

This and the following 47 pages comprise Annexure A to Lease dated from Armidale Local Aboriginal Land Council and Anaiwan Local Aboriginal Land Council to the Minister for Energy and Environment

Annexure A

Bulagaranda (Mt Yarrowyck) Aboriginal Area Part 4A Lease

Armidale Local Aboriginal Land Council

Anaiwan Local Aboriginal Land Council

Minister for Energy and Environment

Secretary of the Department of Planning,
Industry and Environment

Secretary of the Department of Premier and
Cabinet

Bulagaranda (Mt Yarrowyck) Aboriginal Area Part 4A Lease

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Bulagaranda (Mt Yarrowyck) Aboriginal Area Part 4A Lease

Date

This Lease is made on the Commencement Date.

Parties

Armidale Local Aboriginal Land Council (ABN 74 878 382 043), constituted by section 50 of the *Aboriginal Land Rights Act 1983* (*Armidale LALC*)

Anaiwan Local Aboriginal Land Council (ABN 78 199 722 356), constituted by section 50 of the *Aboriginal Land Rights Act 1983* (*Anaiwan LALC*)

The Hon. Matthew Kean, MLA, Minister for Energy and Environment, as the Minister Administering the *National Parks & Wildlife Act 1974*, for and on behalf of the State of New South Wales (*Minister*)

Jim Betts, Secretary of the Department of Planning, Industry and Environment, as the Secretary with functions under the *National Parks and Wildlife Act 1974* (excluding Part 6 of that Act) (*Secretary*).

Tim Reardon, Secretary of the Department of Premier and Cabinet, as the Secretary with functions under Part 6 of the *National Parks and Wildlife Act 1974* (*Secretary of DPC*).

Background

- A. The area of land that has been known in recent years as Mt Yarrowyck Nature Reserve (Mt Yarrowyck), is a small part of a broad interconnected landscape that has physically and spiritually sustained, and that has been held, lived in, travelled over, used, managed and cared for by, Anaiwan people and neighbouring language groups from time immemorial. As a result, Mt Yarrowyck is laced with strands of belief, mythology, history, meaning and customary rights by which contemporary Anaiwan people and others are connected to it and to the surrounding landscape.
- B. The Land Rights Act is beneficial legislation intended to compensate Aboriginal people in NSW for historical injustice and to help address current disadvantage.
- C. Armidale LALC and Anaiwan LALC are Local Aboriginal Land Councils constituted under the Land Rights Act, with the objects and functions prescribed by the Land Rights Act, and whose memberships include people with a cultural association with Mt Yarrowyck.
- D. After due investigation, the Registrar of the Land Rights Act has recorded the names of the Aboriginal Owners in the Register of Aboriginal Owners kept under Division 3, Part 9 of that Act, being satisfied that they:

- i. are directly descended from the original Aboriginal inhabitants of the cultural area in which Mt Yarrowyck is situated, and
 - ii. have a cultural association with Mt Yarrowyck that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the land, and
 - iii. have consented to the entry of their names in the Register.
- E. The Minister is responsible for the administration of the National Parks Act (except Division 3 of Part 3 and Parts 6 and 6A of that Act) and, as such, has functions specified in that Act. These include the functions under Part 4A of the National Parks Act relating to the hand back, leasing and reservation of lands listed in Schedule 14 of that Act.
- F. The Secretary and the Secretary of DPC have functions under the National Parks Act.
- G. Mount Yarrowyck is presently reserved as a Nature Reserve under the National Parks Act. After the creation of the original nature reserve in 1983, the reserve has been added to several times – in 2007, 2009 and 2011.
- H. In 1996 Mount Yarrowyck Nature Reserve was listed on Schedule 14 to the National Parks Act as land of recognised cultural significance to Aboriginal people.
- I. On 25 February 2015, Armidale LALC and Anaiwan LALC wrote to the Minister advising that the LALCs wished to have the present reservation of Mount Yarrowyck Nature Reserve revoked so that those lands may be vested in the LALCs as tenants in common in return for;
 - i. a lease of the lands from the LALCs to the Minister (to be negotiated under Part 4A of the National Parks Act); and
 - ii. a reservation of the lands in accordance with Part 4A of the National Parks Act.
- J. Pursuant to section 71H of the National Parks Act, for the purpose of conducting negotiations under Part 4A of the National Parks Act, the Minister administering the Land Rights Act appointed a negotiating panel (the Aboriginal Negotiating Panel) from amongst the Aboriginal Owners to represent Aboriginal persons having a cultural association with Mt Yarrowyck.
- K. The Minister and Secretary (represented by officers of the Service), the LALCs and the Aboriginal Negotiating Panel have negotiated the terms of this Lease pursuant to Part 4A of the National Parks Act in good faith.
- L. Recognising that Mt Yarrowyck represents only a small part of the cultural landscape in which it is situated, the Minister and Secretary have separately promised to negotiate a memorandum of understanding with the Aboriginal Owners, Armidale LALC and Guyra LALC in relation to the co-management of each of Booroolong, Duval, Imbota, Yina and Mother of Ducks Lagoon Nature Reserves.
- M. As a result of the negotiations for this Lease, the Minister, the LALCs and the Aboriginal Negotiating Panel proposed that the classification of Mt Yarrowyck Nature Reserve under the National Parks Act, as listed in Schedule 14, be changed from nature reserve to Aboriginal area when the lands are vested in the LALCs.
- N. Further, the LALCs and the Aboriginal Negotiating Panel have recommended that the land should be renamed Bulagaranda (Mt Yarrowyck) Aboriginal Area when it is reserved under Part 4A of the National Parks Act.

- O. Accordingly, pursuant to section 71N of the National Parks Act, the Minister caused notification of the proposal to change the classification of Mt Yarrowyck to an Aboriginal area to be tabled in both Houses of Parliament. No resolution of the kind referred to in section 71N(3) disallowing the change of classification was passed by either House.
- P. The Minister, Secretary, LALCs and Aboriginal Owners intend the joint management of Bulagaranda (Mt Yarrowyck) Aboriginal Area to be a great success, and they have negotiated the terms of this Lease to support that outcome.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Lease, the following capitalised words and expressions have the following meanings:

Word or expression	Meaning
<i>Aboriginal Owners</i>	of Bulagaranda, means the persons whose names are entered on the Register of Aboriginal Owners because of the persons' cultural association with Bulagaranda.
<i>Account</i>	the separate account required by section 138(1A) to be kept within the Fund for Bulagaranda.
<i>Anaiwan LALC</i>	Anaiwan Local Aboriginal Land Council, being the Local Aboriginal Land Council constituted by section 50 of the Land Rights Act for the Anaiwan Local Aboriginal Land Council area and being one of the Parties to this Lease.
<i>Armidale LALC</i>	Armidale Local Aboriginal Land Council, being the Local Aboriginal Land Council constituted by section 50 of the Land Rights Act for the Armidale Local Aboriginal Land Council area and being one of the Parties to this Lease.
<i>Board</i>	the board of management for Bulagaranda established pursuant to Division 6 of Part 4A of the National Parks Act and this Lease.
<i>Bulagaranda</i>	all of the lands previously reserved as Mt Yarrowyck Nature Reserve and, from the Commencement Date, reserved as Bulagaranda (Mt Yarrowyck) Aboriginal Area, being the lands comprised in: <ul style="list-style-type: none"> • Lot 33 DP 755851, • Lot 111 DP 753683, • Lot 12 DP 1127360, • Lot 1 DP 1142424, and • Lots 1012, 1014 and 1015 DP 1085937,

Word or expression	Meaning
	<ul style="list-style-type: none"> the former Crown public road within Lot 1015 DP 1085937, and the former Crown public road separating Lot 12 DP 1127360 from Lot 1012 DP 1085937, <p>and depicted as shaded in green on the maps at Schedule 2, together with any additional lands added to Bulagaranda after the Commencement Date pursuant to Division 8 of Part 4A of the National Parks Act.</p>
<i>Business Day</i>	any day of the week excluding any Saturday, Sunday or public holiday.
<i>Commencement Date</i>	<p>the date on which the proclamation referred to in section 71O of the National Parks Act is published in the Gazette, which date is, in accordance with section 71AF of that Act, to be inserted in this Lease as:</p> <p>(a) the date of execution of the lease, and</p> <p>(b) the date of the commencement of the Term.</p>
<i>CPI</i>	the Consumer Price Index for Sydney (all groups) published from time to time by the Australian Bureau of Statistics.
<i>Cultural Area</i>	the area that the original inhabitants of which are the direct forebears of the Aboriginal Owners, being (approximately) the area depicted on the map at Schedule 3.
<i>Cultural Information</i>	in relation to Bulagaranda, means all information about the culture, customs, history, beliefs and practices of the Aboriginal Owners or their forebears and all biographical information about those people.
<i>Fund</i>	the National Parks and Wildlife Fund kept at the NSW Treasury in the Special Deposits Account in accordance with the National Parks Act.
<i>Guyra LALC</i>	Guyra Local Aboriginal Land Council, being the Local Aboriginal Land Council constituted by section 50 of the Land Rights Act for the Guyra Local Aboriginal Land Council area.
<i>Interim Advisory Committee</i>	the advisory committee established by the memorandum of understanding made between the Secretary, the Aboriginal Negotiating Panel, Armidale Local Aboriginal Land Council and Anaiwan Local Aboriginal Land Council and dated 10 May 2017.
<i>LALC</i>	either Anaiwan LALC or Armidale LALC, as the case may be.
<i>LALCs</i>	Anaiwan LALC and Armidale LALC, both jointly and severally.
<i>Land Rights Act</i>	the <i>Aboriginal Land Rights Act 1983</i> (NSW).

Word or expression	Meaning
Law	includes the common law, principles of equity, and laws made by parliament/legislature (and laws made by parliament/legislature includes all acts and also all regulations and other instruments under them, and all consolidations, amendments, re-enactments or replacements of any of them).
Lease	As the context requires: <ul style="list-style-type: none"> (a) the lease of Bulagaranda to the Minister pursuant to Part 4A of the National Parks Act and the provisions of this document; and/or (b) this document setting out the provisions of that lease.
Local Aboriginal Business	a business that is at least 51% owned and controlled by Local Aboriginal Persons and includes a LALC to the extent that it may be operating a business.
Local Aboriginal Person	an Aboriginal person who: <ul style="list-style-type: none"> (a) is an Aboriginal Owner; (b) has a cultural association with; or (c) lives in, the Cultural Area.
Minister	the Minister responsible for the administration of the National Parks Act from time to time, who, at the Commencement Date, is the Minister for the Energy and Environment and Heritage, and who is one of the Parties to this Lease.
National Parks Act	the <i>National Parks and Wildlife Act 1974</i> (NSW).
Native Title Act	the <i>Native Title Act 1993</i> (Cth).
Outgoings	includes all rates, levies, charges, duties, or taxes payable in respect of Bulagaranda.
Parties	Anaiwan LALC, Armidale LALC, the Minister and the Secretary, and Party means any one of them.
Plan of Management	a plan of management under Part 5 of the National Parks Act in relation to Bulagaranda.
Registrar	the Registrar whose office and functions are established by the Land Rights Act.
Secretary	the Secretary of the Department of Planning, Industry and Environment who is one of the Parties to this Lease and has functions under the National Parks Act (see clause 12(3) of the <i>Administrative Arrangements (Administrative Changes – Public Service Agencies) Order 2019</i>).

