



# Kincheha National Park

## Menindee Aboriginal Elders Council



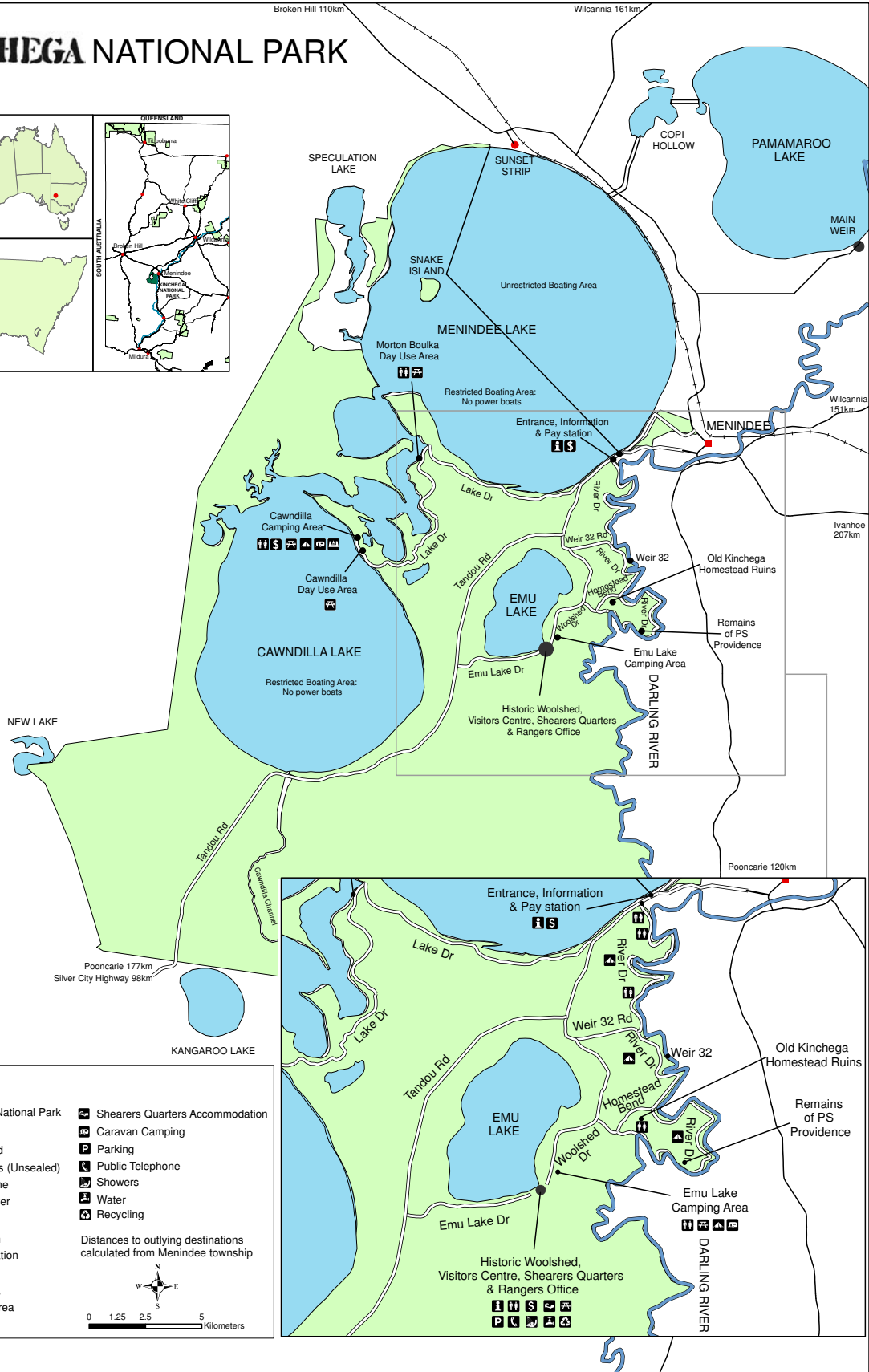
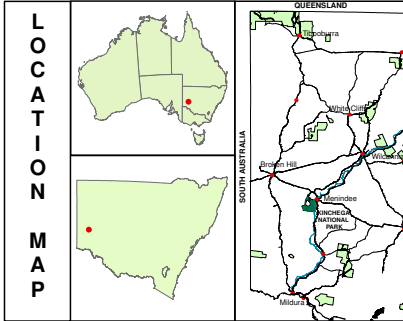
### MEMORANDUM OF UNDERSTANDING



**Friday 26<sup>th</sup> November 2010**



# KINCHEGA NATIONAL PARK



**LEGEND:**

- Kinchega National Park
- Lake
- Major Road
- Park Roads (Unsealed)
- Railway Line
- Darling River
- Menindee
- Information
- Fee paystation
- Toilet
- Picnic Area
- Camping Area
- Shearers Quarters Accommodation
- Caravan Camping
- Parking
- Public Telephone
- Showers
- Water
- Recycling

