members of the Consultative Committee to attend appropriate training courses that are relevant to ensuring that those members have an adequate appreciation of:
- (a) the issues associated with the management of the respective lands and waters; and
 - (b) the statutory and policy frameworks within which the respective bodies are required to operate and fulfil their functions.

Capacity Building

- 14.4 OEH, SCA, the Forestry Corporation of New South Wales and BMCC shall assist the Consultative Committee in the establishment of a community capacity building program for the education and skills development of Gundungurra People in areas relevant to the administration, planning, care, control, management and protection of the National Park Lands, SCA Lands, the Forestry Corporation of New South Wales Lands and BMCC Lands.
- 14.5 Assistance offered by the respective bodies pursuant to subclause 14.4 may take the form of financial assistance, unpaid opportunities to participate in management programs such as Aboriginal sites surveys and management programs, wildlife surveys, specialist assistance with relevant external funding applications and traineeship programs, volunteers and work experience programs.

15. EMPLOYMENT

- 15.1 OEH, SCA and the Forestry Corporation of New South Wales shall notify the Consultative Committee of any employment opportunities arising within their bodies with respect to positions concerning the care, control, management and protection of lands within the Agreement Area.
- 15.2 BMCC shall notify the Consultative Committee of any employment opportunities arising within BMCC with respect to positions concerning the care, control, management and protection of BMCC Lands.
- 15.3 Upon receipt of the notification referred to in subclause 15.1 or 15.2, a representative of the Gundungurra Corporation (who is a member of the Consultative Committee) and a representative of the Gundungurra Association (who is a member of the Consultative Committee) shall use their best endeavours to inform their respective

members and other Gundungurra People of the employment opportunity notified pursuant to subclause 15.1 or 15.2.

- 15.4 The bodies referred to in subclauses 15.1 and 15.2 shall consider the appropriateness of including a Gundungurra Person on the selection panel for a position, if the position involves the day to day care, control, management and protection of land within the Agreement Area and the position description includes the protection and conservation of Aboriginal heritage.

16. CONTRACTORS

- 16.1 OEH, SCA and the Forestry Corporation of New South Wales shall use all reasonable endeavours to notify the Consultative Committee when tenders are publicly sought for a work, service or consultancy to be carried out in relation to lands and waters within the Agreement Area.
- 16.2 BMCC shall use all reasonable endeavours to notify the Consultative Committee when tenders are publicly sought for a work, service or consultancy to be carried out in relation to BMCC Lands.
- 16.3 The Forestry Corporation of New South Wales agrees to consult annually with the Consultative Committee in relation to works proposed under its annual Plan of Operation, either during a meeting of the Consultative Committee or another meeting.

17. FUNDING APPLICATIONS

- 17.1 OEH, SCA and the BMCC shall consider requests for funding or part-funding made by Gundungurra People to OEH, SCA and/or the BMCC where the proposal:
- (a) complies with relevant provisions of the *SWCM Act*, the *NPW Act*, the *Crown Lands Act* and the *Local Government Act*;
 - (b) accords with the priorities of OEH, SCA and/or the BMCC as identified within strategic operation plans and reserve plans of management;
 - (c) involves a joint project between OEH, SCA and/or the BMCC and the Gundungurra Corporation; and
 - (d) involves a formal employment or contractual arrangement.

18. CONSULTATION ON SITE SURVEY AND MONITORING

- 18.1 OEH, SCA, the Forestry Corporation of New South Wales and BMCC shall consult with the Consultative Committee regarding survey and monitoring activities of sites undertaken within the SCA Lands, National Park Lands, Forestry Corporation of New South Wales Lands and BMCC Lands.
- 18.2 The Forestry Corporation of New South Wales will consult with the Consultative Committee regarding the management of Aboriginal cultural heritage¹ in accordance with requirements identified in the *Plantations and Reafforestation Act 1999* (NSW),

¹ as used in the Forestry Commission 'Operational Guidelines for Aboriginal Cultural Heritage Management' as they appear from time to time.

the 'Aboriginal Objects Due Diligence Code for Plantation Officers Administering the *Plantations and Reafforestation (Code) Regulation 2001* (NSW)' and the Forestry Corporation of New South Wales 'Operational Guidelines for Aboriginal Cultural Heritage Management' as they appear from time to time.