Word or expression	Meaning
<i>Secretary of DPC</i>	the Secretary of the Department of Premier and Cabinet who is one of the Parties to this Lease and has functions under Part 6 of the National Parks Act (see clause 5 of the <i>Administrative Arrangements (Administrative Changes—Miscellaneous) Order 2020</i>)
<i>Service</i>	the New South Wales National Parks and Wildlife Service described in Division 1 of Part 2 of the National Parks Act.
<i>State</i>	the State of New South Wales.
<i>Term</i>	the term of this Lease being the period described in clause 4.2.

1.2 Meaning of consult

Where in this Lease there is reference to an obligation on the Minister or Secretary or Secretary of DPC to consult with another person about a matter, the obligation of the Minister or Secretary is to:

- (a) fully explain what is proposed to the person;
- (b) provide an opportunity for the person to make informed comment or submission;
- (c) properly consider any oral or written submissions made or advice given by the person;
- (d) advise the Minister's or Secretary's decision; and
- (e) if the decision is contrary to the views expressed by the person, provide reasons for not following that person's views.

1.3 Interpretation

In this Lease, unless the context requires otherwise, the following rules of interpretation apply:

- (a) **(headings and notes)** headings (including those in brackets at the beginning of a paragraph) and notes are for convenience only and do not affect the interpretation of this document;
- (b) **(rules of construction)** no rule of construction operates to the detriment of a Party only because that Party was responsible for the preparation of this Lease or a relevant part of it;
- (c) **(clauses, schedules and annexures)** a reference to a clause, schedule or annexure is a reference to a clause in or annexure or schedule to this Lease;
- (d) **(statutes)** a reference to any statute includes all:
 - (i) regulations and other instruments under it; and
 - (ii) consolidations, amendments, re-enactments or replacements of any of them;
- (e) **(singular and plural)** the singular includes the plural and vice versa;
- (f) **(forms of speech)** if a word or expression is defined, other parts of speech or grammatical forms of the same word or expression have corresponding meanings;

- (g) **(person)** the word “person” includes a company, association, corporation or other body corporate, or a partnership or any government agency and may include the Board;
- (h) **(includes)** the word “includes” or “including” is not to be construed as a limitation;
- (i) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to Australian currency;
- (j) **(agreement in favour of two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of each of them individually and every two or more of them jointly;
- (k) **(executors, administrators, successors)** a reference to a particular person includes a reference to the person’s executors, administrators, successors, and permitted assigns;
- (l) **(office)** a reference to a statutory office includes a reference to the person or officer performing the duties of that office from time to time however titled; and
- (m) **(variations or replacement)** a reference to a document, including this Lease, includes any variation or replacement of that document.

2. Minister’s and Secretary’s acknowledgements about Bulagaranda and the Aboriginal Owners

2.1 Bulagaranda

The Minister and Secretary acknowledge that Bulagaranda:

- (a) is one small part of a broad interconnected landscape that has physically and spiritually sustained, and that has been held, lived in, travelled over, used, managed and cared for by, Anaiwan people and neighbouring language groups from time immemorial,
- (b) is laced with strands of belief, mythology, history, meaning and customary rights by which the Aboriginal Owners are connected to it and to the surrounding landscape, and
- (c) is a place of special cultural significance to the Aboriginal Owners.

2.2 Aboriginal Owners

The Minister and Secretary acknowledge that the Aboriginal Owners:

- (a) are directly descended from the original Aboriginal inhabitants of the Cultural Area, and
- (b) have a cultural association with Bulagaranda that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of that land.

2.3 Cultural use and management

The Minister and Secretary acknowledge that the fundamental purposes of Bulagaranda being vested in the LALCs, reserved under Part 4A of the National Parks Act as an Aboriginal area, leased to the Minister under this Lease and managed by the Board, are to facilitate:

- (a) the ongoing cultural connection between the Aboriginal Owners and Bulagaranda, and
- (b) in particular, the cultural use and management of Bulagaranda by the Aboriginal Owners,

and the Minister and Secretary agree to work with the LALCs, the Board and the Aboriginal Owners to support these purposes.

3. LALCs statutory acknowledgements about Bulagaranda

3.1 Bulagaranda is held on behalf of Aboriginal Owners

Note: This clause is intended to satisfy the requirement in s 71AD(1)(g) of the National Parks Act.

- (a) Pursuant to section 71AD(1)(g) of the National Parks Act, the LALCs acknowledge that on and from the Commencement Date, they hold Bulagaranda on behalf of the Aboriginal Owners.
- (b) The LALCs also acknowledge that they are required by section 52(2)(e) of the Land Rights Act, when exercising their functions in relation to Bulagaranda, to act in the best interests of the Aboriginal Owners.

3.2 LALCs must comply with the National Parks Act

Note: This clause is intended to satisfy the requirement in s 71AD(1)(j) of the National Parks Act.

- (a) Pursuant to section 71AD(1)(j) of the National Parks Act, the LALCs acknowledge that they and their employees, contractors and agents must comply with the provisions of the National Parks Act, any other Act applying to Bulagaranda, the National Parks Regulations and any Plan of Management in force, including provisions concerning the protection of animals, trees, timber, plants, flowers and vegetation.
- (b) This clause is not intended to affect the entitlement of Aboriginal Owners referred to in clause 11.1.

3.3 Land dealings are prohibited or restricted

Note: This clause is intended to satisfy the requirement in s 71AD(1)(n) of the National Parks Act.

Pursuant to section 71AD(1)(n), the LALCs acknowledge that:

- (a) neither Bulagaranda, nor any part of Bulagaranda, may be the subject of any sale, exchange, disposal or mortgage; and
- (b) to the extent to which Bulagaranda may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister.

3.4 Public access

Note: This clause is intended to comply with s 71AD(1)(m) of the National Parks Act.

Pursuant to section 71AD(1)(m) of the National Parks Act, the LALCs acknowledge that while ever Bulagaranda is reserved under Part 4A of that Act, the public generally has (subject to any Plan of Management in force) a right of access to Bulagaranda in accordance with the Act and the National Parks Regulations.

4. Lease

4.1 Lease

The LALCs lease Bulagaranda to the Minister for the Term subject to the provisions in this Lease.

4.2 Term

- (a) The Term is 30 years beginning on the Commencement Date and expiring at midnight on the 30th anniversary of that date.
- (b) Pursuant to section 71AD(1)(c) of the National Parks Act, the Lease may be renewed for a further term of 30 years, with no limitation on the number of times the lease may be so renewed, provided that each Party consents to the renewal.

4.3 Holding over

- (a) The Parties acknowledge that pursuant to section 71AL of the National Parks Act, upon the expiry of the then current Term, the Minister holds over under the Lease until such time as the Lease is renewed or replaced.
- (b) The Parties agree that the provisions of this Lease continue to apply during any period of holding over.

4.4 Permitted use

- (a) The Minister acknowledges that Bulagaranda is leased solely for the purposes of it being:
 - (i) reserved under the National Parks Act as an Aboriginal Area, and
 - (ii) managed as an Aboriginal Area in accordance with Part 4A of the National Parks Act and this Lease.
- (b) The Minister must not use Bulagaranda for any other purpose other than as set out in subclause (a) without the agreement in writing of the LALCs.

4.5 Name

The Minister must not change the name under which Bulagaranda is reserved unless this has been agreed to by the Board and the LALCs.

4.6 Acknowledgement that Lease is subject to native title

Note: This clause is intended to satisfy the requirement in s 71AD(1)(a) of the National Parks Act.

Pursuant to s 71AD(1)(a) of the National Parks Act, the Parties acknowledge that the Lease is subject to any native title that exists in relation to Bulagaranda on the Commencement Date. Nothing in the Lease affects the native title rights, if any, existing in relation to Bulagaranda on that date.

4.7 Acknowledgement that Lease is subject to other existing interests

Note: This clause is intended to satisfy the requirement in s 71AD(1)(k) of the National Parks Act.

- (a) Pursuant to s 71AD(1)(k) of the National Parks Act, the Parties acknowledge that the Lease is subject to any existing interest within the meaning of section 39 of the National Parks Act, any licence issued under Part 9 of the Act, any lease, licence, franchise or easement granted under Part 12 of the Act and any authority or consent issued under the Act or the regulations affecting Bulagaranda, or any part of Bulagaranda, that was current on the Commencement Date.
- (b) However, the Minister warrants that, as at the Commencement Date, there is no such existing interest, licence, lease, franchise, easement, authority or consent affecting Bulagaranda or any part of it.

4.8 Sub-leasing and licensing etc.

Note: This clause is intended to satisfy the requirement in s 71AD(1)(l) of the National Parks Act.

- (a) The Minister may grant, extend or extinguish any interest, licence, lease, sublease, franchise, easement, authority or consent of a kind referred to in section 71AD(1)(k) of the National Parks Act, or of any kind, in relation to Bulagaranda only with the written approval of the Board.
- (b) The requirement in subclause (a) is in addition to any other requirements or obligations that may apply to the Minister, including any such requirements or obligations in the National Parks Act.
- (c) All lessees, sub-lessees, licensees and grantees must be required by the Minister or Secretary to take out and maintain adequate insurances (including public liability insurance) appropriate to the nature of their interests.

4.9 LALCs' right of inspection

- (a) To enable them to be satisfied that Bulagaranda is being used only for the permitted purpose and in accordance with this Lease, the LALCs are entitled to enter and inspect Bulagaranda at any reasonable time during the Term and any holding over upon giving reasonable notice.
- (b) This right is in addition to, and does not limit, all other rights that Board members, staff, agents and members of the LALCs may have to enter Bulagaranda.

5. Rent and other payments

Note: This clause is intended to comply with s 71AE of the National Parks Act.

5.1 Obligation to pay rent and other amounts

In consideration for the LALCs leasing Bulagaranda, the Minister must make the payments set out in this clause 5.

5.2 Annual payment of rent

- (a) The Minister must pay rent annually in accordance with this clause 5.2.
- (b) The initial rent payable by the Minister is \$20,000 per annum.
- (c) Subject to subclause (e), the Minister must pay the rent in advance on or before 31 July every year of the Term and any holding over.
- (d) The amount of rent payable for the first and last years of the Term, and for any other period that is less than one full year, is to be a proportionate amount of the annual rent amount, determined by dividing the number of days in the period by 365 and multiplying the result by the annual rent amount.
- (e) For the first part year of the Term, the rent is to be paid within 28 days of the Commencement Date.

