



Mt Grenfell Lease

Cobar Local Aboriginal Land Council Lease to the Minister for the Environment

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Summary of the Arrangements

The lands known as and which were known in the recent past as Mt Grenfell Historic Site now comprise inalienable Ngiyampaa Wangaaypuwan freehold land, held on behalf of the Aboriginal owners by the Cobar Local Aboriginal Land Council. By this Deed these lands are leased for an initial period of 30 years to the Minister for the Environment under the Part 4A of the *National Parks and Wildlife Act 1974*. They remain part of the conservation estate of New South Wales but will henceforth be under the care, control and management of a Board of Management, with a majority of Board members being Aboriginal owners. The Act provides for a nominee of the Land Council and for a representative of each of the National Parks and Wildlife Service, local government, conservation groups and neighbouring station lessees also to be on the Board. The parties intend that a new Plan of Management for the lands be prepared as a priority by the Board to reflect and enhance these joint management arrangements.

This sets out the history behind the hand back of Mt Grenfell to the Ngiyampaa Wangaaypuwan. This does not form part of the legal terms of the lease.

1. The Lands

1.1 Description of the lands at the commencement of the Lease

1. The lands now known as the Mt Grenfell lands which are dealt with by this lease comprise those areas of land which were reserved or dedicated as the Mt Grenfell Historic Site immediately prior to their revocation for the purposes of vesting their title in the Land Council pursuant to s71O of the Act.
2. A map of the Mt Grenfell lands is appended to but does not form part of this lease and copies of the instruments or extracts from the enactments of reservation or dedication are appended as Schedule 3 to and form part of this lease.

This is the legal definition of the Mt Grenfell lands that are included in the lease.

1.2 Name of the lands

The parties agree that the name of the Historic Site shall remain Mt Grenfell for the time being.

This sets out that the name of the reserve will remain Mt Grenfell.

1.3 Acknowledgment of the Land Council holding the lands on behalf of Aboriginal owners and the Land Council's responsibilities to them

The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the lands are held by the Land Council on behalf of the Aboriginal owners.

1. The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the Land Council must act in the best interests of the Aboriginal owners when exercising its functions pursuant to s12 of the Land Rights Act with respect to the lands.
2. The Land Council agrees, in order to give effect to its obligations under this clause, that it will not exercise such functions with respect to the lands without first consulting the Board members who are Aboriginal owners and obtaining the consent of them.

The Cobar Local Aboriginal Land Council, the Minister and the Director-General of National Parks and Wildlife confirm the Land Council will not own the land for itself. This also says that the Land Council only holds the Mt Grenfell lands on behalf of the Aboriginal owners and will not do anything about this without the agreement of the Board members who are Aboriginal owners.

1.4 Restrictions on dealings with the lands

1. In accordance with s71AD (1)(n) of the Act, the parties agree that the lands, or any part of the lands, may not be the subject of any sale, exchange, disposal or mortgage and that, to the extent to which they may otherwise be dealt with, any such dealing must be only with the prior written consent of the Minister if such dealing is by the Land Council or of the Land Council if such dealing is by the Minister.
2. The parties agree that these restrictions will continue to apply to the lands whether or not the Act is amended with respect to these provisions.

The Cobar Local Aboriginal Land Council, the Minister and the Director-General agree the Ngiyampaa Wangaaypuwan people's freehold title is inalienable and that neither the Land Council or the Minister will otherwise deal with the Mt Grenfell lands without the written agreement of the other one of them.

1.5 Additions to the lands

1. The Minister agrees that any additions to the lands will only be with the consent of the Board and the Land Council.
2. The parties agree that, subject to the process described below, it is desirable that further land be reserved or dedicated as part of the lands.

3. The parties agree that, should other land in the vicinity of the lands be offered for sale, it would be appropriate that the parties consider whether negotiations should be undertaken by the Land Council and/or the Service to acquire all or part of that other land for reservation or dedication as additions to the lands.
4. The parties agree to discuss not less frequently than each review of this lease pursuant to clause 5.8 the issue of possible additions to the lands.

This says that land can only be added to the lands if the Board and the Land Council agree. This says that, if land in the vicinity comes on the market, talks will be held about whether all or part of it should be bought to add to the Mt Grenfell lands. In any event there should be regular discussions about possible additions. No land can be added without the Board and the Land Council agreeing.

2. Definitions and Procedural Matters

2.1 Definitions

(a) Defined terms

"Aboriginal owner board members"

means the Aboriginal owners who are members of the Board of Management for the lands.

"Aboriginal owners"

means all those persons named as having a cultural association with the lands in the Register of Aboriginal Owners kept under Division 3 of Part 9 of the *Aboriginal Land Rights Act 1983*.

"Aboriginal cultural item"

means "Aboriginal object" as defined in the Act as at the date of commencement of this lease.

"account"

means the separate account in the National Parks and Wildlife Fund known as the Mt Grenfell Lands Management account

"the Act"

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

"added lands"

means any lands added to the lands after the commencement of the lease in accordance with Division 8 of Part 4A of the Act.

"animal"

has the same meaning as in the Act as at the date of commencement of this lease.

"Board"

means the Board of Management to be appointed pursuant to s71AN of the Act and this lease for the management of the lands.

"Community Development"

includes development by the Land Council, by Aboriginal owners or by the Board of:

- recreation facilities
- cultural facilities
- general park facilities

that are appropriate for a Historic Site.

"Crown"

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

"cultural association"

means an association with the lands that derives from the traditions, observances, customs, beliefs or history of the original Aboriginal inhabitants of the lands.

"cultural area"

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

"cultural values"

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

"Director-General"

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

"Historic Site"

has the same meaning as in the Act.

"Land Council"

means the Cobar Local Aboriginal Land Council established pursuant to the Land Rights Act.

"Land Rights Act"

means the Aboriginal Land Rights Act, 1983 (NSW).

"lands"

comprise those lands defined in clause 1.1 of this lease and depicted in the map appended to (but not forming part of) this lease and (where applicable) includes any added lands.

"lease"

means this lease or any amended version of this lease.

"Minister"

means the Minister administering the Act from time to time.

“nature conservation values”

means those values corresponding to the conservation of nature objects set out in section 2A(1)(a) of the Act.

“Ngiyampaa Wangaaypuwan”

means the Aboriginal owners of the Mt Grenfell Historic Site.

"NPW regulation"

means the National Parks and Wildlife Regulation 2002 or any regulation made under the Act which replaces it

"parties"

means

- I. the Land Council and the Minister with respect to all clauses of this lease; and
- II. in addition, the Director-General with respect to all clauses of this lease except those clauses specified in Schedule 1.

“pecuniary interest”

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

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

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

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

- a. if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
- b. just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
- c. just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

"Plan"

means the plan of management under the Act in force from time to time applying to the lands and includes the 1991 plan in force at the date of this lease.

"Service"

means the National Parks and Wildlife Service established pursuant to the Act, and where appropriate includes the relevant part or parts of the Department of Environment and Conservation.

“Wangaaypuwan/Ngiyampaa Association”

is an incorporated association incorporated pursuant to the Association Incorporation Act 1984 (NSW) and is an association formed by Aboriginal people that have a cultural association with the lands.

"wilderness area"

means an area declared by the Minister to be a wilderness area pursuant to s59 of the Act or pursuant to the provisions of the Wilderness Act, 1987 (NSW).

"World Heritage listed"

means listed as an item of cultural heritage or natural heritage of outstanding universal value pursuant to the Commonwealth Act and the international convention referred to in s71AD(2)(c) of the Act.

Use of Language

- a. a word or expression that indicates one or more particular genders shall be taken to indicate every other gender unless the contrary is expressly intended to give effect to the expression in context,
- b. a reference to a word or expression in the singular form includes a reference to the word or expression in the plural form unless the contrary is expressly intended to give effect to the expression in context,
- c. a reference to a word or expression in the plural form includes a reference to the word or expression in the singular form unless the contrary is expressly intended to give effect to the expression in context,
- d. a reference to an Act (including "the Act") includes any regulations made pursuant to that Act and any amendments to that Act or regulations for the time being in force and also to any Act or regulations enacted or made in substitution, and
- e. a reference to "power" does not encompass any mandatory obligation under any Act.

These definitions set out what the various technical words or expressions mean when they are used in this lease.

2.2 Applicable law

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

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

2.3 Notices

1. The parties agree that if any notice is required by this lease to be given by any one of them to either or both of the others, such notice shall be in writing and shall be sent by prepaid post to the following address as relevant:
 - when to the Minister - to Parliament House, Macquarie Street, Sydney;
 - when to the Director-General - to the last address notified to the Board by the member of the Board appointed pursuant to s71AN(3)(d) as being the appropriate address for such notices; or
 - when to the Land Council - to the last address notified to the Board by the member of the Board appointed pursuant to s71AN(3)(b) as being the appropriate address for such notices
2. The parties also agree that any such notice required by this lease may also be given by any one of them to either or both of the others by electronic transmission to any electronic address provided by a party for that purpose.
3. The parties also agree that any such notice given by any one of them to either or both of the others by electronic transmission shall be in substitution for the requirement that such notice be in writing and sent by prepaid post to the relevant address pursuant to (1) above.

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

2.4 Summary of arrangements, headings and explanatory notes not part of the lease

1. The parties agree that the summary of arrangements, all headings and boxed "plain English" explanatory notes of this lease are for information purposes only.
2. The parties further agree the summary of arrangements, all headings and boxed "plain English" explanatory notes of this lease do not form part of the lease nor shall they be used to construe the terms of the lease in the event of any dispute about interpretation of any term of the lease.

This means that the summary of arrangements, all headings and explanations (in boxes like this) do not form part of the legal words of this document but are just put in to help explain the ordinary meaning of the legal words.

3. Native Title

3.1 Reservation of native title

The parties acknowledge that nothing in this lease in any way extends, diminishes, extinguishes, suspends or otherwise alters any common law or statutory native title rights and interests which may exist over the lands nor does it prevent any exercise of such native title rights and interests.

This means that this lease does not change any native title rights which may exist over the Mt Grenfell lands.

4. Acknowledging of principles

4.1 Acknowledgment of consideration of Ngiyampaa Wangaaypuwan cultural values

The parties acknowledge that, in their negotiation of this lease, they have had regard to Ngiyampaa Wangaaypuwan cultural values and, in particular, that they have recognised the special significance of the lands to Ngiyampaa Wangaaypuwan people with a cultural association.

This clause is an acknowledgment that Ngiyampaa Wangaaypuwan cultural values and the special significance to Ngiyampaa Wangaaypuwan people with a cultural association with the Ngiyampaa Wangaaypuwan lands were considered in the negotiation of this lease.