19. DISPUTES

- 19.1 If a dispute arises as to the terms of this Schedule that cannot be resolved by discussions between the Participants, it shall be treated as being a Dispute for the purposes of this Deed and the dispute management mechanism outlined in clause 17 of this Deed will apply.
- 19.2 Notwithstanding subclause 6.1 of this Schedule, a failure of the Consultative Committee to reach a consensus will not constitute a Dispute for the purposes of this Deed and cannot be capable of triggering the dispute resolution procedures in clause 17 of this Deed.
- 19.3 In situations where the Consultative Committee cannot reach a consensus regarding a particular matter, the issue shall be resolved by a vote cast by the members of the Consultative Committee in accordance with subclause 6.2.
- 19.4 A final decision made by the Director General (NPWA), the Chief Executive of SCA, the Chief Executive of the Forestry Corporation of New South Wales or the BMCC regarding a recommendation made by the Consultative Committee pursuant to subclause 9.1 is not a Dispute for the purposes of this Deed and cannot trigger the dispute resolution procedures in clause 17 of this Deed.

20. TERMINATION OR VARIATION OF THIS SCHEDULE

- 20.1 This Schedule may be terminated or varied at any time by the agreement in writing of the Participants referred to in clause 1 of this Schedule.

(Schedule D, Subclause 4.4)

Annexure A, Schedule D.

**ACCEPTANCE OF NOMINATION FOR PARTICIPATION IN THE
GUNDUNGURRA CONSULTATIVE COMMITTEE**

I
(Full name of participant)
of
(Address of participant)
accepts the nomination of
(name of body represented by nominee)
to be a member of the Gundungurra Consultative Committee.

I agree:

- (a) to act as a member of the Gundungurra Consultative Committee;
- (b) to be bound by the terms of the Deed made [date] and Schedule D to that Deed;
- (c) that my membership of the Gundungurra Consultative Committee may be determined without notice by written notice given by the body by which I have been nominated to the secretary of the Gundungurra Consultative Committee; and
- (d) that in accepting the nomination I shall not become an employee or agent of the Gundungurra Consultative Committee or any of the Participants in the consultative process represented on the Gundungurra Consultative Committee.

Dated:

Signed by the nominee:

.....

in the presence of:

.....

(witness)

Signed on behalf of the nominating Participant

in the Gundungurra Consultative Committee:

.....

in the presence of:

.....

(witness)

SCHEDULE E

Relevant State Instrumentalities

1. Bathurst Regional Council
2. Blue Mountains City Council
3. Camden Council
4. Lithgow City Council
5. The Department of Aboriginal Affairs
6. The Office of Environment and Heritage
7. Goulburn Mulwaree Council
8. The Department of Trade and Investment, Regional Infrastructure and Services
9. NSW National Parks and Wildlife Service
10. Roads and Maritime Services
11. Sydney Catchment Authority
12. Sydney Water Corporation
13. TransGrid
14. Upper Lachlan Shire Council
15. Wingecarribee Shire Council
16. Wollondilly Shire Council

SCHEDULE F

Contact Details of the Parties

ELSIE STOCKWELL AND MERVYN TRINDALL on their own behalf and on behalf of the **GUNDUNGURRA PEOPLE**

(See contact details for Gundungurra Tribal Council Aboriginal Corporation and Gundungurra Aboriginal Heritage Association Inc. below.)

GUNDUNGURRA TRIBAL COUNCIL ABORIGINAL CORPORATION incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth).

Contact: Mr Eddy Neumann, Solicitor, Eddy Neumann Lawyers

GUNDUNGURRA ABORIGINAL HERITAGE ASSOCIATION INC. incorporated under the *Associations Incorporation Act 2009* (NSW).

Contact: Mr Andrew White, Partner, Benetatos White Solicitors & Attorneys

GREGORY EUGENE SMITH, ATTORNEY GENERAL in his capacity as State Minister for New South Wales under the *Native Title Act 1993* (Cth).