5.3 Annual payment of Operational Funds and Community Development Funds

- (a) In addition to the rent, and subject to clause 5.5, the Minister must pay:
 - (iii) \$65,000 per annum in annual Operational Funds; and
 - (iv) \$70,000 per annum in Community Development Funds,for the Term and any holding over.
- (b) Subject to subclause (d), the Operational Funds and Community Development Funds must be paid in advance on or before 31 July every year of the Term and any holding over.
- (c) The amount of Operational Funds and Community Development Funds payable for the first and last years of the Term, and for any other period that is less than one full year, is to be a proportionate amount of the annual amount, determined by dividing the number of days in the period by 365 and multiplying the result by the annual amount.
- (d) For the first part year of the Term, the Operational Funds and Community Development Funds are to be paid within 28 days of the Commencement Date.

5.4 Payment of Establishment Project Funds

- (a) In addition to the rent and other funds referred to above, the Minister must pay \$110,000 in Establishment Project Funds in 3 instalments in accordance with this clause 5.4
- (b) The first instalment of Establishment Project Funds is to be an amount \$36,000 paid within 28 days of the Commencement Date.
- (c) The second and third instalments of the Establishment Project Funds are to be amounts of \$37,000 each paid on or before 31 July in each of the following 2 years.

5.5 Annual CPI adjustments

- (a) **(Rent)** Subject to subclause (c), on 1 July in each year during the Term and any holding over (other than a year for which rent has been determined by a rent review pursuant to clause 5.6), the amount of rent payable for that year is to be calculated by multiplying the annual rent payable in respect of the immediately previous year by A/B where:

A = the Annual CPI figure most recently published prior to the 1 July on which the rent is being adjusted; and

B = the Annual CPI figure last published prior to the previous 1 July.

- (b) **(Operational Funds and Community Development Funds)** Subject to subclause (c), on 1 July in each year during the Term and any holding over, the amount of Operational Funds and Community Development Funds payable for that year is to be calculated by multiplying the annual amount payable in respect of the immediately previous year by A/B where:

A = the Annual CPI figure most recently published prior to the 1 July on which the funds are being adjusted; and

B = the Annual CPI figure last published prior to the previous 1 July.

- (c) **(Adjustment must not result in decrease)** No adjustment pursuant to this clause 5.5 is to occur for any year if this would result in the annual rent payable for that year being less than the annual rent payable for the previous year.

5.6 Rent reviews

- (a) Every 5 years of the Term and any holding over, the amount of rent payable is to be reviewed by the Parties and if they consider it necessary re-determined.
- (b) Rent reviews under this clause 5.6 will generally occur as part of a 5 yearly review of this Lease, which is required under section 71AH of the National Parks Act and clause 17 of this Lease.

5.7 Rent and other amounts to be paid into the Account

- (a) Pursuant to sections 71AE(9) and 138(1)(b1) of the National Parks Act, the Minister must pay all rent to the credit of the Account.
- (b) The Minister must also pay all other amounts required by this clause 5 to the credit of the Account.

6. Other obligations in relation to Bulagaranda

6.1 Outgoings

- (a) The Minister must meet the cost of all Outgoings payable in respect of the Term and any holding over.
- (b) If the LALCs are ever required by a third party to pay any such Outgoings, then upon being given proof of the payment, the Minister must reimburse the LALCs or LALC within 28 days.
- (c) If a particular decision of the Board results in an extraordinary one off Outgoing becoming payable, and in the Minister's or Secretary's reasonable view this ought to be paid out of the Account, the Minister or Secretary may request the Board to authorise payment out of the Account.

6.2 Minister to assume LALCs' obligations under land management statutes

- (a) During the Term and any holding over, the Minister must, at the Minister's own expense, promptly and diligently discharge all of the LALCs' duties and obligations as owners, occupiers or managers of Bulagaranda imposed by or arising under all land management statutes.
- (b) Without limiting subclause (a), the Minister must discharge all of the LALCs' duties and obligations arising under the:
 - (i) *Rural Fires Act 1997* (NSW);
 - (ii) *Noxious Weeds Act 1993* (NSW);
 - (iii) *Pesticides Act 1999* (NSW);
 - (iv) *Wild Dog Destruction Act 1921* (NSW); and
 - (v) *Rural Lands Protection Act 1998* (NSW).
- (c) The Parties acknowledge that the obligations imposed on the Minister under this clause 6.2 may fall within the scope of the care, control and management of Bulagaranda, and that the Minister may direct the Board to take all actions necessary to comply with this clause 6.2 and that the Minister's obligations may be discharged by the Board.
- (d) To facilitate the Minister's discharge of these duties and obligations, if the LALCs receive a notice or instrument in relation to Bulagaranda pursuant to a land management statute, they will promptly give a copy of the notice to the Minister or the Secretary as soon as practicable.
- (e) In addition, the Minister must notify all relevant authorities of the commencement of the Lease and request that any notice or legal instrument under any land management statute that may be served upon the LALCs in respect of Bulagaranda is also served upon the Minister.

6.3 Public liability insurance

The Minister must maintain public liability insurance for Bulagaranda.

6.4 Recurrent funds

- (a) The Minister and Secretary acknowledge that prior to the Commencement Date, the care, control and management of Mt Yarrowyck Nature Reserve was being paid for out of recurrent funds available for the administration of the National Parks Act ("**Recurrent Funds**").
- (b) The Minister and Secretary agree that neither the vesting and reservation of Bulagaranda under Part 4A, nor this Lease, are intended to, or will, lead to any reduction in the proportion of Recurrent Funds allocated for the care, control and management of Bulagaranda.
- (c) The Minister and Secretary must ensure that during the Term and any holding over, Recurrent Funds continue to be equitably and adequately allocated to the care, control and management of Bulagaranda (including for such things as Outgoings, facility maintenance, and pest and fire management) as if Bulagaranda remained under the care, control and management of the Secretary.

- (d) To enable the Board to satisfy itself that Recurrent Funds are being equitably and adequately allocated for the care, control and management of Bulagaranda in accordance with this Clause 6.4, the Secretary must ensure that the Board:
 - (i) is kept advised of the cyclical budgetary processes and deliberations for allocating Recurrent Funds,
 - (ii) is able to participate in those processes and deliberations in so far as they relate to Bulagaranda, and
 - (iii) is routinely made aware of the outcomes of those processes.
- (e) To avoid any doubt, where under either the National Parks Act, Law generally, or this Lease the Minister or Secretary has an obligation in relation to Bulagaranda, the performance of that obligation is not to be funded out of the Account.
- (f) As a consequence of subclause (e), and without limiting the effect of that subclause, both:
 - (i) the delivery of the joint management coordination support services pursuant to clause 8.2; and
 - (ii) the provision of Board training pursuant to clause 8.4,
 are to be funded out of Recurrent Funds and not out of the Account.

7. The Board of management

7.1 Establishment

Note: This clause is intended to comply with s 71AN of the National Parks Act.

- (a) The Minister must establish the Board as soon as it is practicable to do so after the Commencement Date.
- (b) The Minister must take all reasonable steps to ensure that there is always a Board with a full complement of appointed members.

7.2 Composition of the Board

Note: The composition of the Board must be in accordance with section 71AN of the National Parks Act.

Having regard to the fact that Bulagaranda is jointly held by the LALCs, the Minister agrees that the Board will have 13 members and that this will include one nominee from each of the LALCs.

7.3 Functions and powers

- (a) The Board will have the powers and functions of a board of management for Part 4A lands under the National Parks Act, including those set out in section 71AO of that Act.
- (b) The Board will have such other functions as may be given to it by this Lease.

- (c) The Parties acknowledge that pursuant to the National Parks Act, the Board will not be a body corporate, will not have legal personality, may not hold property in its own name and may not sue or be sued in its own name.
- (d) The Board may seek independent advice in connection with the performance of its functions.

7.4 Deputies

- (a) The Minister must appoint a deputy for every Board member.
- (b) A person who is disqualified from appointment as a Board member is also disqualified from appointment as a deputy.

7.5 Term of office

- (a) Board members and deputies are to hold office for 4 years from the date of their appointment.
- (b) The instrument of appointment for a Board member or deputy may state that the Board member or deputy will remain in office after their term has ended until their replacement has been appointed, but not so as to result in any Board member remaining in office:
 - (i) for more than 12 months after the expiry of his or her term, or
 - (ii) for any longer than the 6 year maximum referred to in section 71AP of the National Parks Act.

7.6 Disqualification from office as a Board member

- (a) The Minister must not appoint as a Board member or deputy a person who is disqualified from managing corporations for the purposes of the *Corporations Act 2001* (Cth).
- (b) The Minister must revoke the appointment of any Board member or deputy who becomes disqualified from managing corporations for the purposes of the *Corporations Act 2001* (Cth).

7.7 Procedures for appointing members of the Board

- (a) **(Call for nominations)** The Minister must cause notice calling for nominations to be given to the relevant person or persons not less than 8 months prior to the expiry of the term of office of an outgoing Board member. The notice is to advise a closing date for nominations, which date must not be less than 6 months prior to the expiry of the outgoing Board members' term.
- (b) **(Notice for nomination of Aboriginal Owner Board members)** In relation to Aboriginal Owner positions on the Board, the Minister is to ensure that the notice is given to at least:
 - (i) the LALCs; and
 - (ii) the Registrar of the Land Rights Act,and that it is also published in the Koori Mail and in a newspaper circulating in the Cultural Area.

- (c) **(Consultation with the LALCs)** Before making appointments to the local government, local landowner and conservation group Board positions, the Minister must consult with the LALCs about the nominations to those positions.

7.8 Aboriginal Owner Board member selection process

- (a) The Minister agrees that, generally, Aboriginal Owner Board members and deputies should be appointed following and in accordance with a selection process conducted amongst the Aboriginal Owners.
- (b) Nothing in this clause 7.8 obliges the Minister to refrain from appointing Aboriginal Owner Board members or deputies until an Aboriginal Owner selection process has been conducted where:
 - (i) an appointment is required as a matter of urgency, or
 - (ii) it appears unlikely to Minister, on reasonable grounds, that a process will be completed within a reasonable timeframe or at all.

7.9 Local Government Board member

The Minister acknowledges that the Aboriginal Negotiating Panel and the LALCs have expressed a wish to ensure that the local government council appointee to the Board has seniority, experience and skills necessary to make them an effective member of the Board. Accordingly, all Parties intend that the nominee should be the general manager or another senior staff member of the council .

7.10 Meeting procedures

Note: See also Schedule 14A to the National Parks Act.