4.2 Acknowledgment of consideration of nature conservation

1. The parties acknowledge that they have had regard to the nature conservation values of the lands in their negotiation of this lease.
2. In addition, the parties acknowledge that, to Ngiyampaa Wangaaypuwan people with a cultural association, the nature conservation values form an integral part of the cultural values of the lands.

This clause is an acknowledgment that the nature conservation values of the Mt Grenfell lands were considered in the negotiation of this lease and that, to Ngiyampaa Wangaaypuwan people with a cultural association, the natural values form an integral part of the cultural values of the lands.

5. Lease Issues

5.1 Purpose of and parties to the lease

1. The Land Council leases the lands to the Minister for the purpose of their declaration and management pursuant to the Act as an Historic Site with respect to those lands formerly known as the Mt Grenfell Historic Site.
2. Wherever in the Lease an obligation is placed upon the Director-General, the Minister agrees to issue appropriate directions to the Director-General in respect of the observance of the particular obligation.

This clause leases the area comprising the Mt Grenfell lands back to the Government as an Historic Site.

5.2 Term of the lease

1. The Land Council and the Minister agree that the date of execution of the lease is to be 17 July 2004 being the date of publication of the proclamation of the vesting of the lands in the Land Council and the re-dedication and re-reservation of the lands under the Act;
2. The Land Council and the Minister agree that the term of the lease will be for a period of thirty years commencing from 17 July 2004 being the date of publication of the proclamation recited in (1) above; and
3. The Land Council and the Minister agree that the lease is to expire at midnight on 16 July 2034.

The lease is for thirty years finishing on 16 July 2034.

5.3 Renewability

1. If the Land Council and the Minister agree, at the expiry of this lease, the lease may be renewed for a further term of at least 30 years.
2. The parties acknowledge that there shall be no limitation on the number of times the lease may by agreement be so renewed nor on the term of any such renewal (provided it is for a period of not less than 30 years from the effective date of such renewal).

This says that any renewal of the lease after 16 July 2034 must be for at least another 30 years and that there is no limit to how many times it can be renewed.

5.4 Holding over at expiry of lease

1. The parties acknowledge that, if, at the time of expiry of the term of this lease, the parties have not reached agreement for the extension of the term of this lease or for its replacement by a new lease, the Minister shall hold over in accordance with s71AL of the Act until the date of execution of a new lease.

2. During any such holding over period, the Land Council, the Minister and the Director-General agree to be bound by all the provisions of this lease by which they were bound prior to the expiry of the term of this lease.

This means that this lease continues to operate until it is replaced by a new one - even if that is after the formal finishing date of this lease.

5.5 Renewal process

1. The parties acknowledge that the renewal process shall be as set out in section 71AI of the Act.
2. The parties also acknowledge and agree that subject to that section and subject always to there being agreement pursuant to clauses 5.3 and 5.9 of this lease, the following shall apply:
 - a. Not before 16 July 2028 nor after 16 January 2029, the Minister shall by notice to the Director-General, the Land Council and the then Aboriginal owner Board members request them to meet to consider whether or not any one or more of the provisions of the lease should be amended to enable the lease to operate more effectively.
 - b. The Director-General, representatives of the Land Council and the Aboriginal owner Board members shall meet for this purpose as soon as practicable thereafter and in any event by not later than 16 July 2029.
 - c. If amendments are agreed to by the Director-General, the Land Council and the Aboriginal owner Board members by not later than 16 July 2032 and are approved by the Minister, a new lease shall be prepared incorporating the amendments, which new lease should, if at all possible, be executed in escrow by the Minister and the Land Council by not later than 16 January 2034 and shall take effect, in substitution for this lease, from 17 July 2034.
 - d. If there is disagreement between the Director-General, the Land Council and the Aboriginal owner Board members as to whether a provision in the lease requires to be amended or as to the wording of an amendment to such a provision or if an amendment agreed between the Director-General, the Land Council and the Aboriginal owner Board members is not approved by the Minister, the Minister or the Land Council may refer the matter for arbitration in accordance with section 71BJ of the Act (except with respect to the fixing of the first year's rent for the new lease which is to be undertaken by agreement or, if agreement cannot be reached, is to be dealt with as provided for in s71AE of the Act).
 - e. In conducting the arbitration, the arbitrators are to have regard to:
 - I. the preservation of the rights and interests of native title holders;
 - II. the views on the matter expressed by the Aboriginal owner Board members;
 - III. the preservation and protection of Ngiyampaa Wangaaypuwan ways of life, culture and tradition;
 - IV. the interests, proposals, opinions and wishes of Ngiyampaa Wangaaypuwan with a cultural association in relation to the management, use and control of the lands;
 - V. the growth and development of Ngiyampaa Wangaaypuwan social, cultural and economic structures;

- VI. freedom of access to the lands by Ngiyampaa Wangaaypuwan with a cultural association and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their tradition;
- VII. the preservation of the natural environment;
- VIII. the continuing management of the lands under Part 4A of the Act;
- IX. the use of the lands for tourist and educational activities; and
- X. the duties, functions and responsibilities of the Minister in relation to the lands.

This sets out the timetable and process for negotiating the renewal of lease prior to its expiry on 16 July 2034

5.6 Effect of the new lease

In accordance with s71AD(1)(e) of the Act, the parties agree that, if the parties renew the lease, such renewal will have the effect of completely replacing this lease except insofar as provisions of this lease are preserved by any such renewal or are required by any statute.

This says that any new lease replaces all of the old lease unless it is agreed that some bits of the old lease should continue or the law requires some bits to continue.

5.7 Rights to participate in consultations

In accordance with s71AD(2)(b) of the Act, the parties agree that consultations concerning the operation of the lease are to involve the Director-General and the Board.

The Board of Management and the Director-General are to be involved in any talks about how this lease is to work.

5.8 Review of the lease

1. The parties acknowledge the requirements of s71AH of the Act and, in particular, that at least once every five years the Director-General on behalf of the Minister, the Land Council and the Aboriginal owner board members must review the provisions of this lease.
2. Where the parties and the Aboriginal owner board members agree to an amendment as a result of the review consultations, the parties agree that they shall execute a Deed to give effect to such agreement.
3. The parties agree that if a party to the Lease or the Aboriginal owner Board members fail to agree to an amendment proposed by another party, the disagreement is to be arbitrated in accordance with s71BJ of the Act and the decision of the arbitrators (including as to the wording of any amendment in dispute) shall be final and binding on the parties.
4. The parties agree that the arbitrators are to be instructed to have regard to the same matters as are set out in clause 5.5(e) of this Lease.

5. The parties also agree that the arbitrators' determination must in any event preserve the overall level of the benefits and the essential rights conferred on the Land Council and the Aboriginal owners by this Lease.

This section means that the parties to the lease have to look at it every five years and decide if there are any changes to be made. If there is a difference in ideas between the parties about changes which effect the management of the Mt Grenfell lands the dispute could be arbitrated. Changes to the lease cannot make the overall level of benefits to and rights of the Land Council and the Aboriginal owners lower than it is the previous year.

5.9 Agreement to vary, amend or renew the lease

1. The parties agree that any variation, amendment or renewal of this lease shall require the agreement of the parties (being, in the case of a variation or an amendment, the agreement only of those parties who are parties to the clause to be varied or amended) and shall also require the agreement of the Aboriginal owner Board members.
2. Despite the provisions of (1) above, the parties agree to take all such steps as are necessary to give effect to any determination from any arbitration, concerning the lands, where such arbitration was conducted as a result of the provisions of this lease or the Act.
3. Should any variation being effected pursuant to (2) require a direction to the Board from the Minister in any regard, the parties agree that the Minister shall give such direction as necessary for such purpose.

This means that any variation, amendment or renewal of this lease has to be agreed to by the relevant ones of the Land Council, Minister and Director-General and by the Aboriginal owner Board members unless the change is from an arbitration when the parties can't agree.

6. Rent

6.1 Amount of rent

The parties agree that the rent is to be the amount of thirty thousand dollars (\$30,000.00) per annum (subject to adjustment pursuant to clause 6.9 and to review pursuant to clause 6.11).

The rent to be paid by the Government each year for the Mt Grenfell lands is \$30,000 but other clauses say how it is to be adjusted each year and reviewed each five years.

6.2 Amount of rent in first year of lease

The parties agree that the first payment of rent under the lease is to be a proportionate amount of the rent for the full year calculated by the proportion of the number of days after the day the lease comes into force until and including 30 June following compared to the days in the year from the preceding 1 July to the following 30 June.

Because the first year of the lease does not start on 1 July, this clause says how the rent is to be paid for the period until 30 June 2005.

6.3 Amount of rent in final year of lease

The parties agree that the final payment of rent under the lease is to be a proportionate amount of the rent for the full year calculated by the proportion of the number of days after the 1 July prior to the date of expiry of the lease until and including the date of expiry compared to the days in the year from the preceding 1 July to the following 30 June.

Because the last year of the lease will not end on 30 June, this clause says how the rent is to be paid for the period from 1 July immediately prior to the end of the lease until it ends.

6.4 Date rent due

1. The parties agree that the rent is due on 1 July and is to be paid by the Minister by 31 July of each year except in the first year of this lease.
2. The parties agree, despite (1) that the rent for the period after commencement of the lease until 30 June 2005 is to be paid by the Minister by 31 August 2004.

This means that for rent purposes, the year starts on 1 July and that the rent must be paid by 31 July except for the first rent payment which must be paid by the end of the second month after the Mt Grenfell lands are transferred to Ngiyampaa Wangaaypuwan ownership and joint management with the National Parks and Wildlife Service.

6.5 Payment of rent to be annual

The parties agree that the rent is payable annually (except as provided in Clauses 6.2 and 6.3) and is payable in advance.

This means that there is to be one rent payment each year (with part payments in the first and final years as these are not full rent years).

6.6 Account for payment of rent

The parties agree that the rent is to be paid by the Minister into the account.

This means that the rent is to be paid into a separate National Parks account for the Mt Grenfell lands.

6.7 Purpose of rent

The parties agree that the rent to be paid pursuant to this lease is an amount that compensates the Land Council for the fact that the Land Council does not have the full use and enjoyment of the lands.

This clause means that the rent is compensation to the Land Council for the fact that the Cobar Local Aboriginal Land Council does not have complete control over the use of the Mt Grenfell lands.

6.8 Expenditure from the rent sub-account in the account

1. The parties acknowledge that the rent is paid to the Land Council for the reasons described in clause 6.7 and is to be expended for purposes consistent with these reasons and which satisfy s139(5) of the Act.
2. For the avoidance of doubt, the parties confirm that expenditure by the Board on community development or, with the consent of the Minister, on acquisition of land for addition to the lands, where that community development or acquisition complies with s139(5) of the Act and with the Plan, would be consistent with these reasons.