ANDREW STONER, DEPUTY PREMIER OF NEW SOUTH WALES in his capacity as Joint Minister administering the *Crown Lands Act 1989* (NSW)

ROBYN MARY PARKER, MINISTER FOR THE ENVIRONMENT

SALLY BARNES, CHIEF EXECUTIVE OF THE OFFICE OF ENVIRONMENT AND HERITAGE in her capacity as delegate of the Director General under the *National Parks and Wildlife Act 1974* (NSW)

FIONA SMITH, Acting Chief Executive Officer of the Sydney Catchment Authority in respect to her functions under and in accordance with section 10 of the *Sydney Water Catchment Management Act 1998* (NSW)

NICK ROBERTS, Chief Executive Officer of the Forestry Corporation of New South Wales in his capacity as the delegate of the Forestry Corporation of New South Wales as constituted pursuant to the *Forestry Act 2012* (NSW) (part of Department of Primary Industry; now called Department of Industry and Investment and trades as Industry and Investment NSW).

Contact: Joanna Bodley, Manager, Communications & Media

BLUE MOUNTAINS CITY COUNCIL.

Contact: Nick Rigby, Manager, Environmental Sustainability

SCHEDULE G

	Lands Covered by Clause 10.1
National Parks Land	All lands acquired or reserved under the <i>NPW Act</i> within the Agreement Area, including: <u>Blue Mountains Region</u> Blue Mountains National Park Kanangra-Boyd National Park Wombeyan Karst Conservation Reserve Hartley Historic Site Jenolan Karst Conservation Reserve, but excluding the Jenolan Caves Visitor Use and Services Zone Mares Forest National Park Yerranderie Regional Park Yerranderie State Conservation Area <u>Metro South West Region</u> Bargo State Conservation Area (part) Burrangorang State Conservation Area Joadja Nature Reserve Nattai National Park (part) Nattai State Conservation Area Wollondilly River Nature Reserve <u>South Coast Region</u> Back Arm Nature Reserve Bangadilly National Park Cecil Hoskins Nature Reserve Cookbundoon Nature Reserve (part) Kerrawary Nature Reserve Tarlo River National Park but not including Morton National Park.
SCA Lands	All SCA managed lands within the Agreement Area or land jointly managed by the SCA and OEH within the Agreement Area.
Forestry Commission Lands	The nominated State forests managed by the Forestry Corporation of NSW located within the Agreement Area as follows Jellore State Forest, Belanglo State Forest, Penrose State Forest and compartments 55, 56 and 57 of Wingello State Forest.

	Lands Covered by Clause 10.1	
BMCC Lands	The nominated Crown reserves under the care, control and management of the Blue Mountains City Council as follows:	
	Banksia Park	Lot 7312 in Deposited Plan 1165530
	Blackheath Glen Reserve	Lot 172 in Deposited Plan 751647
	Bonnie Doon Reserve	Lot 3 in Deposited Plan 772152
	Central Park Reserve	Lot 7333 in Deposited Plan 1165604
	Cliff Drive Public Reserve	Lot X in Deposited Plan 442467
	Cliff Drive - Moss Street Reserve	Lot 1 in Deposited Plan 557848
	Coates Park	Lot 222 in Deposited Plan 751652
	Digger Cooper Reserve	Lot 5 in Deposited Plan 1143002
	Fairy Dell Reserve	Lot 5 in Deposited Plan 226286
	Jamison Creek Reserve	Lot 7320 in Deposited Plan 1144873
	Lillianfels Park	Part of Lot 1 in Deposited Plan 170400
	Old Ford Reserve	Lot 1 in Deposited Plan 1159572
	Pulpit Hill Public Reserve	Lot 8 in Deposited Plan 10148
	Red Gum Park	Lot 292 in Deposited Plan 13407
	Sassafras Gully Reserve	Part of Lot 7300 in Deposited Plan 1141332
	Silver Mist Park	Lot 14 in Deposited Plan 1101275
	Sublime Point Reserve	Lot 41 in Deposited Plan 8393
	Terrace Falls Reserve	Lot 7001 in Deposited Plan 1127483
	Valley Road Public Reserve	Lot 7 in Deposited Plan 2202454
	Wilson Glen	Lot 34 in Deposited Plan 751652