Pursuant to clause 8 of Schedule 14A to the National Parks Act, the Board may determine its own procedures for the calling of meetings and for the conduct of business at those meetings. The Minister and Secretary must ensure that any such agreed procedures are recorded in writing and provided to the LALCs.

7.11 Indemnity for Board members

The Minister agrees that the State will indemnify all Board members and deputies when they are acting in good faith in the discharge of their duties under this Lease, the National Parks Act or Law generally (and whether acting individually or collectively).

7.12 Insurance cover for Board members

- (a) The Minister agrees that all members of the Board will be able to obtain cover under the Service's Miscellaneous Insurance policy (or such other similar insurance policy in place from time to time) against any personal injury sustained by them while engaged in official duties both on and off Bulagaranda.
- (b) Should an accident occur whilst any Board member is using his or her private vehicle on Board business, then:

- (i) the amount claimable for property damage against the Service will be limited to an amount equal to the basic excess on that vehicle's comprehensive insurance policy; and
- (ii) provision to the Service of prior evidence of comprehensive insurance coverage of a Board member's private vehicle will be required before any amount is claimable for property damage.

7.13 Accounting and audit

- (a) The Parties acknowledge that s71AQ of the Act requires the Board to:
 - (i) cause proper accounts and records to be kept in relation to all its operations;
 - (ii) before the commencement of each financial year, prepare and submit to the Minister a detailed budget relating to its proposed operations during that financial year;
 - (iii) furnish the Minister with such information relating to each budget as the Minister may request;
 - (iv) monitor its financial activities to determine whether it is operating in accordance with its budget; and
 - (v) in each year, as soon as practicable after 30 June, but on or before 1 October, forward to the Minister an annual report of its operations for the 12 months ending on 30 June in that year.
- (b) The Parties acknowledge that Division 3 of Part 3 of the *Public Finance and Audit Act 1983* requires the Board to:
 - (i) cause proper books and records to be kept in relation to all of its operations;
 - (ii) prepare financial statements for each financial year; and
 - (iii) submit such financial statements to the Minister and to the Auditor-General not later than 6 weeks after the end of the financial year to which they relate.
- (c) The Parties acknowledge that, pursuant to s 71AO of the National Parks Act, the Board exercises its functions, subject to the control and direction of the Minister, and the Parties agree that the Minister may direct:
 - (i) that financial dealings of the Board and the operation of the Account will be subject to the scrutiny of the Service's ongoing internal audit program, in the same manner and to the same extent as the scrutiny given to the accounting processes and financial dealings of the Service branch within which the Bulagaranda lands are located, and
 - (ii) that the Board to comply with the Service's Accounting Manual in the administration of its account payment and other accounting and financial administration practices
- (d) The Minister and Secretary agree to bear all costs associated with any audit of the Board's accounts, including any internal audit of the kind referred to in subclause (c).

- (e) The Parties agree it is their understanding that if there ever is no Board in existence, the Secretary may fulfil any obligations under Division 3 of Part 3 of the *Public Finance and Audit Act 1983* in relation to the Account.
- (f) The Minister and Secretary are to ensure that the LALCs receive copies of the Board's:
 - (i) annual budgets and any information in relation to the budget's requested by the Minister,
 - (ii) annual reports of operations, and
 - (iii) audited financial statements,
 within 28 days of such documents being finalised.

8. Minister and Secretary to assist the Board

8.1 Assistance to the Board generally

The Minister and Secretary must give the Board, and must ensure that the Board is given, all reasonable assistance the Board requires to properly understand its functions and perform them effectively.

8.2 Joint management coordination

- (a) Without limiting the Minister's and Secretary's obligations in clause 8.1, the Minister and Secretary must provide joint management coordination support ("**Joint Management Coordination Support**") in accordance with this clause 8.2 to directly assist the Board and to help ensure that effect is given to the Board's decisions.
- (b) The Joint Management Coordination Support is to include:
 - (i) facilitating effective communication between the Board and the Service;
 - (ii) arranging and coordinating Board meetings as needed, including arranging transport, accommodation, meeting venues and the like;
 - (iii) ensuring the Board is provided with the information and briefings it needs to make properly informed decisions;
 - (iv) providing, or arranging the provision of, advice that may be required by the Board;
 - (v) attending at Board meetings and taking minutes;
 - (vi) maintaining records of Board meetings;
 - (vii) assisting the Board to prepare budgets, maintain financial records and prepare annual operational reports in accordance with section 71AQ of the National Parks Act;
 - (viii) assisting the Board to comply with its obligations under the *Public Finance and Audit Act 1983* and other applicable legislation;
 - (ix) monitoring the implementation of Board decisions; and
 - (x) reporting to the Board on the implementation of Board's decisions.

- (c) The officer or officers of the Service providing the Joint Management Coordination Support must be clearly identified, and must be reasonably available, to all Board members.
- (d) The Minister and Secretary agree that the Joint Management Coordination Support is not the responsibility of the Board member nominated by the Secretary and referred to in section 71AN(3)(d) of the National Parks Act.
- (e) The Parties agree it is desirable that some or all of the Joint Management Coordination Support should be the responsibility of an officer of the Service who is an Aboriginal Owner or Local Aboriginal Person.
- (f) However, the Parties acknowledge that subclause (e) does not create an enforceable obligation on the Minister or Secretary to employ a Local Aboriginal Person to provide the Joint Management Coordination Support.

8.3 Clear, accurate and timely information and briefings

- (a) The Minister and Secretary acknowledge that Board procedures may be unfamiliar to some Board members and that Board members may have varying degrees of literacy and numeracy, experience and capability.
- (b) Having regard to this, and without limiting the Minister's and Secretary's obligations in clause 8.1, the Minister and Secretary must ensure:
 - (i) that the Service provides the Board with the accurate information and clear advice it requires to understand and perform its functions,
 - (ii) that all written briefings and submissions the Service gives to the Board are written in clear and plain language, so that they are readily understandable, and
 - (iii) that all written briefings and submissions are provided to the Board in a timely fashion, allowing Board members to read and consider them before they are required to make any decision.

8.4 Board induction and training

- (a) The Minister and Secretary must provide appropriate training for all Board members to meet the Board members' reasonable training needs.
- (b) Without limiting subclause (a), the Minister and Secretary must provide:
 - (i) induction training in accordance with subclause (c) for all new Board members as soon as practicable after their appointment (which training is to be offered at the same time to existing Board members as a refresher);
 - (ii) governance training; and
 - (iii) cultural capabilities training in accordance with subclauses (d) to (f).
- (c) **(Induction training)** The induction training for Board members is to cover at least:
 - (i) the legal and institutional framework for the joint management of Bulagaranda, including this Lease;
 - (ii) the respective roles and functions of each of the Board, the Minister, the Secretary and the Service in relation to the care, control and management of Bulagaranda;

- (iii) the management principles applicable under the National Parks Act and any Plan of Management;
 - (iv) the rights and entitlements of the Aboriginal Owners and of members of the public; and
 - (v) the procedures and responsibilities of the Board and Board members,
- and must include the provision of an induction pack in which the Board members receive all documents necessary for understanding and performing their roles (including Part 4A and Schedule 14A of the National Parks Act and this Lease).
- (d) **(Cultural capabilities training)** In addition, and without limiting subclause (a), the Minister must ensure that cultural capabilities and cross-cultural relationship training is provided for all Board members who are not Local Aboriginal Persons.
 - (e) All Board members who are Local Aboriginal Persons must also be invited to participate in the cultural capabilities and cross-cultural relationship training.
 - (f) The cultural capabilities and cross-cultural relationship training is to be given by a provider agreed to by the Aboriginal Owner Board members.

9. The Account

9.1 Establishment of the Account

- (a) As soon as practicable after the Commencement Date, and before any money is paid into the Fund pursuant to this Lease, the Minister must ensure that the Account is established in accordance with section 138(1A) of the National Parks Act.
- (b) The Board may direct that money paid into the Account from different sources or for different purposes is paid into different sub-accounts within the Account.

9.2 Payments into the Account

- (a) The Minister must ensure that:
 - (i) the rent and all other amounts payable under clause 5;
 - (ii) all monies received in respect of matters of the kind referred to in section 138(1)(b) of the National Parks Act in relation to Bulagaranda (including amounts received in respect of any interest, licence, lease, franchise, easement, authority or consent of a kind referred to in section 71AD(1)(k) of the National Parks Act, or of any kind);
 - (iii) all interest on the investment of the Account pursuant to section 138(1C) of the National Parks Act;
 - (iv) any gifts or bequests received by the State, the Minister, the Secretary or the Service for the benefit of the Board or of Bulagaranda, and
 - (v) any other amounts paid into the Fund in respect of Bulagaranda,
 are carried into the Account.

- (b) However, any amount paid to the State, the Minister, the Secretary or the Service by way of a gift of bequest expressed to be for the benefit of the Aboriginal Owners is to be paid to the LALCs to hold and use for the benefit of the Aboriginal Owners.
- (c) In addition, the Board may require that any amount obtained from an alternative funding source in relation to the management of Bulagaranda, is to be paid into the Fund and carried into the Account. The Minister and Secretary will ensure that any such requirement is complied with.

9.3 Payments out of the Account

- (a) No payments are to be made from the Account without authorisation by the Board.
- (b) For the purposes of subclause (a), the Board is taken to have authorised a payment from the Account if the Board has approved a contract under which the payment is required. The Secretary may proceed to make such payment even if the Board has ceased to exist by the date of the payment.
- (c) The LALCs acknowledge that, pursuant to sections 71AE(9) and 139(5) of the National Parks Act, the Account may be applied only to:
 - (i) the management of Bulagaranda (including the preparation of a Plan of Management); and
 - (ii) in accordance with the provisions of any Plan of Management.
- (d) The Parties record their understanding that “management of Bulagaranda”, for the purposes of section 139(5) of the National Parks Act, includes:
 - (i) obtaining independent advice relevant to the performance of the Board’s functions;
 - (ii) facilitating or conducting cultural activities and land use and management practices on Bulagaranda;
 - (iii) facilitating or improving the capacity of Aboriginal Owners and other Local Aboriginal People to participate in the management of Bulagaranda;
 - (iv) facilitating or improving the capacity of Aboriginal Owners and other Local Aboriginal People to obtain employment or take advantage of business opportunities afforded by the joint management of Bulagaranda,
 - (v) development of the kind prescribed for the purposes of section 72AA(6) of the National Parks Act;
 - (vi) development and implementation of the Community Development Plan referred to in clause 13.5; and
 - (vii) acquiring lands for addition to Bulagaranda (where this is agreed to as set out in clause 14.1).

10. Care, control and management of Bulagaranda

Note: This clause is intended to comply with s 71AD(1)(f) of the National Parks Act. In this regard see also s 63(2) of the National Parks Act.