This means that the Board is to spend rent money under the lease for purposes which may include certain community development or buying land to add to the Park.

6.9 Adjustment of rent during term of lease

The parties agree that the rent is to be adjusted, each 1 July during the currency of the lease, to such amount as shall be obtained by multiplying \$30,000 by the quotient obtained by dividing the Consumer Price Index figure applicable to Sydney for the period ending on 31 March immediately prior to such adjustment by the Consumer Price Index figure applicable to Sydney for the period ending 31 March 2004 (provided that no adjustment shall be made if the operation of this clause would lead to a reduction in the amount of the rent payable).

This clause sets out how the rent is to be adjusted for inflation each year after the first year.

6.10 Matters considered in negotiating the rent

1. The parties acknowledge that, in reaching agreement on the rent to be paid, they have had regard to the following matters as required by s71AE(4) of the Act:
 - the nature, size and location of the lands and the nature of the infrastructure and improvements on the lands,
 - the nature of the ownership rights in the lands that the Land Council possesses,
 - the provisions of the Act and this lease relating to the lands,
 - the extent to which the cultural significance of the lands to Ngiyampaa Wangaaypuwan people restricts the use that may be made of the lands under this lease,
 - the arrangements contained in the Act and this lease for the care, control, management and development of the lands,
 - the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of this lease,
 - the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the lands the subject of this lease.

This sets out the things which were considered in the rent negotiations during these lease discussions.

6.11 Review of the rent

1. The parties agree that in the course of a review of the provisions of the Lease in accordance with clause 5.8, those conducting the review will consider the provisions relating to rent (including as to the amount of the rent).
2. The parties also agree that if any of them proposes, in any arbitration to be conducted pursuant to clause 5.8, that the then existing rent should be varied:
 - a. that party shall give not less than one month's notice in writing of their intention so to argue and the bases upon which such argument is founded; and
 - b. the party arguing that the then existing rent should be varied shall be required to demonstrate to the arbitrators, to the satisfaction of the arbitrators, that there have been changes in one or more of the matters considered during the mediation by the Valuer-General which set the initial rent (which matters are set out in clause 6.10) and that such changes affect substantially the overall basis for the agreement of the parties to the initial rent referred to in clause 6.1.

When the lease is reviewed, that review includes looking at the amount of the rent.

7. Cobar Local Aboriginal Land Council

7.1 Land Council and employees etc to observe land management statutes

The Land Council acknowledges that the Land Council and its employees, contractors and agents must comply with the provisions of the Act and any other Act applying to the lands, the regulations and any Plan in force with respect to the lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and other vegetation.

This clause means that the laws and rules including those for the protection of animals, plants and vegetation apply to the Cobar Land Council and anyone working for it.

7.2 Acknowledgment of the Land Council holding other property on behalf of Aboriginal owners for use as directed by the Board

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

This says that the Land Council holds any other property (other than Aboriginal cultural items) it gets with the Mt Grenfell lands for use as directed by the Board.

7.3 Insurance etc for LALC members

1. The parties agree that where members of the Land Council undertake voluntary work on or off the lands on projects approved by the Board pursuant to this lease and where such voluntary working is undertaken with the express prior approval of the Board, those members will be covered under the Service's Miscellaneous Insurance Policy against any injury sustained during or arising from that work.
2. The parties agree that, for Land Council members undertaking voluntary work on or off the lands on projects approved by the Board pursuant to this lease and where such voluntary working is undertaken with the express prior approval of the Board, such members will need to be supervised by Service staff or have previously been given appropriate training by Service staff in the use of relevant equipment and in the principles and practices of occupational health and safety in the workplace.

Where members of the Land Council are doing voluntary work on projects which have been approved by the Board first (whether the project is on or off the Mt Grenfell lands), those members will be covered under the National Parks and Wildlife Service's Miscellaneous Insurance Policy for any injury during that work. Land Council members will need to be supervised by Service staff or have previously been given appropriate training by Service staff to be covered by this insurance.

8. Minister

8.1 Aboriginal training and employment

1. The Minister undertakes, including with respect to the lands, to use the Minister's best endeavours to implement the Aboriginal Employment and Development Strategy 2003–2006 which replaced the Aboriginal Employment and Training Plan 1991-1996 and to implement any plan replacing that Strategy and, in particular, any timetable set out in such a plan.
2. The Minister undertakes that, with respect to the lands, the Minister will not replace the Aboriginal Employment and Development Strategy (or any subsequent plan replacing that plan) without consulting the Board and the Land Council. The Minister will direct the Board to provide him, each year, at a time to be agreed to between the Board and the Director-General, with information with respect to the lands to assist the Minister to report to the Parliament on the implementation of the Aboriginal Employment and Development Strategy. The parties agree that the Service will consult with the Board about specific Aboriginal training and employment requirements for the lands including the need for an on site, purpose designed training program which could be implemented in addition to the Plan referred to in clause 8.1.1 above. If any specific Aboriginal training and employment program is developed for the lands, the parties agree that it will be subject to approval by the Board.
3. For the avoidance of doubt, the parties agree that development of any specific Aboriginal training and employment program for the lands does not commit the Service to the provision of additional staff or funding for its implementation unless specifically agreed to by the Service.
4. The Minister and the Director-General agree that the creation, as a result of this lease, of any Aboriginal designated Service positions shall not affect the obligation of the Minister and of the Director-General to treat the lands and the Board equitably in the implementation of the Aboriginal Employment and Development Strategy (or any subsequent plan replacing that plan).

This means that the Minister agrees to promote Aboriginal training and employment within the National Parks and Wildlife Service including at Mt Grenfell and that Mt Grenfell will get fair treatment under the National Parks and Wildlife Service general Aboriginal employment plan in addition to the new Aboriginal jobs created by this lease.

8.2 Giving effect to decisions of the Board

The Minister agrees to do all such things as are necessary and within the Minister's power to ensure that effect is given to decisions of the Board for:

- the care, control or management of the lands, or
- the preparation of plans of management for the lands, or
- payments from the Fund with respect to the lands,

except any decision where the Minister directs otherwise pursuant to s71AO of the Act.

This means that the Minister agrees to do what is necessary to implement decisions of the Board unless the Minister directs that the decision is not to be implemented.

8.3 Indemnification of the Board

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

This means that the Minister will protect the Board and its members from legal action if they are acting legally.

8.4 Minister seeking legislative change applying to the lands but not applying solely to the lands without consulting the Board and the Land Council

1. The Minister agrees not to introduce nor to cause to be introduced, without consulting the board and the Land Council, any Bill into the NSW Parliament for legislation where such legislation is to apply to the lands and affects the care, control or management of the lands by the Board or would significantly affect any rights or powers of the Land Council or the Aboriginal owners in regard to the lands whether or not such legislation is to apply solely to the lands.
2. Where legislation subject to (1), if enacted, would substantially diminish any rights or powers of the Land Council, the Board or the Aboriginal owners under this lease or the Act, the Minister agrees not to introduce nor to cause to be introduced any Bill into the NSW Parliament for such legislation, without the Minister giving at least two weeks notice of such introduction to the Board and the Land Council.
3. The Minister agrees not to introduce nor to cause to be introduced, without the Minister giving at least two weeks notice of such introduction to the Board and the Land Council, any Bill into the NSW Parliament applying solely in respect of the lands or applying solely to land (which includes the lands) dealt with pursuant to Part 4A of the Act.
4. The Minister agrees that, if he becomes aware of any Bill which has been tabled in the Parliament which it appears to him may apply to the lands he will advise the Board forthwith.

This clause means that the Board and the Land Council have a say (and has to be given two weeks notice if the rights of Ngiyampaa Wangaaypuwan people about the lands are significantly changed) before the Minister can propose new laws to Parliament where those new laws will affect the Mt Grenfell lands.

8.5 Minister to consult on regulations

The parties agree that the Minister will consult the Board and the Land Council before the making, amending or repealing of any regulations:

- under the Act or the Wilderness Act, 1987; or the Threatened Species Conservation Act, 1995; or

- under any other Act administered by the Minister and where their implementation is the responsibility of the Director-General

where such regulations apply to the lands whether applying solely to the lands or otherwise.

This means that the Minister will not make any rules that apply to the Mt Grenfell lands unless the Land Council has been consulted first.

8.6 Minister not to make regulations applying solely to the lands without consulting the Board and the Land Council

1. The parties agree that the Minister will not seek, without consulting the board and the Land Council, to have made, amended or repealed any regulations applying solely in respect of the lands.
2. The parties agree that, where the Minister has consulted the Land Council and the board pursuant to clause 8.5 about making, amending or repealing any regulations applying solely to land (which includes the lands) dealt with pursuant to Part 4A of the Act, the Minister will not seek, where the Land Council has not agreed to the proposal, to have made, amended or repealed any such regulations without the Minister giving at least two weeks notice of such introduction to the Land Council and the Board.

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

8.7 Minister's powers to direct Board

The parties acknowledge that in accordance with s71AO of the Act, in the exercise of its functions, the Board is subject to the control and direction of the Minister except that the Minister may not give directions to the Board in relation to:

- a. the contents of any report, advice, information or recommendation that is to be or may be made or given by the Board, or
- b. any decision of the Board, that is not inconsistent with the Act and the Plan for the lands, relating to the care, control and management of Aboriginal heritage and culture within the lands.

This clause acknowledges that the Minister can tell the Board what to do except about advice from the Board or about its lawful decisions on Aboriginal cultural and heritage matters at Mt Grenfell.

8.8 Exercise of statutory powers on lands by employees of Minister etc on the lands

1. The parties acknowledge that in accordance with s71AD(1)(h), the Service and the officers, employees and contractors of the Minister, the Director-General and the Service are (subject to any Plan in force with respect to the lands and to any directions given and supervision and oversight exercised by the Board for the lands) entitled to exercise on and with respect to the lands any power, authority, duty or function conferred or imposed on any one or more of them by or under the Act or any other Act.
2. The Director-General acknowledges and agrees that in accordance with s71BH of the Act, the Director-General and the Service must, when exercising any power, authority, duty or function conferred or imposed on them under the Act in relation to management of the lands (but subject to the requirements of the Act, this lease and the Plan), have regard to the interests of the Aboriginal owners of the lands.

National Parks and Wildlife Service staff can do their lawful duties at Mt Grenfell but they must look after the interests of the Aboriginal owners.

8.9 Accepting gifts etc on behalf of Aboriginal owners

The Minister agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Aboriginal owners in respect of the lands is transferred to the Land Council on their behalf.

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

8.10 Accepting gifts etc on behalf of the Board

The Minister agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the lands or the Board is credited to the account (if in monetary form) or transferred to the Land Council (on behalf of the Aboriginal owners) to be dealt with as directed by the Board (if in non-monetary form).