Distances to outlying destinations calculated from Menindee township

0 1.25 2.5 5 Kilometers

## **MEMORANDUM OF UNDERSTANDING**

### **This Memorandum of Understanding is made between Deputy Director-General of New South Wales National Parks And Wildlife Service and The Menindee Aboriginal Elders Council**

#### **Rationale**

The purpose of this Memorandum of Understanding is to formally acknowledge the NSW National Parks and Wildlife Service's commitment to working co-operatively with the Menindee Aboriginal Elders Council in the management of the Aboriginal cultural heritage in Kinchega National Park and the surrounding area.

Kinchega NP is critically important for Aboriginal culture and heritage, containing occupation sites and burials in excess of 13000 years b.p. In recent years the National Parks and Wildlife Service has involved the local Aboriginal community in the management of Aboriginal sites and heritage in the Menindee area (in particular Kinchega NP).

In 2002, through the Menindee Local Aboriginal Land Council, a Menindee Aboriginal Elders Council has been formed to negotiate an agreement between themselves and the NSWNPWS for the co-operative management of Kinchega National Park. This Memorandum of Understanding is the third to be ratified since those negotiations. It formalises procedures in which those Menindee Aboriginal elders who have traditional and / or contemporary ties to Kinchega National Park can have real and meaningful involvement in the management of the park.

#### **Recital**

- 1** The National Parks and Wildlife Service agrees to consult with, and assist, the Menindee Aboriginal Elders Council in the protection, management and / or interpretation of Aboriginal cultural sites within Kinchega National Park, and the Menindee area.
- 2** The National Parks and Wildlife Service also agrees to consult with, and assist, the Menindee Aboriginal Elders Council to participate in the general management of Kinchega National Park

#### **Understanding**

The parties adopt this Memorandum of Understanding in order to promote the co-operative management of Kinchega National Park, for employment of Aboriginal people, and for the protection of Aboriginal cultural heritage, artefacts and sites in the Menindee area.

- 1 The National Parks and Wildlife Service will actively pursue the advice of the Menindee Aboriginal community in the management of Kinchega National Park, and will consider all recommendations of the Menindee Aboriginal Elders Council in good faith.
- 2 The Menindee Aboriginal Elders acknowledge that in their capacity as advisers to the NSW National Parks and Wildlife Service the decisions and advice that they give must comply with the Kinchega Plan of Management and relevant legislation.

### **Objectives**

- 1 The Regional Manager (Far West) will ensure all budget submissions for Kinchega National Park will be first considered by the Menindee Aboriginal Elders Council, and that their recommendations are duly recognised and considered in the decision process:
  - a) The Menindee Aboriginal Elders Council will meet with the Regional Manager (Far West) towards the end of each financial year to discuss the coming year's Kinchega NP budget. The Menindee Aboriginal Elders Council will provide input into the formulation of potential major and minor projects relevant to Kinchega National Park.
  - b) At the start of each financial year the Regional Manager (Far West) will ensure that the Menindee Aboriginal Elders Council will be informed of the final Kinchega National Park budget for that year in order for the elders to be involved in the operational planning for that financial year.
- 2 Where possible, the NSW National Parks and Wildlife Service will also encourage and facilitate the employment of members of the Menindee Aboriginal Elders Council, and other local Aboriginal people in Kinchega NP.

### **Commencement, Cessation and Amendment**

- This Memorandum of Understanding shall take effect from the 26 November 2010 and end on 26 November 2012 and may be extended subject to review and agreement by both parties.
- This Memorandum of Understanding may only be amended by the written agreement of both parties.

### **Reporting**

At least once every twelve months the Regional Manager (Far West) shall forward a report to the Director (Western Branch) containing the following information:

- a) details of the frequency of meetings of the Menindee Aboriginal Elders Council

held over the preceding period of twelve (12) months, the members who attended those meetings, the members who were absent from those meetings without leave of the Committee or without being excused by the Committee and other information considered relevant by the Menindee Aboriginal Elders Council to be included in the report; and

- b) such other information as may be requested from time to time by the Director (Western Branch) and which the Menindee Aboriginal Elders Council determines to be appropriate to include in the report.

### **Frequency of meetings**

- A quorum of the Menindee Aboriginal Elders Council shall meet a minimum of three (3) times per year, or as required, on the dates and times and at the locations determined by the Menindee Aboriginal Elders Council and the National Parks and Wildlife Service.
- A meeting of the Menindee Aboriginal Elders Council may be conducted by telephone where the members consider it would be expedient or appropriate to do so or the urgency of the business to be transacted or considered would prevent the members from meeting in person.
- The Menindee Aboriginal Elders Council may at any time request the National Parks and Wildlife Service Regional Manager (Far West) to attend any informal Menindee Aboriginal Elders Council meeting.
- Whether a meeting should be open or closed is to be determined by the Menindee Aboriginal Elders Council.