See also s 71AO of the National Parks Act which provides for the statutory functions of boards of management of Part 4A National Parks.

10.1 Care, control and management vested in the Board

The Parties acknowledge that from the date the Board is established:

- (a) the Secretary no longer has the care, control and management of Bulagaranda; and
- (b) the care, control and management of Bulagaranda is vested in the Board in accordance with Part 4A of the National Parks Act.

10.2 Interim Advisory Committee

- (a) The Secretary agrees that prior to the Board being established, the Secretary will continue to consult with the Interim Advisory Committee in relation to all matters concerning the care, control and management of Bulagaranda.
- (b) The Minister and the Secretary agree to meet the reasonable costs of consulting with the Interim Advisory Committee, including any reasonable travel and accommodation costs, and other related out of pocket expenses, of members of that Committee.

10.3 Giving effect to the Board's decisions

- (a) The Minister and Secretary must, subject to subclause (c), the National Parks Act, Law generally, and any Plan of Management, do all things necessary to ensure that full effect is given to the Board's decisions in relation to Bulagaranda.
- (b) Without limiting subclause (a), the Minister or Secretary (as the case may be) must give effect to that subclause by:
 - (i) **(Directions to the Service)** giving all necessary directions to the Service required to implement the Board's decisions and directions;
 - (ii) **(Cooperative land management arrangements with neighbours)** if the Board reaches agreement with the owner or lessee of land in the vicinity of Bulagaranda in relation to cooperative land management activities, entering into and giving effect to such agreement; and
 - (iii) **(Law enforcement)** commencing or authorising the commencement of proceedings pursuant to section 191 of the National Parks Act if requested to do so by the Board.
- (c) The Minister and Secretary are not required to implement or give effect to a decision of the Board if the Board has refused or failed to authorise any necessary associated payment out of the Account.

- (d) If the Minister or Secretary considers that giving effect to a decision of the Board would be contrary to the National Parks Act or Law generally, or to a Plan of Management, the Minister or Secretary must advise the Board of this and give the Board a written explanation.
- (e) Pursuant to section 71AD(1)(h) of the National Parks Act, the Parties acknowledge that officers of the Service are (subject to any Plan of Management in force and to any directions given and supervision and oversight exercised by the Board) entitled to exercise on and with respect to Bulagaranda any power, authority, duty or function conferred or imposed on any one or more of them by or under the National Parks Act or any other Act.

Note: This subclause is intended to comply with s 71AD(1)(h) of the National Parks Act.

- (f) The Minister and Secretary acknowledge that in accordance with section 71BH of the Act, the Secretary and all officers of the Service must, when exercising any power, authority, duty or function conferred or imposed on them under the National Parks Act in relation to the management of Bulagaranda have regard to the interests of the Aboriginal Owners of the Lands.

10.4 Availability of the Service's resources

Minister and Secretary agree to make reasonable resources, staff and equipment of the Service available for the care, control and management of Bulagaranda.

10.5 Plan of Management

Note: See Part 5 of the National Parks Act, and s 72 in particular.

- (a) The Minister agrees to ensure, including by giving all necessary directions, that the Board in consultation with the Secretary, prepares a Plan of Management as soon as practicable.
- (b) The Parties agree that any Plan of Management is to be prepared having regard to (without limitation):
 - (i) the matters and principles set out in clause 2; and
 - (ii) the matters referred to in s 72AA(6)(c) of the National Parks Act and clause 80 of the National Parks and Wildlife Regulation 2009, and to any Community Development Plan.
- (c) The Minister must meet all costs associated with publicly exhibiting, conducting public consultations in relation to, and the formal adoption of, any Plan of Management.

10.6 Voluntary work

- (a) The Minister acknowledges that there may be occasions when Aboriginal Owners, LALC members or other Local Aboriginal People wish to undertake voluntary work on or off Bulagaranda on land use and management projects approved by the Board.

- (b) Voluntary work of the kind described in subclause (a) may occur but the Minister may reasonably require that such volunteers be supervised by Service staff or be given appropriate training in the use of relevant equipment and in the principles and practices of occupational health and safety in the workplace.
- (c) Where Aboriginal Owners, LALC members or other Local Aboriginal People undertake voluntary work pursuant to this clause 10.6, the Minister must ensure that they will be covered under the Service's Miscellaneous Insurance Policy (or other similar insurance policy in effect from time to time) against any injury sustained by them during their carrying out or arising from that work.

11. Cultural use, Aboriginal heritage and cultural knowledge

11.1 Cultural use of Bulagaranda

Note: This acknowledgement is intended to comply with s 71AD(1)(i) of the National Parks Act.

See also the exemptions in Part 7 of the National Parks Regulation, which apply to Aboriginal people generally.

- (a) The Parties acknowledge that the Aboriginal Owners, and any other Aboriginal persons who have the consent of the Aboriginal Owner Board members, are entitled (subject to the National Parks Act and any other Act applying to Bulagaranda and to any Plan of Management) to enter and use Bulagaranda for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal Owners.
- (b) The LALCs acknowledge that pursuant to section 71AO(2) of the National Parks Act, the Board has the function of considering and approving, or withholding approval for, proposals by Aboriginal Owners or other Aboriginal people to conduct cultural activities on Bulagaranda.
- (c) The LALCs agree that hunting with firearms on Bulagaranda is undesirable and it is their wish that any Plan of Management should prohibit it.
- (d) All Parties agree that Aboriginal Owners must never be charged a fee for access to or use of Bulagaranda under this clause 11.1.

11.2 Care, preservation and protection of Aboriginal objects and places on Bulagaranda

- (a) **(Protocol)** The Secretary and the Secretary of DPC agree to comply with any protocol or protocols developed and agreed between the Secretary, the Secretary of DPC and the Board relating to the care, preservation and protection of Aboriginal objects, including Aboriginal remains, found or located on Bulagaranda.
- (b) **(Notification of new finds)** The Secretary and Secretary of DPC agree to ensure that the Board is given notice of any new finds of Aboriginal objects on Bulagaranda by:
 - (i) the Service, or
 - (ii) any person who gives notice of such finds under section 89A of the National Parks Act.

- (c) **(New finds to remain in situ)** Unless and until the Board directs otherwise, all new finds are to be left in situ. However, this subclause (c) is not intended to prevent staff of the Service from moving an Aboriginal object without having first sought the Board's direction, if this is necessary in order to protect the object from immediate harm.
- (d) **(Transfer of Aboriginal objects)** The Minister, Secretary and Secretary of DPC acknowledge that the Aboriginal Owners are Aboriginal owners entitled in accordance with Aboriginal tradition to possession, custody or control of Aboriginal objects found on Bulagaranda (whether before or after the Commencement Date) for the purposes of section 85A of the National Parks Act.
- (e) If requested to do so by the Aboriginal Owners, the Secretary of DPC will transfer any or all Aboriginal objects found on Bulagaranda to the possession, custody and control of one or both of the LALCs on behalf of the Aboriginal Owners.
- (f) The LALCs agree that where ownership of Aboriginal objects has been transferred but the objects are returned to or remain on Bulagaranda, the care, preservation and protection of the objects will fall within the care, control and management of Bulagaranda under the Board.
- (g) For the purposes of this clause 11.2, a request made by the Aboriginal Owner members of the Board will be taken to be a request of the Aboriginal Owners.
- (h) **(Secretary of DPC's Part 6 functions)** The Secretary of DPC agrees not to grant or vary an Aboriginal heritage impact permit under Division 2 of Part 6 of the National Parks Act in relation to Bulagaranda or any Aboriginal object or place located on Bulagaranda, without consulting the Board.

11.3 Cultural information

- (a) Subject to subclause (c), the Minister, the Secretary and the Secretary of DPC agree to compile, and provide the Board and LALCs with a complete copy of, all documented Cultural Information in relation to Bulagaranda and the Aboriginal Owners in the custody, possession or control of both or either of them.
- (b) The compiled documented Cultural Information is to be provided:
 - (i) to the LALCs - as soon as practicable after the Commencement Date, and
 - (ii) to the Board – as soon as practicable after its establishment.
- (c) The Minister, the Secretary and the Secretary of DPC are not obliged to provide a copy of any documented Cultural Information if this would be contrary to an agreement with a person who provided the information or document.
- (d) The Minister, Secretary and the Secretary of DPC agree that the Board's care, control and management of Bulagaranda will include control over the use of all Cultural Information in relation to Bulagaranda in the custody, possession and control of the Minister or the Secretary or the Secretary of DPC.
- (e) The LALCs acknowledge that the Board's control over the use of Cultural Information will be subject to any conditions and restrictions that may apply to the use of that information by the Minister, Secretary or Secretary of DPC.

12. Laws, instruments and decisions affecting Bulagaranda and the rights of the LALCs or Aboriginal Owners

12.1 Laws affecting Bulagaranda

- (a) The Minister acknowledges that the LALCs and Aboriginal Owners have agreed to the vesting, reservation and lease back of Bulagaranda under Part 4A of the National Parks Act and the provisions of this lease based on the provisions of that Part and that Act as they exist at the Commencement Date.
- (b) The Minister must not take any step to make, or facilitate the making of, any changes to the National Parks Act or any other Act or regulations (including by seeking to make, amend or have repealed any Act or regulations) that may affect:
 - (i) the rights, obligations or functions of the LALCs, the Aboriginal Owners or the Board in relation to Bulagaranda; or
 - (ii) the care, control and management of Bulagaranda,unless the Minister has first consulted the LALCs and the Board about the proposed change.
- (c) The Minister agrees that in the event of a change or proposed change of the kind described in subclause (b)(i), the LALCs and Board may require that the lease be reviewed, and that if they do require a review, clause 17.1 will apply to the review as if it was a regular scheduled review under that clause.

12.2 Regulations about Bulagaranda

Note: See s 71AD(2)(a) of the National Parks Act

- (a) Before the making, amending or repealing of any regulation in respect of Bulagaranda, the Minister must consult with the LALCs and the Board about the proposed making, amendment or repeal of the regulation.
- (b) This clause 12.2 does not affect or limit clause 12.1.

12.3 Decisions, instruments and actions generally

The Minister, Secretary and Secretary of DPC further agree that before making any decision or instrument, or taking any action, under the National Parks Act or under any enactment or regulations, that may affect:

- (a) the rights, obligations or functions of the LALCs, the Aboriginal Owners or the Board in relation to Bulagaranda; or
- (b) the care, control and management of Bulagaranda,

the Minister, Secretary or Secretary of DPC (as the case may be) will first consult the LALCs and the Board about the proposed decision, instrument or action.