This means that if anyone leaves money in their will or gives money to the Minister for the Mt Grenfell lands or the Board, the Minister will make sure that the money is paid into the Mt Grenfell Board's account. If anyone leaves something in their will that isn't money or gives it to the Minister for the Mt Grenfell lands or the Board, the Minister will make sure that the gift is made the property of the Land Council to be used as the Board says.

8.11 Delegation of Minister's Powers

1. The Minister agrees not to delegate, with respect to the lands, any power vested in the Minister pursuant to s71AO of the Act.
2. The Minister agrees to have regard to the views of the Board prior to giving any direction pursuant to s12 of the Act in respect of the lands where, in the absence of the Minister's direction pursuant to s12 of the Act, the works or activities would

otherwise be under the control of the Board under this lease or the Act and the works or activities are not subject to a direction to the Board pursuant to s71AO of the Act.

3. The parties agree that, in the case of an emergency, the Minister may issue such a direction pursuant to s12 of the Act without consulting the Board. In such emergency circumstances, the Minister agrees to notify the Board forthwith of such direction and to have regard to the views of the Board on the continuation of operation of such direction.

This says that normally the Minister would not delegate authority to direct the Board or that something be done on the Mt Grenfell lands. It also says that a direction may have to be given if an emergency occurred and quick action was needed. If this happens, the Board must be told straight away and will be able to stop things if the Board decides to do so.

9. Director-General

9.1 Exercise of powers

1. The parties acknowledge that, upon reservation of the lands as an historic site, the Director-General was vested with powers and duties pursuant to the Act and other legislation.
2. The Director-General agrees not to exercise or permit to be exercised, without consulting the Board, any power vested in the Director-General under the Act or any other legislation (other than the Wilderness Act 1987 or the Threatened Species Conservation Act 1995) where such exercise of the power is exclusively with respect to or impacting on the lands or any Aboriginal cultural items on the lands. However, the parties agree that in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise if so directed by the Board.
3. The Director-General agrees not to exercise or permit to be exercised, without consulting the Board, any power vested in the Director-General under the Act or any other legislation (other than the Wilderness Act 1987) or the Threatened Species Conservation Act 1995) to the extent that such exercise is proposed to be with respect to or impacting on the lands or any Aboriginal cultural items on the lands and where such exercise is not proposed to be exclusively with respect to or impacting on the lands or any Aboriginal cultural items on the lands. However, the parties agree that in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise with respect to the lands if so directed by the Board.
4. The Director-General agrees not to carry out or cause to be carried out any mandatory requirement under the Act or any other legislation (other than the Wilderness Act 1987 or the Threatened Species Conservation Act 1995) without consulting with and having regard to the views of the Board.

5. Without prejudice to any other provision of this clause, the Director-General agrees not to authorise or permit to be authorised any prosecution (other than a prosecution arising from a failure to satisfy a penalty notice for an offence declared to be a penalty notice offence pursuant to the NPW regulation) arising out of any act or omission on or concerning the lands without seeking the advice of the Board on the proposed prosecution.

This clause deals with the Director-General's exercise of powers on the Mt Grenfell lands and says that the Director-General will not exercise such powers without consulting the Board except in an emergency. The Director-General also will not prosecute anyone for an offence relating to the Mt Grenfell lands without advice from the Board.

9.2 Giving effect to decisions of the Board

1. The Director-General agrees to do all such things as are necessary and within the Director-General's power to ensure that effect is given to decisions of the Board (except where the Minister has directed otherwise pursuant to s71AO of the Act) for:
 - a. the care, control or management of the lands, or
 - b. the preparation of plans of management for the lands, or
 - c. payments from the Fund with respect to the lands.
2. In addition, to remove any doubt, the Director-General agrees to direct the Regional Manager to give effect to decisions of the Board where the decision is one which could have been taken by the Regional Manager if the lands were to have remained under the care control and management of the Director-General.
3. In agreeing pursuant to this clause to implement or cause to be implemented a decision of the Board, the Director-General reserves the right not so to implement or cause to be implemented any decision of the Board if the Board has not authorised the expenditure of sufficient monies to give effect to the decision.

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

9.3 Mt Grenfell monies to be kept in a separate account

The Director-General agrees that, notwithstanding any provisions of the Act or any other Act or any other Part 4A lease, the rent payable under this lease and any other monies payable under this lease will be paid into the account and that any monies for any other lands dealt with under Part 4A of the Act which are not under this lease (or any revision or amendment of it) will not be paid into the account.

Any money for the Mt Grenfell lands will be kept by the National Parks and Wildlife Service in a separate account. The money for any other parks which have arrangements for Aboriginal ownership in the future will be kept separate from Mt Grenfell money.

9.4 Creation of principal sub accounts in the account and creation of separate accounts within NPWS account system for operational and capital works funding for the lands

1. The Director-General agrees that, within the account, there will be three separate sub-accounts:
 - a sub-account into which the rent is to be paid (s138(1)(b1))
 - a sub-account into which revenue earned from the lands (together with any gifts, devises or bequests pursuant to clauses 8.10 or 9.10) is to be paid (s138(1)(b)).
 - A sub-account into which any external grants to the LALC or the Aboriginal owners for the management of the land can be paid.
2. Notwithstanding this or any other provision of the lease, the Director-General and the Board may agree to the creation of additional sub-accounts for specific purposes if agreed to by them as being desirable.
3. The Director-General agrees that the annual funds for the management of the lands and any capital works funds for the lands provided through the Service under s138(1)(a) of the Act will be identified clearly within the NPWS accounting system.

The separate account for the rent and other external money for the Mt Grenfell lands will have three sub-accounts to keep the different receipts separate and clearly identified. The NPWS will clearly identify the annual funds for the management of the lands and any capital works funds for the lands in the NPWS accounting system.

9.5 Structure of the "chart of accounts" within the account

1. The Director-General agrees that the structure for accounting for funds within the various sub-accounts in the account will be determined by the Board.
2. The parties agree that it is appropriate that the Minister may direct the Board that, when the Board determines the structure for accounting for funds within the various sub-accounts in the account, the Board is to conform with the general accounting practices and standards adopted by the Service.

The Board will decide how the accounts are to be set up but they will need to comply with normal Service accounting practices and standards. The Service is bound by public sector accounting practices and standards.

9.6 Separate identification of ordinary annual operating funds for the lands within the NPWS accounting system

1. The Director-General agrees to ensure that the annual funds for the management of the lands provided in accordance with s138(1)(a) of the Act are to be clearly identified within the NPWS accounting system.
2. The Director-General also agrees that the proportion of the Service's operational funds provided to the lands at the commencement of this lease shall continue to be reflected equitably in future operational funding for the lands.

The normal Mt Grenfell lands money from the National Parks and Wildlife Service's budget will be clearly identified within the NPWS accounting system. Any changes in the general budget monies for the Mt Grenfell lands will be in line with any changes throughout the Parks system generally.

9.7 Separate identification of capital works funds for the lands within the NPWS accounting system

The Director-General agrees to ensure that any capital works funds for the lands provided through the Service and spent are to be clearly identified in the NPWS accounting system.

Funds for the capital works program for the Mt Grenfell lands will be clearly identified in the NPWS accounting system

9.8 Credit to the account of permit and other fees derived from the lands

The Director-General agrees to ensure that all revenue earned from the lands (together with any gifts, devises or bequests pursuant to clauses 8.10 or 9.10) is to be paid into the separate sub-account established for this purpose in the account.

Money that is earned from the Mt Grenfell lands from camping and other fees or any money gifts will also be put into the separate account set up for the Mt Grenfell lands.

9.9 Accepting gifts etc on behalf of Aboriginal owners

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

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

9.10 Accepting gifts etc on behalf of the Board

The Director-General agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the lands or the Board is credited to the account (if in monetary form) or transferred to the Land Council on behalf of the Aboriginal owners) to be dealt with as directed by the Board (if in non-monetary form).

This means that if anyone leaves money in their will or gives money to the Director-General for the lands or the Board, the Director-General will make sure that the money is paid into the Mt Grenfell Board's account. If anyone leaves something in their will that isn't money or gives it to the Director-General for the Mt Grenfell lands or the Board, the Director-General will make sure that the gift is made the property of the Land Council to be used as the Board says.

9.11 Promotion of the lands

The Director-General agrees to promote the lands as part of the ordinary promotion of the National Parks system of NSW and to consult the Board on any new and substantial mention of the lands in Service publications prior to their printing and release.

This means that the Director-General agrees to promote Mt Grenfell as part of the National Parks system of NSW and to consult the Board before printing and releasing anything new which substantially mentions the Mt Grenfell lands.

9.12 Service representative on the Board

1. The Director-General agrees that the officer of the Service to be nominated to the Board pursuant to s71AN(3)(d) shall be the person holding the office of Regional Manager of the Service for the Region in which the lands are located.
2. The Director-General agrees to nominate an officer of the Service to be the deputy to the officer appointed pursuant to s71AN(3)(d).

This means that the National Parks and Wildlife Service representative on the Board will be the Regional Manager or a deputy.

9.13 Land management arrangements with neighbours

Until any legislative amendment gives the Board powers such as those vested in the Director-General by s146(3) of the Act, the Director-General agrees to enter into and give effect to any agreement reached by the Board, for the purpose of the management, maintenance or improvement of the lands, with the owner or lessee of any other land concerning the management or care of that other land adjoining or in the vicinity of the lands.

This will enable the Board to enter into management agreements, such as "give and take" fencing arrangements or pest animal programs that are on and off park, with neighbours.

9.14 Annual report information on the lands

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

The Director-General may ask the Board give information each year to assist in preparation in the Service's Annual Report.

10. Board of Management

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

The parties acknowledge that care, control and management of the lands are to be vested in the Board.

This clause says that the Board is responsible for the care, control and management of the Mt Grenfell lands.

10.2 Obligations of the Board and employees etc to observe land management statutes

The parties agree that the Minister may direct the Board that the Board and its employees, contractors and agents must comply with the provisions of the Act and any other Act applying to the lands, the regulations and any Plan in force with respect to the lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and other vegetation.

This clause means that the laws and rules for the protection of animals, plants and other vegetation apply to the Board and anyone working for it.

10.3 The Board will consult the Director-General on the exercise of its functions, while Mt Grenfell Historic Site does not have a plan of management

The parties agree, that while there is no plan of management for the park, the Board in the exercise of its functions with respect to the care, control and management of the lands is to consult with and have regard to advice of the Director-General.

10.4 Membership of the Board

The Minister agrees that the Board will consist of thirteen members.

There will be thirteen Board members.

10.5 Local Government Board member

The Minister agrees that any person appointed to the Board pursuant to s71AN(3)(c) shall be an elected member of a local council where that council's area includes or adjoins the lands.