### **Independent Assessment**

- The Menindee Aboriginal Elders Council shall have the right to obtain from any person with relevant qualifications or experience an independent assessment of the plan of management prepared for Kinchega National Park and all other operational plans, planning and assessment documents, reports, and surveys that impact on the care control and management of Kinchega National Park.
- The National Parks and Wildlife Service shall meet the reasonable costs of any such independent assessment up to a maximum amount of \$2,000 in any single financial year upon receipt from the Menindee Aboriginal Elders Council of a fully itemised bill of costs, including Tax Invoice by the person who carried out the independent assessment and a copy of all written instructions (original and supplementary) given to that person, as well as a note containing a summary of any oral instructions given. Additional costs shall not be incurred by the Menindee Aboriginal Elders Council without the consent of the Director (Western Branch).

## **Funding for the Menindee Aboriginal Elders Council**

The NSW National Parks and Wildlife Service will maintain a separate budget for this Memorandum of Understanding to meet the following costs and expenses:

- a) the costs (including Sitting Fees) that are reasonably required for the Council members and two councilors (60% Sitting Fees) to attend formal meetings of the National Parks and Wildlife Service and Menindee Aboriginal Elders Council; and
- b) any expenses reasonably incurred by members of the Menindee Aboriginal Elders Council in the performance of their duties as members of the Menindee Aboriginal Elders Council; and
- c) the reasonable travel and ancillary costs of the members of the Menindee Aboriginal Elders Council to attend formal meetings of the National Parks and Wildlife Service and Menindee Aboriginal Elders Council.

## **Insurance - Menindee Aboriginal Elders Council members and others**

Where Menindee Aboriginal Elders Council members, or voluntary workers authorised by the Regional Manager (Far West) or the National Parks and Wildlife Service, voluntarily work on or off the lands pursuant to this Memorandum of Understanding those members and workers will be covered under the Treasury Managed Fund against any injury sustained during or arising from that work.

## **Exemption from fees**

- The parties agree that the Menindee Aboriginal Elders Council will be the body that the National Parks and Wildlife Service consults with for exemptions for Aboriginal people for entry, or any other fees for use of or access to the Kinchega National Park.
- The parties agree that all exemptions shall be considered on an individual basis.
- The parties agree that the granting of such exemption will be on the basis that the applicant(s) shall be bound by a set of conditions governing access to and use of the facilities and features of Kinchega National Park. Any such conditions can be amended by the Menindee Aboriginal Elders Council and will be consistent with this Memorandum of Understanding, legislation, and the National Parks and Wildlife Service Policy and Procedures.
- If the Menindee Aboriginal Elders Council does not approve of an exemption from fees in relation to Kinchega National Park the Menindee Aboriginal Elders Council must provide the National Parks and Wildlife Service with reasons for that decision.

- The Menindee Aboriginal Elders Council shall at their discretion revoke an exemption from park access and use fees if there has been a contravention of the conditions under which that exemption was granted.

### **Restriction on dealings**

Except as provided for in this Memorandum of Understanding, the Regional Manager (Far West) shall not grant a licence for commercial tour operations within Kinchega National Park without first notifying the Menindee Aboriginal Elders Council and giving Council members an opportunity to comment on the proposed licence.

### **Research and Information**

- The Regional Manager (Far West) shall continue to implement a program to identify and record Aboriginal cultural sites within Kinchega National Park.
- The program shall be developed and implemented in consultation with the Menindee Aboriginal Elders Council.
- The Regional Manager (Far West) and the National Parks and Wildlife Service shall keep confidential the nature and location of any sacred site identified and recorded pursuant to this Memorandum of Understanding and, unless otherwise required by law shall not, without the consent of the Menindee Aboriginal Elders Council, disclose any information about the site to persons other than the Menindee Aboriginal Elders Council.

### **Access to information**

- The Menindee Aboriginal Elders Council may request the Regional Manager (Far West) to provide them with access to documents or information in the possession of the National Parks and Wildlife Service relating to Kinchega National Park and the Regional Manager (Far West) shall, so far as is reasonably practicable, comply with that request.
- The Regional Manager (Far West) may refuse to give access to any document that is an exempt document within the meaning of the *Freedom Information Act* 1989, subject to privilege, any privacy laws, or information that was provided to the Regional Manager (Far West) in confidence.

### **Employment - Aboriginal positions**

- The Regional Manager (Far West) shall, in all instances, consider and promote the employment of Aboriginal members of the Menindee Barkindtji and Nyiampaa communities as a priority when planning and implementing works plans.
- The National Parks and Wildlife Service shall specify as a mandatory qualification

for the appointment or employment of a person in a designated Aboriginal position in the administration of or care, control and management of Kinchega National Park that the person be a member of the Barkindtji or Nyiampaa community.