12.4 World heritage listing

Note: See s 71AD(2)(c) of the National Parks Act

- (a) The Minister agrees not to permit Bulagaranda, or part of it, to become part of an area listed as an item of cultural heritage or natural heritage of outstanding universal value in accordance with:
 - (i) the *World Heritage Properties Conservation Act 1983* of the Commonwealth, and
 - (ii) the Convention for the Protection of the World Cultural and Natural Heritage adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization, being the convention a copy of the English text of which is set out in the Schedule to the Commonwealth Act referred to in paragraph (i),unless the Minister has first consulted the LALCs and the Board about the proposed listing and unless the LALCs and the Board have consented to the listing.
- (b) The Parties acknowledge that if Bulagaranda, or part of it, does become part of an area that is so listed, they must comply with any requirements that arise because of that listing.

13. Employment, training and contracting and economic and community development

13.1 General

- (a) The Minister acknowledges that the need for economic development is a matter of profound and urgent concern for the LALCs, the Aboriginal Owners and Aboriginal people in New South Wales generally.
- (b) The Minister acknowledges that this clause 13 is intended to help address this concern.
- (c) The Minister and Secretary agree to work cooperatively with the Board to achieve the best employment, training, contracting and business outcomes for Local Aboriginal People and Local Aboriginal Businesses arising from the Part 4A reservation and joint management of Bulagaranda that they can.

13.2 Departmental Aboriginal Employment Plan

- (a) Pursuant to section 71AD(3) of the National Parks Act, it is a condition of the Lease that the Minister must undertake to use the Minister's best endeavours to implement the *Aboriginal Employment and Training Plan 1991-1996* published by the National Parks and Wildlife Service in October 1991 or any plan replacing that Plan and, in particular, any timetable set out in such a plan. The Minister must report to Parliament from time to time on progress achieved in implementing any such plan.
- (b) The Parties agree that, for the purposes of section 71AD(3) of the National Parks Act, the Office of Environment and Heritage *Aboriginal Employment Plan 2018-2023* is intended to be a plan replacing the *Aboriginal Employment and Training Plan 1991-1996* referred to in that section.

- (c) The Minister agrees to consider and have proper regard to suggestions and proposals made by the Board or the LALCs about implementing the Office of Environment and Heritage *Aboriginal Employment Plan 2018-2023*, and any plan replacing that Plan, in relation to Bulagaranda and the Cultural Area.
- (d) The Minister must ensure that at all times there is current a plan replacing the *Aboriginal Employment and Training Plan 1991-1996*.
- (e) The Minister must consult with the Board and the LALCs in relation to the preparation, review and replacement of each such plan.

13.3 Training, recruitment and procurement

The Secretary agrees to comply with any reasonable protocol or protocols developed by the Board about notifying Aboriginal Owners, the LALCs and Local Aboriginal People about training, employment and contracting opportunities and otherwise facilitating Local Aboriginal People and Local Aboriginal Businesses taking advantage of such opportunities.

13.4 Business opportunities

- (a) The Minister and Secretary support the conduct of appropriate business enterprises by Local Aboriginal People and Local Aboriginal Businesses on Bulagaranda and other parks and reserves.
- (b) The Minister and Secretary agree that generally a business enterprise proposed by a Local Aboriginal Person or Local Aboriginal Business will be appropriate and should be approved if:
 - (i) it is consistent with the management principles and other relevant provisions in the National Parks Act;
 - (ii) it is consistent with any Plan of Management; and
 - (iii) to the extent it is to be conducted on Bulagaranda – it is approved by the Board.

13.5 Bulagaranda Community Development Plan

- (a) **(Minister's direction)** The Minister agrees to direct the Board to:
 - (i) prepare a Community Development Plan in relation to Bulagaranda as soon as practicable in accordance with this clause 13.5; and
 - (ii) review and update such plan every calendar year.
- (b) **(Purposes of the Community Development Plan)** The primary purposes of the Community Development Plan are:
 - (i) to facilitate and improve the capacity of Aboriginal Owners and other Local Aboriginal People to participate in the management of Bulagaranda; and
 - (ii) to help maximise employment, training, contracting and business opportunities and outcomes for Aboriginal Owners, other Local Aboriginal People and Local Aboriginal Businesses, arising from or in connection with the Part 4A reservation and joint management of Bulagaranda.

- (c) Without limiting subclause (b), the Community Development Plan may make provision for assisting Aboriginal Owners, other Local Aboriginal People and Local Aboriginal Businesses with:
 - (i) undertaking training and obtaining qualifications to enable them to work on Bulagaranda;
 - (ii) seeking and responding to potential contracting opportunities in connection with Bulagaranda;
 - (iii) developing proposals to conduct business enterprises on Bulagaranda; and
 - (iv) acquiring employment and business experience.
- (d) **(Content of the Community Development Plan)** Without limiting what else it may include, the Community Development Plan:
 - (i) must outline objectives and strategies for achieving the primary purposes of the Plan;
 - (ii) may include an implementation budget; and
 - (iii) must be consistent with any Plan of Management.
- (e) **(Cooperation in implementing the Community Development Plan)** The Minister and Secretary wish to help ensure the success of the Community Development Plan and, subject to Law and the Plan of Management, the Minister and Secretary agree to fully assist and cooperate with the Board in relation to the development, review and implementation of the Community Development Plan.
- (f) **(Funding the Community Development Plan)** The LALCs acknowledge it is intended that the development and implementation of the Community Development Plan will be funded in whole or in part by the Community Development Funds.
- (g) However, nothing in this clause 13.5 is intended to oblige the Board to apply the Community Development Funds or any other money in the Account in any particular way.

14. Aboriginal Owners and the Cultural Area

14.1 Additional lands

- (a) The Minister and Secretary acknowledge that, as a result of the facts in clause 3, the Aboriginal Owners may wish to see additional lands added to Bulagaranda pursuant to Division 8 of Part 4A of the National Parks Act.
- (b) The LALCs, Minister and the Secretary agree to support the Aboriginal Owners in this aspiration, including by:
 - (i) consulting with each other and with the Board about any proposals it may have to add lands to Bulagaranda, and
 - (ii) by facilitating any acquisition and reservation that may be agreed to.
- (c) The Minister and Secretary agree to give due consideration to any proposal of the Board for the use of public funds for the acquisition of additional lands.

- (d) However, the LALCs acknowledge that the Minister and Secretary may have many other priorities for the use of public funds available for land acquisition and accordingly that subclause (c) does not oblige the Minister or Secretary to contribute public funds for acquisition of additional lands.

14.2 Memorandum of understanding in relation to surrounding reserves

- (a) In further recognition of the facts in clause 3, the Minister and Secretary promise to engage in negotiations with the Aboriginal Owners, Armidale LALC and Guyra LALC for a memorandum or memoranda of understanding about the co-management of each of Booroolong, Mt Duval, Imbota, Yina and Mother of Ducks Lagoon Nature Reserves.
- (b) It is Minister's and Secretary's intention that the negotiations will be concluded, and the memorandum or memoranda of understanding will be in place, within 12 months of the Commencement Date.

15. GST

- (a) If any payment to be made by the Minister under this Lease is consideration for a taxable supply, the amount of the payment will be increased by, and the Minister must pay, an additional amount equal to the amount of the GST payable in respect of the taxable supply.
- (b) A word or phrase which is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause.

16. Release and indemnity

16.1 LALCs and Aboriginal Owners make no warranty as to condition or suitability

The Minister and Secretary acknowledge and agree that:

- (a) prior to the Commencement Date, Bulagaranda was reserved and was being managed as a nature reserve (known as "Mount Yarrowyck Nature Reserve") under the care, control and management of the Secretary;
- (b) neither the LALCs nor the Aboriginal Owners have made any representation or warranty about the condition, suitability or safety of Bulagaranda as a reserve open to the public; and
- (c) they occupy and use Bulagaranda at their own risk.

16.2 Release

- (a) Subject to subclause (b), the Minister and Secretary release and discharge the LALCs from all actions, suits, causes of action, proceedings, claims, demands, accounts, costs, charges and expenses whatsoever, both at law or in equity and/or arising under any statute, which but for this release and discharge the Minister or Secretary may have or have had against the LALCs, as a result of or in connection with Bulagaranda being:
 - (i) leased to the Minister pursuant to this Lease;

- (ii) reserved under the National Parks Act;
 - (iii) vested in the care control and management of the Secretary and/or the Board; and/or
 - (iv) used as an Aboriginal area.
- (b) A LALC is not released or discharged pursuant to subclause (a) to the extent that any such claim, demand, account, cost, charge or expense is caused or contributed to by the wilful or negligent act of that LALC.

16.3 Indemnity

- (a) As an independent and principal obligation, and subject to subclause (b), the Minister and Secretary hereby indemnify, and must keep indemnified, the LALCs, from and against all losses or liabilities sustained by the LALCs, and all actions, suits, causes of action, proceedings, claims, demands and charges made against, or costs and expenses incurred by the LALCs (including legal costs and expenses on a solicitor and own client basis or a full indemnity basis, whichever is the higher) suffered or incurred directly or indirectly as a result of or in connection with:
- (i) any breach of the Lease by the Minister or Secretary (except to the extent that the breach has been caused by an act or omission of the LALCs); or
 - (ii) Bulagaranda being:
 - (A) leased to the Minister pursuant to this Lease;
 - (B) reserved under the National Parks Act;
 - (C) vested in the care control and management of the Secretary and/or the Board; and/or
 - (D) used as an Aboriginal area.
- (b) A LALC is not indemnified pursuant to subclause (a)(ii) to the extent that any such loss, liability, charge, cost or expense is caused or contributed to by the wilful or negligent act of that LALC.

16.4 Continuing obligation

The obligations in this clause 16 continue after the expiry of the Term, or any earlier termination of this Lease, in respect of any act, deed, matter or thing happening during the Term and any holding over, or prior to any earlier termination of the Lease (as the case may be).

17. Review, variation, renewal and replacement

17.1 Review

Note: See also s 71AH of the National Parks Act.

- (a) At least once every 5 years during the Term:
- (i) the Secretary, on behalf of the Minister, and

- (ii) the LALCs, and
- (iii) the Aboriginal Owner Board members,

must, in accordance with section 71AH of the National Parks Act, consider whether or not any one or more of the provisions of the Lease (including provisions relating to rent and the Term) require amendment.

- (b) The Minister agrees to meet the LALCs' reasonable costs of each such Lease review, including but not limited to:
 - (i) reasonable legal advice and other advice and assistance for the LALCs, and
 - (ii) the LALCs' necessary travel and other expenses for attendance at all review meetings.
- (c) The LALCs agree that a budget for each review must be agreed with the Minister prior to them incurring any expenses for which they will be entitled to seek reimbursement.

17.2 Consultations about operation of the Lease

Pursuant to section 71AD(2)(b) of the National Parks Act, the Parties acknowledge that consultations concerning the operation of the Lease are to involve the Secretary and the Board.

17.3 Variation

Note: See also s 71AK of the National Parks Act.