The representative of Cobar Shire Council on the Board has to be an elected member of the Council not a staff person.

10.6 Development of annual budget proposals

1. The parties agree that the Minister will direct the Board to submit to the Service, through the Director Western, after consultation with the Service's Regional Manager for the Service's Region within which the lands are situated, its capital and recurrent budget estimate for the care, control and management of the lands for the following financial year, within the timeframes required by the NPWS corporate planning cycle.
2. The Minister and the Director-General agree that the Service will include this estimate in its budget submission to the NSW Treasury.

The Board has to finalise the budget submissions for its operations and capital works programs within the timeframes required by the NPWS corporate planning cycle and the National Parks and Wildlife Service will submit them without change to the Government as part of the overall National Parks and Wildlife Service proposed budget. This does not mean that these will automatically be agreed to by the Government.

10.7 Board meeting frequency

The Minister agrees, pending any regulation so to provide, to direct the Board that it meet at least 3 times in each financial year.

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

10.8 Board Quorum

1. The Minister agrees, pending any regulation so to provide, to direct the Board that a quorum at any meeting should be seven members including (if deputies to members are provided for) deputies for any absent members and that more than half the number of members counted toward such quorum must be Aboriginal owners appointed pursuant to s71AN(3)(a) including (if deputies to such members are provided for) deputies for any such absent Aboriginal owner members.
2. The Minister also agrees pending any regulation so to provide, to direct the Board that any person who is obliged to be absent, temporarily, from any meeting as a result of the application of clause 10.13 shall continue to be counted, during such absence, toward the existence of a quorum.

To make a proper decision, the Board must have a quorum of at least 7 members (or their deputies) of which at least 4 have to be Aboriginal owner members (or their deputies). Also if one of the members is temporarily out of the meeting because of having a "pecuniary interest" (see clause 10.13 below), they can still be counted as part of the quorum although they can't vote.

10.9 Protocols and procedures for the conduct of the business of the Board

1. The parties agreed that the Board of Management is to develop protocols and procedures for the conduct of the business of the board to be submitted to Minister for approval within one year of its appointment.
2. The protocols and procedures are to address the following as a minimum and may address any other matters the board or the Minister considers appropriate
 - Role of board
 - Guiding principles
 - Functions of the board
 - Roles and responsibilities of the chair person and board members
 - Terms and conditions of board appointment including term of appointment, remuneration and removal of members and creation of vacancies
 - Standards of conduct for board members, which would include: due diligence, decision making, conflict of interest including pecuniary and non-pecuniary interests, fraud, corrupt conduct, acceptance of gifts, hospitality or benefits, use of public resources, accountability of board for public expenditure, accountability of board for decision making
 - Public speaking and media contact
 - Conduct of board meetings including location of meetings, quorums, voting, decisions of board, agendas for meetings, minutes of meetings, attendance at board meetings, confidentiality of board documents.
 - Evaluation and reporting

10.10 Voting at Board meetings

The Board, in developing protocols and procedures, will develop protocols for the passing of resolutions by the Board and voting at meetings.

The Board will make the rules for the passing of resolutions by the Board and voting at meetings.

10.11 Aboriginal owner Board members

1. The Aboriginal owner board members shall be selected from those persons who are nominated by themselves or by another Aboriginal owner of the lands with the consent of the nominee.
2. In appointing Aboriginal owners to the Board pursuant to s71AN(3) of the Act the Minister shall have regard to the gender, cultural affiliation and family grouping of the nominee.
3. The Minister shall also have regard to the recommendations of any body or group formed by Aboriginal people who have a cultural association with the lands.
4. The parties acknowledge that for the purposes of this clause as at the date of this lease, the Wangaaypuwan/Ngiyampaa Association is a body formed by Aboriginal people who have a cultural association with the lands.

This says the Minister must try and get an even balance of family interests as Aboriginal owner representatives on the Board when making Board member appointments and that any group formed by Aboriginal people who have a cultural association with the lands can make recommendations to the Minister.

10.12 Insurance of Board members and their vehicles whilst on Board duties

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

4. The parties agree that the Board is to develop a policy or protocols regarding when members are considered to be on Board business.

This means Board members will be covered under the National Parks and Wildlife Service's insurance against any personal injury while on official duties both on and off the Mt Grenfell lands. Board members using their cars on official duties both on and off the Mt Grenfell lands will be covered under the National Parks and Wildlife Service's insurance for any basic excess on the comprehensive insurance on their car. The Board member must have full comprehensive insurance on their car and have shown proof of this to the National Parks and Wildlife Service before using the car on Board business for this to take effect.

10.13 Declaration of pecuniary interests by Members of the Board

1. The Minister agrees, pending any legislative change so to provide, to direct the Board that:
 - a. If a member has a direct or indirect pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
 - b. A disclosure by a member at a meeting of the Board that the member:
 - is a member, or is in the employment, of a specified company or other body, or
 - is a partner, or is in the employment, of a specified person, or
 - has some other specified interest relating to a specified company or other body or a specified person, is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under (a) above.
 - c. Particulars of any disclosure made under this clause are to be recorded by the Board in the minutes of the meeting and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
 - d. After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines, be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter.
 - e. A person does not breach (a) to (d) if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.
 - f. A contravention of (a) to (d) does not invalidate any decision of the Board.
2. The Minister agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of:
 - matters affecting all Aboriginal owners without discrimination between any groups of such owners; and

- matters affecting all Ngiyampaa Wangaaypuwan people with a cultural association with the lands without discrimination between any groups of such persons

is not to be regarded as giving rise to any direct or indirect pecuniary interest for any member of the Board who is Ngiyampaa Wangaaypuwan.

3. The Minister also agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of matters affecting employment issues relating to any Service officer or position is not to be regarded as giving rise to any direct or indirect pecuniary interest for any member of the Board who is a Service officer unless that consideration concerns or impacts such officer specifically rather than Service employment matters generally.

This sets out the times when Board members must leave the meeting because it would not be proper for them to deal with matters where they had a direct money interest.

10.14 Declaration of non-pecuniary interests by Members of the board.

1. The Minister agrees, pending any legislative change so to provide, to direct the Board that:
 - a. If:
 - a member has a non-pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board, and
 - that interest appears to raise a conflict with the proper performance of the members duties in relation to the consideration of the matter, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
 - b. Particulars of any disclosure made under this clause are to be recorded by the Board in the minutes and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
 - c. After a member has disclosed the nature of an interest in any matter, the Board must determine whether it is appropriate for the member to be present during any deliberation of the Board or take part in any decision of the Board, with respect to the matter
 - d. A contravention of (a) to (c) does not invalidate any decision of the Board.
2. The Minister agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of:
 - matters affecting all Aboriginal owners without discrimination between any groups of such owners; and
 - matters affecting all Ngiyampaa Wangaaypuwan people with a cultural association with the lands without discrimination between any groups of such persons

is not to be regarded as giving rise to any direct non-pecuniary interest for any member of the Board who is Ngiyampaa Wangaaypuwan.

3. The Minister also agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of matters affecting employment issues relating to any Service officer or position is not to be regarded as giving rise to any non-pecuniary interest for any member of the Board who is a Service officer unless that consideration concerns or impacts such officer specifically rather than Service employment matters generally.

This sets out the times when Board members must leave the meeting because it would not be proper for them to deal with matters where they had a conflict of interest.

10.15 Term of office of Board members

1. The Minister agrees, pending any regulation so to provide, that the ordinary term of appointment for members of the Board shall be for 4 years provided that in the case of the Board member appointed pursuant to s71AN(3)(c), that person remains an elected member of a local council where that council's area includes or adjoins the lands, in the case of the Board member appointed pursuant to s71AN(3)(d) the person remains an employee of the Service and in the case of the Board member appointed pursuant to s71AN (3)(f) the person continues to represent the interests of those people who nominated them.
2. In the event of a member of the Board being replaced during a term, the Minister agrees that any new member appointed as a replacement shall only be appointed for the unexpired portion of the term of the member being replaced.

The normal term of office for a Board member will be 4 years but the Local Government representative will cease if they stop being a member of the Council. Members who replace someone who stops being a Board member will be appointed only until the end of the term of the person who has left.

10.16 Delegation by the Board

The parties agree that the Board may make such delegations of its powers under the Act or this lease (other than this power of delegation) as the Board considers appropriate provided that:

- with respect to powers delegated to the Board by the Minister, the Minister consents to the delegation proposed by the Board; and
- with respect to powers delegated to the Board by the Director-General, the Director-General consents to the delegation proposed by the Board; and
- with respect to delegations to authorise payments from the account, such delegations also have the consent of the Director-General which consent the Director-General agrees not to withhold unreasonably.

This puts some limits on how much the Board can delegate its powers to other people by requiring consent from the Minister or the Director-General first but only where the Board is delegated the power from either the Minister or the Director-General.

10.17 Financial supervision by the Board

1. The parties acknowledge that s71AQ of the Act requires the Board to:
 - cause proper accounts and records to be kept in relation to all of its operations;
 - prepare financial statements for each financial year in accordance with section 41B (1) of the Public Finance and Audit Act 1983;
 - submit such financial statements for verification and certification to an auditor who is a registered company auditor within the meaning of the Corporations Law;
 - prepare and submit such financial statements to such auditor not later than 6 weeks after the end of the financial year to which they relate; and
 - furnish to the Minister the audited financial statements required by s71AQ and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.
2. The parties agree that the financial year and accounting period for the Board will be from 1 July each year to the following 30 June except in the first year of the lease when it will be from the date of commencement of the lease until the following 30 June.
3. The parties agree that the 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 Region within which the Mt Grenfell lands are located.
4. The parties agree that the Minister may direct the Board to accept the scrutiny of the Service's internal auditors consistent with (3) of this clause
5. The parties agree that no costs for internal audit services provided for in (3) and (4) will be charged to the account.
6. The parties acknowledge that the Board may choose pursuant to clause 10.18, in the absence of a direction to the contrary from the Minister, to use auditors other than the Service's auditors to meet the Board's obligations pursuant to s71AQ(5).
7. The parties agree that the Minister may direct the Board to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to s71AQ(5) provided such auditors are qualified in the manner required by s71AQ(3).
8. The parties agree that, should the Board choose to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to s71AQ(5) or the Minister directs pursuant to (7) that it do so and the Service apportions and charges costs to each of the Regions of the Service for audit services for such Region, the recovery of such cost from the account for such audit services shall be on the same basis as any such recovery from the budget of any other Region within the Service and the parties expressly agree that there shall be no disadvantage in this regard because the lands are held by the Land Council under Part 4A of the Act.
9. The parties agree that the Minister may direct the Board to comply with the Service's Accounting Manual in the administration of its account payment and other accounting and financial administration practices.