- The National Parks and Wildlife Service shall request the Menindee Aboriginal Elders Council certify whether or not an applicant for appointment to a position with the National Parks and Wildlife Service or for employment by the National Parks and Wildlife Service in the administration of or care control and management of Kinchega National Park has the required cultural association.

### **Employment selection procedures**

- In the selection of and appointment of a person to a position within management of Kinchega National Park, the National Parks and Wildlife Service shall follow all departmental recruitment policy and procedures.
- The National Parks and Wildlife Service shall include an independent member from either of the Barkindtji and Nyiampaa groups on any selection committee convened to consider applicants, for appointment to an Aboriginal designated position/s within Kinchega National Park. These person/s will be nominated by the Menindee Aboriginal Elders Council.
- The National Parks and Wildlife Service shall consider in good faith the suggestions and comments of the elected representative of the Menindee Aboriginal Elders Council appointed to the selection committee, in relation to the employment of all persons who shall be responsible for or who shall be substantially involved in the day to day care control and management of Kinchega National Park.
- Where it is impractical to enlist an independent member of the Menindee Aboriginal Elders Council on any selection panel, the National Parks and Wildlife Service shall consult with members of the Menindee Aboriginal Elders Council for a suitable representative or alternate independent member to be nominated for inclusion in the selection committee, to allow for the National Parks and Wildlife Service to conduct an independent, open and transparent interview process.
- The Menindee Aboriginal Elders Council will have regard to the *Public Sector Management Act 1988* in providing advice and recommendations on staff employment and conditions.

### **Cross-cultural awareness**

The National Parks and Wildlife Service shall ensure that within twelve (12) months after an officer or employee of the National Parks and Wildlife Service commences duties involving the officer or employee in the administration, planning, & care and control and management of Kinchega National Park, the officer or employee attends a cross-cultural awareness course the broad objectives of which are agreed to by the Menindee Aboriginal Elders Council.



## **Training within employment with the National Parks and Wildlife Service**

- The National Parks and Wildlife Service shall ensure that Aboriginal employees in the administration or care control and management of Kinchega National Park or whose duties of employment will substantially involve them in the administration or care, control and management of Kinchega National Park receive training in their work.
- The training of Aboriginal employees pursuant to this clause may take the form of on-the-job training or attendance at structured internal courses of study provided by the National Parks and Wildlife Service or attendance at an external course of study determined by the National Parks and Wildlife Service in consultation with the Menindee Aboriginal Elders Council.
- The training of Aboriginal employees pursuant to this clause shall be provided by the National Parks and Wildlife Service at its cost and within the course of employment of the employee.

## **Contractors**

In the event that a contractor is required through a process of competition by tender or by expression of interest, the National Parks and Wildlife Service will consult with the Menindee Aboriginal Elders Council about the conditions of the proposed tender or expression of interest or the conditions of a proposed contract for the work (as the case may be).

## **Dispute Resolution**

If the Menindee Aboriginal Elders Council is dissatisfied with any decision of the National Parks and Wildlife Service regarding Kinchega National Park the Menindee Aboriginal Elders Council must notify the Director (Western Branch) and if the dispute cannot be resolved by discussions between the parties it shall be referred to the Deputy Director General - (Parks and Wildlife Group) who will establish a mechanism whereby the dispute can be resolved.

## **Legal Obligations of the Memorandum of Understanding**

This Memorandum of Understanding is evidence of the good faith of the parties to work together in the spirit of reconciliation and co-operation. It is not intended to in any way impact upon or transgress any Native Title Rights, nor give rise to any legally enforceable rights or obligations between the parties, and place no limitations on the performance of functions and exercise of powers of the Deputy Director-General.

## Review of the Memorandum of Understanding

Amongst others this Memorandum of Understanding provides a forum in which the potential for Aboriginal ownership of Kinchega National Park can be considered. This Memorandum of Understanding will therefore be reviewed within 2 years of its commencement. Any outcomes of the review must be agreed to by all representatives of the Menindee Aboriginal Elders Council, and the NSW National Parks and Wildlife Service.

**Date:** 26 November, 2010

### Menindee Aboriginal Elders Council Representatives

P. Doyle  
S. Bennett  
W. G. Kelly  
Eileen Williams  
J. Miller  
A. Ferguson

W. Williams  
Rachy Williams  
C. Williams  
M. O'S.

### New South Wales National Parks and Wildlife Service Representatives

M. Ray  
M. Mill  
Sally Barnes  
J. Jupp  
M. H. G.  
M. P. P.  
E. G.

Sally Barnes, Deputy Director General (Parks and Wildlife Group)