- (a) This Lease may be varied only with the agreement in writing of the Parties and the Aboriginal Owner Board members.
- (b) This Lease may not be varied so as to make it inconsistent with the National Parks Act.

17.4 Manner of renewal

Note: This clause is intended to comply with ss 71AD(1)(d) of the National Parks Act.

A renewal of the Lease may be effected in any legally effective manner agreed by the Parties and the Aboriginal Owner Board members.

17.5 Renegotiation and replacement

Note: This clause is intended to comply with s 71AD(1)(e) of the National Parks Act.

- (a) Section 71AI of the National Parks Act applies, without variation of the timeframes provided for, in relation to the renegotiation of the Lease prior to the expiry of the Term, and section 71AJ applies to the dating of any renegotiated Lease.
- (b) The Minister agrees to meet the reasonable costs of each such renegotiation process, including but not limited to:
 - (i) reasonable legal and other advice and assistance for the LALCs and Aboriginal Owner Board members, and
 - (ii) all necessary travel, venue hire and catering expenses for all renegotiation meetings.

- (c) The LALCs agree that a budget for each renegotiation must be agreed with the Minister prior to them incurring any expenses for which they will be entitled to seek reimbursement.

18. Disputes

18.1 This process to be used first

- (a) The Parties agree that, subject to clause 18.5, the process in this clause 18 is to be used before resorting to arbitration under section 71BJ or any legal proceedings that may be available.
- (b) In clause 18.2 to clause 18.5, the words "Parties" and "Party" are to be read as including the Board.

18.2 Dispute Notice

If a dispute arises between two or more Parties under or in relation to the Lease, any Party may give notice to the other Party or Parties, providing full details of the dispute, and requiring the other Party or Parties to meet for the purpose of resolving the dispute (a "Dispute Notice").

18.3 Meeting

Within 15 Business Days of the Dispute Notice being given, representatives of the relevant Parties with sufficient authority to resolve the dispute must meet, and must act promptly, reasonably and in good faith to resolve the dispute.

18.4 Mediation

- (a) If the Dispute has not been resolved within 15 Business Days of the first holding of a meeting, then a Party may, by notice given to the other Party or Parties, require that the dispute be referred to mediation (a "Mediation Notice").
- (b) If a Mediation Notice is given, the Parties must act reasonably and in good faith to agree upon a mediator. However, if a mediator cannot be agreed within 5 Business Days, a Party may approach the Australian Disputes Centre to nominate a mediator.
- (c) Mediation of a dispute is to proceed in accordance with the practice and directions of the appointed mediator.
- (d) The Parties must act reasonably and in good faith throughout the course of any mediation to settle a dispute.
- (e) The cost of mediation will be paid equally by the Parties to the dispute.

18.5 Proceedings

Nothing in this clause 18 shall prevent a Party from commencing arbitration under section 71BJ of the National Parks Act or a legal proceeding without first complying with this clause, if doing so is required to protect or preserve any right or interest under this Lease or under Law.

19. General

19.1 Notices

- (a) Any notice or other communication to be given under this Lease:
 - (i) must be in writing;
 - (ii) must be signed by, or for and on behalf of, the Party giving or making it; and
 - (iii) may be either delivered by hand or sent by post or email, to the address or the email address for the recipient shown in schedule 1 (or as otherwise stated in a notice given by the recipient).
- (b) Proof of posting or delivery of a notice or communication, or of dispatch of an email, is, unless proven otherwise, proof of it being given:
 - (i) in the case of delivery by hand – on the day and at the time when the delivery occurred;
 - (ii) in case of ordinary pre-paid post – on the seventh Business Day after the date of posting; and
 - (iii) in the case of email – on the first Business Day after the date the sender's email mailbox indicates it was sent.

19.2 Further assurances

Each Party must promptly take all steps, execute all documents and do all things reasonably required by the other Party to give effect to this Lease.

19.3 Inconsistency with Law

- (a) The Parties do not intend this Lease to be inconsistent to any extent with Law, including the National Parks Act.
- (b) Any provision of this Lease which is inconsistent with Law including the National Parks Act or any other Law is to be read down, if possible, to avoid the inconsistency and, if this is not possible, is to be severed.

19.4 Legal relationship

- (a) Nothing in this Lease is intended to constitute the Parties as a partnership.
- (b) Nothing in this Lease is intended to create a relationship of employment between the Parties.

19.5 Waiver

A right under the Lease may only be waived in writing signed by the Party giving the waiver.

19.6 Counterparts

- (a) This Lease may be executed in any number of counterparts.

- (b) All counterparts will be taken together to constitute one Lease.
- (c) A Party may execute this Lease by signing any counterpart.

19.7 Governing Law

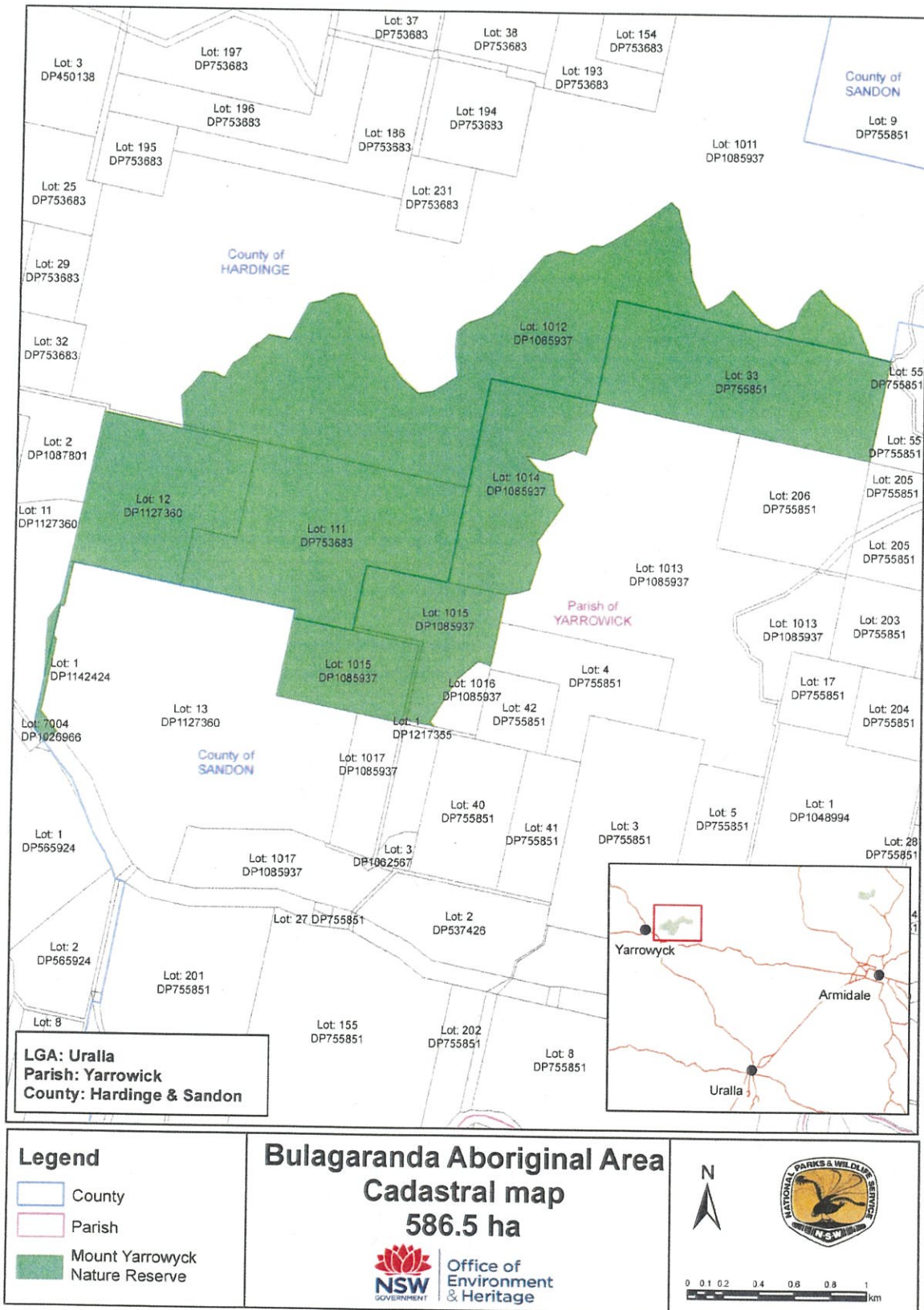
- (a) The Lease is governed by the Law applying in New South Wales.
- (b) Subject to section 71BJ of the National Parks Act, the Parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales.