10. In addition, to take account of exceptional circumstances in which there may be insufficient members to form a Board, the parties agree that, to cover the period pending appointment of new Board members by the Minister, the Director-General will cause the financial administration of the account to be consistent with the obligations of a Board pursuant to s71AQ and this clause during such period.

This clause records the financial accountability required of the Board and says that the Minister may direct that the Board is subject to Park Service internal audit. It also deals with how the Board has its end of financial year accounts audited.

10.18 Right to obtain independent advice

1. The parties agree that, despite any other clause in this lease which might imply the contrary, the Board has an absolute right to seek independent professional advice from persons who are not employees of the Service on such topics as the Board sees fit.
2. The parties also agree that, should the Board choose to seek independent professional advice from persons who are not employees of the Service, there is no obligation whatsoever on the Minister or the Director-General to provide the Board with supplementary funding for the purposes of obtaining that advice.

The Board can get independent advice from outside experts to assist in them in making a decision.

10.19 Preference to be given to Aboriginal organisations in contracting for certain services

The parties agree that, to the extent permitted by law, the Board may give preference to the Aboriginal organisations for contracts to undertake works for the care control or management of the lands including but not restricted to feral animal control, weed control, rock art protection measures, fencing, road works, camping area construction, maintenance of existing facilities, tour guiding and provision of other facilities relating to land management and tourism activities.

This means that the Board can give preference to Aboriginal organisations in contracts for works on the Mt Grenfell lands where the Board is allowed by law to do so.

10.20 Cultural awareness training

1. The Minister agrees that all persons appointed to the Board, who are not Ngiyampaa Wangaaypuwan with a cultural association, will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board.
2. The Board agrees to conduct or approve such a course within one month of notification by the Minister of proposed appointments to the Board.
3. The parties agree that, in the event that the Board fails to conduct or approve such a course within the time required by this clause, the Minister may proceed to make such appointments without such training having been undertaken.

4. However, the parties agree that such training for members appointed to the first Board under this lease shall be held prior to.
5. The parties agree that the reasonable cost of cultural awareness training for Board members will be met from the Board's funds.
6. The parties agree that all Service officers who are not Ngiyampaa Wangaaypuwan people with a cultural association who are appointed to or are to act for any continuous period longer than two months in
 - the position of Regional Manager for the Region in which the lands are situated; or
 - any Service positions located on or exclusively or predominantly involved in the management of the lands will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board.
7. However, the parties agree that such training for such Service officers who are not Ngiyampaa Wangaaypuwan people with a cultural association at the commencement of this lease shall be held prior to and for such Service officers who fall under this provision after the commencement of this lease, within one month of the requirement arising.
8. The parties agree that the reasonable agreed cost of cultural awareness training for such Service officers who are not Ngiyampaa Wangaaypuwan people with a cultural association will be met by the Service.

This clause means that Board members and Service staff working on the Mt Grenfell lands will have to do Ngiyampaa Wangaaypuwan cultural awareness training run or approved by the Board if they are not Ngiyampaa Wangaaypuwan people with a cultural association.

10.21 Application by the Board for external funding

1. The parties agree that the Board may apply to bodies other than the Service or the NSW Treasury for funds to be expended for the care control or management of the lands.
2. The parties agree that any funds provided to the Board as a result of such application by the Board shall not be counted by the Minister or the Director-General as an offset to any funds that should otherwise be provided to the account pursuant to clauses 9.6 or 9.7.
3. The Minister agrees to direct the Board that:
 - any funds provided to the Board as a result of such application by the Board shall be paid into the account; and
 - shall be expended for the purposes for and subject to any conditions attached to their provision to the Board.

This means that the Board can apply to outside bodies for money to spend on the Mt Grenfell lands and, if the Board is successful, its ordinary budget will not be reduced as a result. The Board must spend any money it gets from outside bodies for the purposes the money is given.

10.22 Direct dealings with other Government departments

The Minister may direct the Board to provide the Director-General with a copy of any correspondence to or from the Board with any government instrumentality or department (other than the Service) within 14 days of the dispatch or receipt (as appropriate) by the Board of such correspondence.

If the Board communicates direct with other Government bodies, the Director-General can get a copy of any letters to or from the Board.

11. Joint Management Principles and Issues

11.1 The relationship between the Board and the Regional Manager

The decisions of the Board with respect to the care, control and management of the lands will be implemented by the Regional Manager giving appropriate instructions to relevant Service officers to the extent that this is required to give effect to such decisions.

The Regional Manager will give instructions to Service staff to implement Board decisions.

11.2 Aboriginal designated positions

The Minister and the Director-General agree that after 1 July 2004, two permanent full time staff positions designated for the Mt Grenfell Historic Site will be created within the Service being:

- a. a ranger or trainee ranger; and
- b. a field officer or trainee field officer

which will be positions to be held by Ngiyampaa Wangaaypuwan people.

11.3 Application of the Public Sector Management Act

The parties acknowledge that all Service positions in clause 11.2, without exception, are subject to the Public Sector Management Act.

This means that everyone agrees that all National Parks and Wildlife Service positions (including Aboriginal designated positions) spending all or most of their duties looking after the Mt Grenfell lands are subject to all normal public service rules.

11.4 Payment of Service staff from the Account

The parties agree that the Minister may direct the Board to approve the payment of Service staff salaries from the account for those Service positions whose recruitment is the responsibility of the Board with such payment reflecting the extent to which each position so services the lands.

This means that the Board can't refuse to approve payment of wages for Park Service staff looking after the Mt Grenfell lands.

11.5 Occupational health and safety

The parties agree that the Board shall comply with all relevant legislation and National Parks and Wildlife Service policies relating to occupational health and safety.

The Board of Management will meet all occupational health and safety rules.

12. Land Management Principles and Issues

12.1 Transfer of Aboriginal cultural items

1. The parties acknowledge that having regard to s83 of the Act, some uncertainty may exist as to the extent to which Aboriginal cultural items that are in or on the lands are now vested in the Land Council by virtue of the proclamation vesting the lands in the Land Council. In recognition, in particular, of the paramount powers of the Board under s71AO(5) of the Act in relation to the care, control and management of Ngiyampaa Wangaaypuwan heritage and culture within the lands, the parties wish, as far as practicable, to remove the uncertainty.
2. Accordingly, the Director-General and the Land Council agree that, if directed to do so in writing by or on behalf of any Aboriginal owner, the Director-General will transfer the Aboriginal cultural items which are in or on the lands (to the extent that they may not have already been vested pursuant to the proclamation) to the Land Council pursuant to s85A of the Act, subject to the following conditions:
 - the Land Council will be deemed to have included the Aboriginal cultural items as part of the lands the subject of this lease; and
 - the Board will have care, control and management of the Aboriginal cultural items.
3. The Director-General agrees not to withhold, unreasonably, any consent sought by the Board pursuant to s90 of the Act to permit the Board to deal with an Aboriginal cultural item in a fashion considered appropriate by the Board.

This means that the Land Council will own and the Board will control all items of Ngiyampaa Wangaaypuwan heritage on the Mt Grenfell lands.

12.2 Rights of public access

1. The parties acknowledge that the public has a right of general access to the lands, in accordance with Section 71AD(1)(m) of the Act and that this general right of access is to be subject to the Act and the Plan
2. The parties agree that the principles to be applied by the Board which will guide the management of public access to the lands are
 - the promotion and enhancement of appropriate use, understanding and enjoyment of the lands
 - ecological sustainability
 - equity
 - regional planning
3. The parties also agree that general public rights of access to the land will be maintained subject to any restrictions (declared under the Act, this lease, the Plan or any other Act for the purposes of dealing with natural disasters howsoever caused, urgent land management or urgent public health considerations (determination of urgency and sufficiency for this purpose to be solely by the Board).
4. The parties agree that the Board will be able to apply any declarations of restrictions on access to visitors, staff or Ngiyampaa Wangaaypuwan people as the Board considers appropriate. Because the lands are of special cultural significance to Ngiyampaa Wangaaypuwan people with a cultural association, the parties agree that a number of specific matters relating to restrictions on access should be set out in this lease. These are:
 - The guiding principle of managing public access will be to meet visitor needs to increase their awareness, understanding and appreciation of the cultural significance of the lands to Ngiyampaa Wangaaypuwan people.
 - In addition, public access will be managed to increase visitor awareness, understanding and appreciation of the nature conservation values of the lands
 - The Board having the power to preclude or restrict public access to ceremonial places or other cultural sites by zoning or other mechanism including restrictions based on gender necessary for the cultural protection of such ceremonial places or other cultural sites.
 - Access for self reliant bush walking will be managed by the Board in a manner which ensures safety and protects culturally sensitive areas and nature conservation values.
 - Some areas will be permanently or temporarily zoned by the Plan for Ngiyampaa Wangaaypuwan people cultural and management purposes. Such areas will not generally be open to public access.
 - The Board may, at the request of the Land Council or a group of Aboriginal owners or on its own volition:
 - I. declare the whole or part of the lands a "no alcohol" area for short periods for cultural reasons; and
 - II. declare a defined area of the lands to be a "no alcohol" area for any term or permanently, by prohibiting the possession and/or consumption of alcohol within the lands or the defined area.

- III. The parties agree that the Board shall define the meaning of the term "alcohol" for the purposes of such prohibition.

This clause sets out some principles which it is agreed will guide the Board in setting conditions for public access to the Mt Grenfell lands.

12.3 Reservation of Ngiyampaa Wangaaypuwan people Rights to Use and Occupy

1. The parties acknowledge that Aboriginal owners and other Ngiyampaa Wangaaypuwan people with a cultural association have the following rights, which will operate subject to the directions or decisions of the Board with respect to health, safety or privacy -
 - a. the right to enter upon the lands and use or occupy the lands to the extent that the entry, use or occupation is in accordance with Ngiyampaa Wangaaypuwan tradition;
 - b. the right to engage in the traditional use of any area of the lands for hunting or food gathering in accordance with clauses 12.6 and 12.7 ;
 - c. the right to engage in the traditional use of any area of the lands for ceremonial purposes.
2. The Land Council reserves the right to request the Minister to sub-let any reasonable part of the lands for community development purposes.
3. The Minister agrees not unreasonably to refuse to grant such a sub-lease where it is in accordance with the Act and the Plan.
4. The parties agree that the above reservations are subject to the Act, any other Act or the Plan.

This sets out the rights of Aboriginal owners to go on to and use the Mt Grenfell lands in accordance with Aboriginal tradition but that this entry and use of the Mt Grenfell lands has to be in accordance with the rules and laws governing the Mt Grenfell lands.