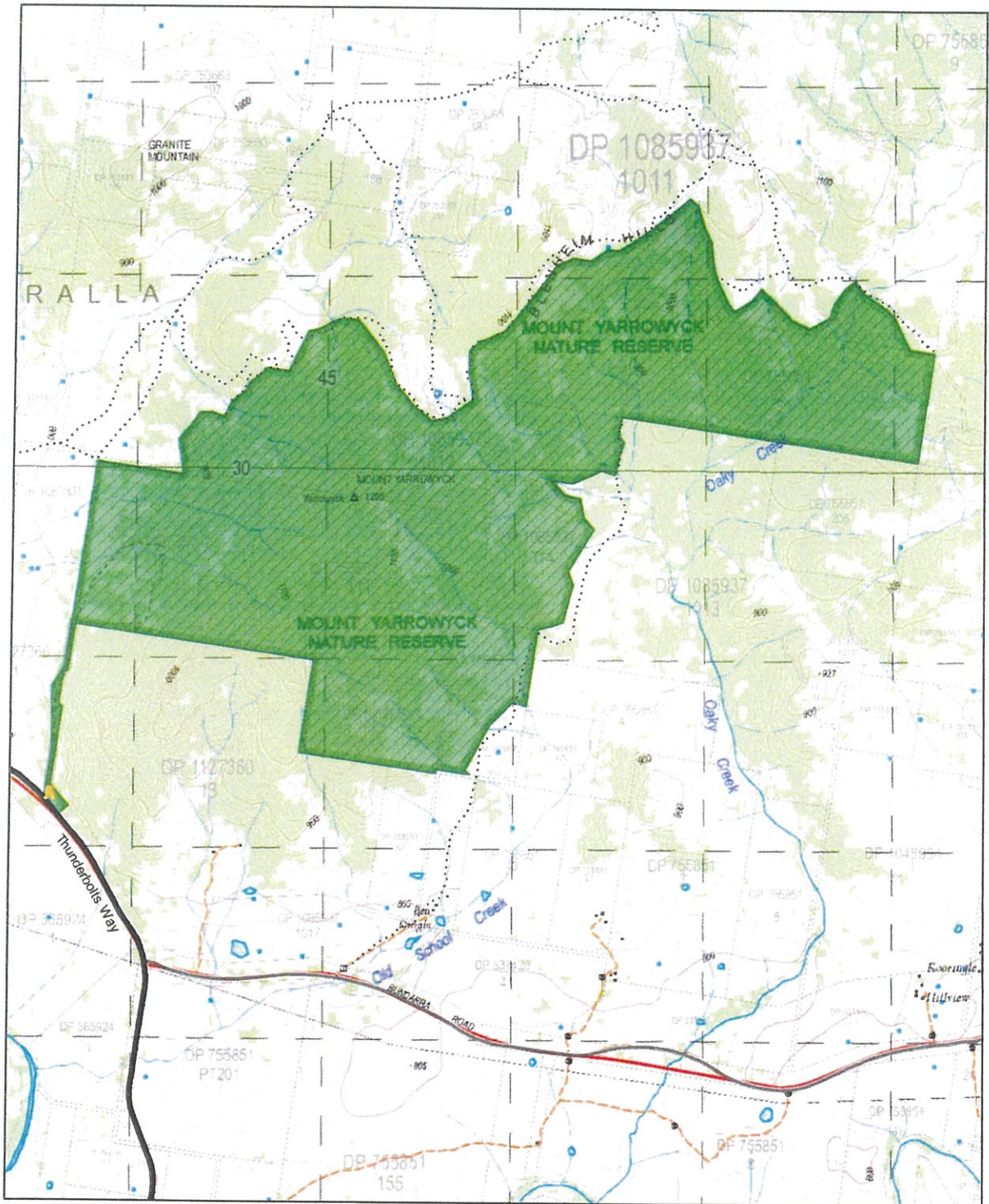
Schedule 1 – Further details

Item	Description	Details
1.	Armidale LALC's further details	
	Party name	Armidale Local Aboriginal Land Council
	Name and position of primary contact person	Ms Lisa Waters Chief Executive Officer Ph: (02) 6772 2447
	Address for notices	PO Box 1837 ARMIDALE NSW 2350
	Facsimile for notices	(02) 6772 6048
	Email for notices	ceo@alalc.org.au
2.	Anaiwan LALC's further details	
	Party name	Anaiwan Local Aboriginal Land Council
	Name and position of primary contact person	Mr Greg Livermore Chief Executive Officer Ph: 0267 233 022
	Address for notices	Po Box 651 INVERELL NSW 2360
	Facsimile for notices	(02) 6723 3023
	Email for notices	anaiwanlalc@tingha.net
3.	Minister's further details	
	Party name	The Hon. Matthew Kean, MLA Minister for Energy and Environment
	Address	GPO Box 5341, SYDNEY NSW 2001
	Facsimile	(02) 9339 5572
	Name and position of primary contact person	Mr Aaron Simmon Manager, New England Area
	Telephone for contact person	(02) 6738 9116; 0428 364 525
	Address for notices	145 Miller Street, ARMIDALE NSW 2350
	Email for notices	aaron.simmon@environment.nsw.gov.au








Item	Description	Details
4.	Secretary's further details	
	Party name	Mr Jim Betts Secretary of the Department of Planning, Industry and Environment
	Address	PO Box A290, SYDNEY SOUTH NSW 1232
	Facsimile	(02) 9995 5999
	Email	info@environment.nsw.gov.au
	Name and position of primary contact person	Mr Aaron Simmon Manager, New England Area
	Telephone for contact person	(02) 6738 9116; 0428 364 525
	Address for notices	145 Miller Street, ARMIDALE NSW 2350
	Email for notices	aaron.simmon@environment.nsw.gov.au
5.	Secretary of DPC further details	
	Party name	Mr Tim Reardon Secretary of the Department of Premier and Cabinet
	Address	GPO Box 5341, SYDNEY NSW 2001 Level 12/52, Martin Place Sydney NSW
	Facsimile	N/A
	Email	dpc.nsw.gov.au/contact-us/contact-the-department-of-premier-and-cabinet/
	Name and position of primary contact person	Pauline McKenzie, Executive Director Heritage NSW Community Engagement Department of Premier and Cabinet
	Telephone for contact person	(02) 9873 8584
	Address for notices	Locked Bag 5020, Parramatta NSW 2124
	Email for notices	pauline.mckenzie@environment.nsw.gov.au

Schedule 2 – Bulagaranda maps





Legend

- | | |
|--|--|
|  Highway / major road |  River / creek |
|  Public road unsealed |  Agreement area |
|  Park road unsealed |  Mount Yarrowyck Nature Reserve |
|  Private property trail | |

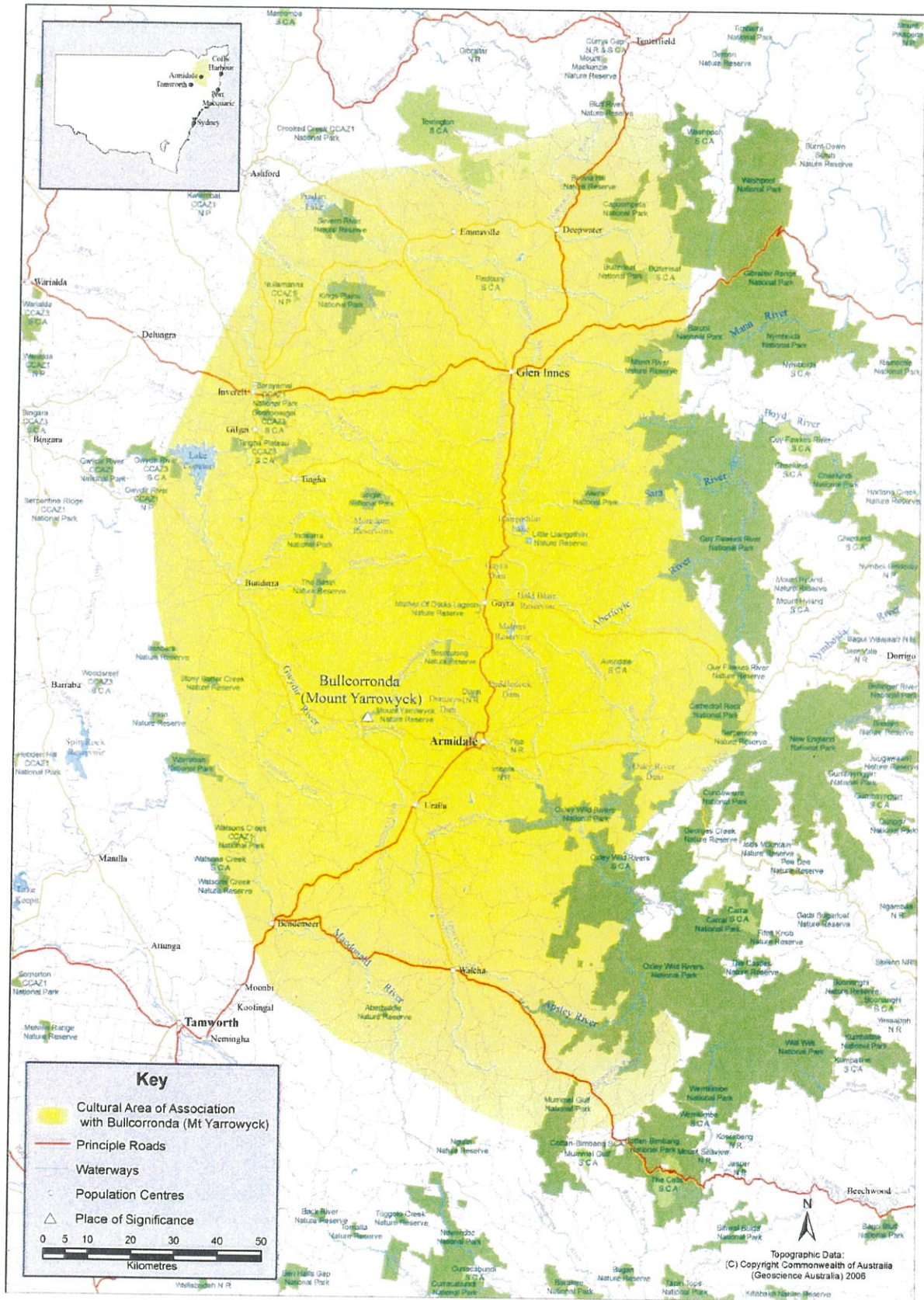
**Bulagaranda
Aboriginal Area
Part 4a lease**



Office of
Environment
& Heritage



Schedule 3 – Cultural Area map



Signing pages

EXECUTED AS A DEED

Execution by Armidale Local Aboriginal Land Council

The common seal of Armidale Local Aboriginal
Land Council is affixed in accordance with the
Aboriginal Land Rights Act 1983 and in the presence of:

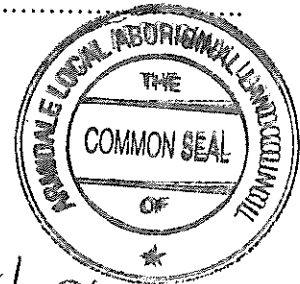
Colin Ahoy

Name of Chairperson

Colin Ahoy

Signature of Chairperson

Who states that he is a Board member and the
Chair of Armidale Local Aboriginal Land
Council



Phyllis Ahoy

Name of Board member

Phyllis Ahoy

Signature of Board member

Who states that he/she is a Board member of
Armidale Local Aboriginal Land Council

Execution by Anaiwan Local Aboriginal Land Council

The common seal of **Anaiwan Local Aboriginal Land Council** is affixed in accordance with the *Aboriginal Land Rights Act 1983* and in the presence of:

JENNI JOHNSON
Name of Chairperson

[Signature]
Signature of Chairperson



Who states that he/she is a Board member and the Chair of Anaiwan Local Aboriginal Land Council

RAYMON CONNORS
Name of Board member

[Signature]
Signature of Board member

Who states that he/she is a Board member of Anaiwan Local Aboriginal Land Council

Execution by the Minister

Signed by the Hon. Matthew Kean, MLA,
Minister for Energy and Environment of the State of
New South Wales,
in his capacity as the Minister administering
the *National Parks and Wildlife Act 1974* (NSW)

)
)
)
)
)
)
[Signature]
(signature of Minister)

In the presence of:

CHRISTIAN DUNK
(name of witness)

[Signature]
(signature of witness)

Execution by the Secretary

Signed by Jim Betts as
Secretary of the Department of Planning, Industry and
Environment

)
)
) Jim Betts
) (signature of Secretary)

In the presence of:

LEANNE STACEY
(name of witness)

[Signature]
(signature of witness)

Execution by the Secretary of DPC

Signed by Tim Reardon as
Secretary of the Department of Premier and Cabinet

)
) [Signature]
) (signature of Secretary)

In the presence of:

Hayley McIntosh
(name of witness)

[Signature]
(signature of witness)