12.4 Reservation of Right of Entry and Inspection

1. For the purpose of ensuring and monitoring compliance with this lease, the Land Council reserves a right in favour of the Chairperson of the Land Council and any person authorised in writing by the Land Council, after reasonable notice and at all reasonable times, to enter upon the lands or any part of them and to inspect the lands and any improvements on the lands.
2. The parties agree that such access is to be subject to:
 - such reasonable constraints as may be contained in the Plan;
 - such reasonable restrictions as may be determined by the Board as being necessary for reasons of safety, security, privacy or protection of the lands; and

- such restrictions as may arise under any industrial award or agreement relating to staff residences on the lands.

This means that the Land Council can send a person onto the Mt Grenfell lands to inspect that the lease is being obeyed but that this is subject to some conditions concerning things like staff privacy etc.

12.5 Minister entitled to quiet enjoyment

The parties acknowledge and agree that the Minister, observing and performing the obligations of the Minister in this lease and procuring the observation and performance by the Director-General of obligations of the Director-General, may peaceably possess and enjoy the lands without any interruption or disturbance from the Land Council or any person lawfully claiming by, from, under or in trust for the Land Council.

This means that the Land Council is not entitled to interfere with the Minister doing what is required by the lease.

12.6 Acknowledgment of hunting etc rights

The parties acknowledge that the Aboriginal owners of the lands, and any other Aboriginal people who have the consent of the Aboriginal owner Board members, are entitled (subject to s71AO(2) of the Act, which section is reflected in clause 12.7, and to other provisions of the Act, to any other Act applying to the lands and to the Plan, and the NPWS policy regarding the use of firearms) to enter and use the lands for hunting or fishing for, or the gathering of, traditional foods for domestic purposes and for ceremonial and cultural purposes to the extent that that entry or use is in accordance with the tradition of the Aboriginal owners.

This clause acknowledges Ngiyampaa Wangaaypuwan hunting and gathering rights of foods for domestic purposes and for ceremonial and cultural purposes.

12.7 Board to control cultural activities including hunting and gathering

The parties acknowledge that the Board has the function of considering proposals for the carrying out, by Aboriginal owners or other Aboriginal people, of cultural activities (including but not confined to hunting and gathering) within the lands and of approving (including the setting of conditions for such approvals), or refusing to approve, the carrying out of such activities.

This clause means that the Board will set the rules for Ngiyampaa Wangaaypuwan hunting and gathering on the Mt Grenfell lands.

12.8 Planning and building approvals

The parties agree that planning and building approvals will require the consent of the Board and acknowledge that planning and building approvals will be required to be consistent with the Act, any other Acts (including the Environmental Planning and Assessment Act 1979) and the Plan.

This means that the Board will control planning and building approvals subject to legal requirements and the plan of management for the Mt Grenfell lands.

12.9 Planning generally

1. The parties agree that, in addition to and not inconsistent with the Plan, the Board may from time to time request the preparation of specific operational practices for particular management issues.
2. The parties agree that the Plan to be prepared pursuant to clause 12.22 shall authorise the adoption and implementation of such additional specific operational practices.
3. The parties acknowledge that, if any specific operational practice developed by the Board requires amendment to the Plan:
 - the processes set out in the Act for amending Plans of Management will need to be observed; and
 - such specific operational practice cannot be implemented until the Plan is amended to permit its implementation.
4. With respect to specific operational practices requiring an amendment to the Plan, the parties agree that the Minister may direct the Board not to implement such specific operational practice until the Plan is amended to permit its implementation.

This means that Board can develop specific detailed plans for things like goat control when the Board needs to do so.

12.10 World Heritage issues

1. The parties agree that the Minister may seek World Heritage listing of all or any part of the lands but only with the consent of the Land Council and the Board.
2. Whilst the parties acknowledge that, at the time of the execution of the lease, the lands are not World Heritage listed in whole or in part, the parties agree that should such listing occur at any time during the currency of the lease, the parties to the lease will comply with any requirements arising as a consequence of such listing whether or not such requirements are already encompassed in this lease, the Plan or the operational practices for the lands.

This clause deals with World Heritage listing and says that the Minister may ask for listing but only if the Board and the Land Council agree. If the Mt Grenfell lands become World Heritage listed, it is agreed that management of the Mt Grenfell lands would meet World Heritage standards.

12.11 Wilderness Act

1. The Minister agrees to consult with and have regard to the views of the Board prior to exercising any power or carrying out any act or function under the Wilderness Act 1987 which relates to or impacts on the lands.
2. The Minister agrees to direct any person to whom any power is delegated under the Wilderness Act 1987 to consult with and have regard to the views of the Board prior to exercising any such power or carrying out any act or function which relates to or impacts on the lands.
3. The Director-General agrees not to exercise nor permit to be exercised any power under the Wilderness Act 1987 which relates to or impacts on the lands without consulting the Board.
4. The Director-General agrees not to carry out or cause to be carried out any mandatory requirement under the Wilderness Act 1987 without consulting with and having regard to the views of the Board.
5. The Minister agrees not to declare, or permit any person to whom any power is delegated under the Wilderness Act 1987 or under the Act to declare, any further part of the lands (additional to that part which has already been declared to be a wilderness area) to be a wilderness area without the consent of both the Land Council and the Board.

This clause deals with how the Wilderness Act will operate on the Mt Grenfell lands including in relation to input from the Board.

12.12 Agreement for mutual assistance

1. In addition to the provisions of clauses 7.2 and 13.5, the parties agree that it is desirable that the management of the lands and of other land in the Western Division reserved or dedicated under the Act take place in a co-operative framework involving the Board and the Director-General.
2. The parties agree that the statement in (1) reflects the wishes of the parties but does not, in itself, place any specific binding obligations on either the Board or the Director-General.

This clause says that everyone thinks co-operation between the Board and the National Parks and Wildlife Service and between all the parks in the Western Division is a good idea. This clause does not create any additional legal obligations on anyone.

12.13 Community development

The parties agree that the Plan to be prepared by the Board after the commencement of this lease may provide for community development purposes prescribed by the regulations.

This means that the new Plan of Management to be prepared by the Board will say where and how new community facilities can be built.

12.14 Regulations for Community development

The Minister agrees to use his best endeavours to have regulations made under the Act to define the expression "community development" in terms consistent with the definition of that expression used in this lease.

The Minister agrees to try to have the words "community development" mean the same thing in the regulations as it means in the lease.

12.15 Directions to the Board concerning the exercise of powers

1. The parties agree that it is appropriate that the Minister direct the Board that it is not to exercise any power, carry out any act nor implement any decision with respect to harming or picking any threatened species, population or ecological community or damaging any habitat of a threatened species, population or ecological community without the consent of the Director-General.
2. The parties agree that it is appropriate that the Minister direct the Board that the Board notify the Director-General not less than 14 days prior to
 - a. carrying out any act or implementing any decision, including a decision to prepare an environmental impact statement in accordance with the Environmental Planning and Assessment Act 1979, with respect to any "activity which is likely significantly to affect the environment" within the meaning of that Act; or
 - b. the implementation of any decision to expend an amount in excess of \$100,000 on any single item or activity.

This means that the Land Council agrees to some restrictions on how or when the Board can use powers which would otherwise be used by the Director-General of National Parks and Wildlife if the Mt Grenfell lands were an ordinary National Park rather than a Ngiyampaa Wangaaypuwan owned one.

12.16 Setting of park entry and user fees

The parties agree that the Minister may direct the Board that entry, camping and any other fees for the lands will be set by the Board but are subject to Ministerial approval.

This means that entry, camping and any other fees will be set by the Board but need the Minister's approval.

12.17 Recognition of state wide Service entry permits

1. The parties agree that the Minister will direct the Board to recognise state wide Service annual entry permits and not charge any additional entry fee for the lands unless such additional charge is approved by the Minister.
2. The Minister and the Director-General acknowledge that, in consequence, the Board is entitled to expect the fair and equitable promotion of the lands by the Service to holders of state wide Service annual entry permits.

3. The parties acknowledge that the rent payable under this lease includes compensation for any loss of entry fee income for the Board likely to result from the Board's recognition of state wide Service annual entry permits (after taking into account the value of indirect benefits which may arise from the expected promotion).

This means that ordinary people who have State-wide National Parks entry permits will not have to pay extra to enter Mt Grenfell. In return the Park Service must fairly promote the Mt Grenfell lands as part of any general National Parks promotion.

12.18 Tour operator permit holders

1. The parties agree that the lands will not be added to any tour operator's permit without the approval of the Board.
2. The parties agree that the Board will set conditions for authorised tour operators operating on the lands.
3. The parties agree that the Board will consult with and have regard to the views of the Service when setting conditions for such authorised tour operators.
4. The parties agree that the Board will have power to issue specific permits authorising tour operators to operate on the lands.
5. The parties agree that any per capita charge on visitors brought to the lands by authorised tour operators will be paid into the account.
6. The parties agree that permits of tour operators current at the date of commencement of lease will be recognised by the Board for the unexpired period of such permit.
7. The parties agree that where five or fewer parks are on the schedule for any individual tour operator's permit, the fee for that permit is to be paid pro rata into the account.

This clause deals with how commercial tour operators permits which allow entry to Mt Grenfell are controlled by the Board.

12.19 Exemption from fees

1. The Land Council and the Minister agree that the Minister direct the Board that Aboriginal owners and Ngiyampaa Wangaaypuwan people with a cultural association with the lands will not be liable to pay entry, camping or any other fees for use of or access to the lands.
2. The parties agree that such access without fees does not give any rights to use of the services, goods, plant, machinery or utilities on or for the lands without the express authorisation of the Board.

This means that Aboriginal owners and Ngiyampaa Wangaaypuwan people with a cultural association with the Mt Grenfell lands will not have to pay entry, camping or any other fees at Mt Grenfell but that they can't use park equipment that is not available to the general public unless the Board agrees.

12.20 Threatened species legislation

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

This clause deals with how the Threatened Species Act will work on the Mt Grenfell lands including in relation to input from the Board.

12.21 Visitor monitoring

1. The parties agree that the Minister will direct the Board to take part in Service state wide monitoring of Park visitor numbers.
2. The Director-General agrees to implement, to the extent reasonably practicable, any modifications to the state wide monitoring program which are requested by the Board to increase the accuracy of information concerning visitor numbers to the lands.

This deals with monitoring of visitor numbers to the Mt Grenfell lands.

12.22 Preparation of a Plan

The Land Council and the Minister agree that the Minister will direct the Board to commence, not later than 31 December 2004, the process of preparation of a Plan for the lands.

The Board will have to get the preparation of a new plan of management started by 31 December 2004

12.23 Law enforcement on the lands

1. The parties agree that enforcement, on the lands, of the Act, other Acts for which the Service has primary or delegated responsibility and any regulations under such Acts are to be undertaken by Service officers.
2. The parties agree that the Minister may direct the Board to develop a law enforcement policy for implementation on the lands subject to approval of such policy by the Minister.

3. The Director-General agrees to give consent pursuant to s179 of the Act to the implementation of proceedings when requested to do so by the Board unless the Director-General considers it would be unreasonable to give such consent.
4. The parties agree that nothing in this clause shall be construed as limiting the right of the Land Council (or any other body or person) to bring proceedings in accordance with s176A of the Act.

This means that Service staff will remain responsible for law enforcement on the Mt Grenfell lands and the Director-General will agree to reasonable requests from the Board to prosecute. It also says that the lease will not remove any existing rights of the Cobar Local Aboriginal Land Council or anyone else to take legal action under the Parks Act.

12.24 Enterprises on the lands

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

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

12.25 Training

1. The parties agree that Board members shall have access to appropriate Service training courses subject to availability of places.
2. The parties agree that the Service will provide assistance to the Board to facilitate and co-ordinate access to skills training (being through Service training courses, on the job training with contractors or Service officers or through other government or non-government agencies) for Ngiyampaa Wangaaypuwan people and/or members of the Cobar Local Aboriginal Land Council wanting to tender for contract work on the Mt Grenfell Historic Site.

12.26 Use of services, goods, plant, machinery or utilities on the lands

The parties agree that a right of access to the lands with the consent of the Board, does not give any rights to use of the services, goods, plant, machinery or utilities on or for the lands without the express authorisation of the Board.

12.27 Insurance etc for volunteers undertaking work approved by the Board of Management

1. The parties agree that where volunteers are undertaking work on or off the lands on projects approved by, and carried out on behalf of, the Board pursuant to this lease and where such voluntary working is undertaken with the express prior approval of the Board, those volunteers will be covered under the Service's Miscellaneous Insurance Policy against any injury sustained during or arising from that work.
2. The Land Council agrees that, for volunteers undertaking voluntary work on or off the lands on projects approved by, and carried out on behalf of, the Board pursuant to this lease and where such voluntary working is undertaken with the express prior approval of the Board, such volunteers will need to be supervised by Service staff or have previously been given appropriate training by Service staff in the use of relevant equipment and in the principles and practices of occupational health and safety in the workplace.

13. Miscellaneous Provisions

13.1 Preliminary steps for resolution of disputes between the Board and the Minister or the Board and the Director-General

The parties agree that if there is a dispute between the Board and the Minister or the Board and the Director-General the Chair of the Board will seek to resolve the matter in issue with the Regional Manager.

If such discussion is not able to resolve the matter in issue, the parties agree that process set out in clause 13.4 is to be followed.

This sets out the first informal steps for settling disputes between the Board and the Minister or the Board and the Director-General.

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

The parties agree that if there is a dispute between the Land Council and the Minister or Land Council and the Director-General:

1. in the first instance, the Chair of the Land Council will seek to resolve the matter in issue with the Area Manager Cobar;
2. if such discussion is not able to resolve the matter in issue, the Chair of the Land Council will seek to resolve the matter in issue with the Regional Manager.

If such further discussion is not able to resolve the matter in issue, the parties agree that process set out in clause 13.4 is to be followed.

This sets out the first informal steps for settling disputes between the Land Council and the Minister or the Land Council and the Director-General.

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

1. The parties agree that if there is a dispute between the Land Council and the Board, in the first instance, the Chair of the Land Council will seek to resolve the matter in issue with the Chair of the Board.
2. The Land Council and the Minister agree that the Minister will direct the Board that, if there is a dispute between the Land Council and the Board, in the first instance, the Chair of the Board will seek to resolve the matter in issue with the Chair of the Land Council.
3. If such discussion is not able to resolve the matter in issue, the parties agree that process set out in clause 13.4 is to be followed and that the Minister will direct the Board to do so in all such circumstances.

This sets out the first informal steps for settling disputes between the Land Council and the Board.

13.4 Formal dispute resolution processes

1. The parties agree that, if after the steps as relevantly set out in clauses 13.1, 13.2 or 13.3 are unsuccessful in resolving any dispute, any one of the parties in dispute considers that the matter remains unresolved, that party shall notify, in writing, the other parties to the dispute of the matters continuing to be in dispute;
2. such written notice shall give those other parties fourteen days in which to resolve the matter in dispute and notify the other parties of the steps taken or to be taken in resolution;
3. if following the expiry of fourteen days after the giving of notice pursuant to (1) above, any party considers that the matter has not been resolved, that party shall convene, within twenty one days of the expiry of such notice, a meeting of the parties (which meeting shall be held on the lands) to discuss the matter in dispute;
4. if any meeting is convened pursuant to (3) above, they shall attend such meeting either in person or by agent authorised to negotiate on their behalf;
5. during any meeting pursuant to (3), the parties (or their representatives) will negotiate bona fide and in good faith to agree on steps necessary to resolve the matter in dispute;
6. if the parties are able to agree on how to resolve the matter in dispute, the parties agree that all or any one will take all such steps as are necessary to give effect to the proposed resolution;
7. if the parties are unable to agree on how to resolve the matter in dispute, the parties may appoint a mediator to assist them endeavour to resolve the matters in dispute;
8. if the parties remain unable to agree on how to resolve the matter in dispute, the matter in dispute (and responsibility for any costs of the arbitration) shall be referred to arbitration pursuant to s71BJ of the Act (or, should s71BJ not apply to the dispute, the parties agree that the arbitration shall be conducted as if it did apply), the results of which the parties agree shall be binding on each of them;
9. any arbitration pursuant to s71BJ shall include any issues of compensation to any party to this lease as a result of the matter in dispute; and

10. The parties agree that, in conducting any arbitration, the arbitrators are to have regard to:
- a. the preservation of the rights and interests of native title holders;
 - b. the views on the matter expressed by the Aboriginal owner Board members;
 - c. the preservation and protection of Ngiyampaa /Wangaaypuwan ways of life, culture and tradition;
 - d. the interests, proposals, opinions and wishes of Ngiyampaa Wangaaypuwan with a cultural association in relation to the management, use and control of the lands;
 - e. the growth and development of Ngiyampaa Wangaaypuwan social, cultural and economic structures;
 - f. freedom of access to the lands by Ngiyampaa Wangaaypuwan people with a cultural association and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their tradition;
 - g. the preservation of the natural environment and wilderness values;
 - h. the continuing management of the lands under Part 4A of the Act
 - i. the use of the lands for tourist and educational activities; and
 - j. the duties, functions and responsibilities of the Minister in relation to the lands.

This sets out the formal process for resolving any disputes which can't be resolved informally. It provides for mediation and arbitration when necessary and how this will happen.

13.5 Use of Service Equipment and Services

1. The parties agree that the present practice of mobility and temporary assignment or transfer of Service equipment shall continue so that equipment located elsewhere in Service areas can be also used on the lands when its use is requested by the Board and it is available for such use.
2. The parties agree that the same provisions shall apply, mutatis mutandis, to advice or other professional services and advice from other Service officers.

This means that equipment located elsewhere in Park Service areas can be also used at Mt Grenfell when it is available. Advice from other Service professional staff will also be available to the Board.

13.6 Future liability for Commonwealth or State taxes

1. Should the Land Council become liable to pay any Commonwealth or State taxes or charges solely as a result of the lands being vested in the Land Council (rather than being retained by the Crown), the Minister agrees that the State shall meet the costs of such taxes, charges or local government rates in addition to any other monies payable pursuant to this lease or pursuant to the normal budgetary allocations by the Service for the management of the lands.

2. Should the Land Council become liable to pay any Commonwealth or State taxes or charges as a result of all lands reserved and dedicated pursuant to the Act being liable to pay such Commonwealth or State taxes or charges or local government rates, the parties agree that the cost of such Commonwealth or State taxes or charges or local government rates will be met by the Board.

This clause means that if any future new taxes or rates must be paid just because the Mt Grenfell lands are Ngiyampaa /Wangaaypuwan owned, the Land Council will not have to pay them.

13.7 Continuation unvaried of existing licences, permits etc

The parties acknowledge that the lease is subject to any existing interest within the meaning of Section 39 of the 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 this Act or the regulations affecting the lands, or any part of the lands, that is current on the date on which the lands are vested in the Land Council, which interest etcetera including details as to expiry date is listed in Schedule 2 appended to and forming part of this lease.

This clause means that all existing permits etc to use the Mt Grenfell lands continue when the Mt Grenfell lands transfer to Ngiyampaa Wangaaypuwan ownership.

13.8 Granting or renewal of licences, permits etc

1. The parties acknowledge that any power to grant, extend or extinguish any interest, etcetera of a kind referred to in clause 13.7 or otherwise under the Act or any other Act may only be exercised with the approval of the Board provided that notice pursuant to clause 12.23 (when required) has been given.
2. In the case of such extension or extinguishment, the parties acknowledge that the extension or extinguishment is subject to any instrument under which the interest etcetera was granted, provided that the purposes of such interest etcetera is not in conflict with any provision of this lease or of the Act or of any other enactment applying to the lands.

This means that the Board must agree if any new permit etc to use the Mt Grenfell lands is to be given when the Mt Grenfell lands transfer to Ngiyampaa Wangaaypuwan ownership.

13.9 Payments from the account

1. The parties agree that all payments made from the account are to be made by authorisation of the Board and not otherwise.
2. The parties agree that the Minister may direct the Board to prepare and adopt financial delegations for the implementation of Board decisions and that such delegations will be consistent with Service financial delegations.

This means that any payments of money from the Mt Grenfell account must be approved by the Board.

13.10 Public liability insurance

1. The parties agree that the Service will accept the responsibility for maintaining public liability insurance for the lands.
2. In addition, the parties agree it is appropriate that the Minister direct the Board to require all licence or permit holders operating on the lands (including the Land Council) to have their own public liability insurance policy for their activities with the amount of cover required for such policy to be the amount generally required from time to time for licensees or permit holders operating in National Parks in NSW.

This means that the National Parks and Wildlife Service will remain responsible for public liability insurance but the Board will require tour operators etc (including the Land Council) to have their own public liability insurance.

13.11 Workers Compensation insurance

1. The parties agree that the Service will remain liable for the arrangement of workers compensation insurance for Service employees working on the lands. The parties agree that the Service can recover from the account the cost of such insurance but only to the extent that such costs become apportioned to each of the Region of the Service for Service employees working within such Region
2. The parties agree that if the Service apportions and charges workers compensation insurance for Service employees to the each of the Regions of the Service for Service employees working within such Region, the recovery of such cost from the account for Service employees whose duties are on or exclusively or predominantly servicing the lands shall be on the same basis as any such recovery from the budget of any other Region within the Service and the parties expressly agree that there shall be no disadvantage in this regard because the lands are held by the Land Council under Part 4A of the Act.

This means that the National Parks and Wildlife Service will remain responsible for workers compensation insurance for National Parks and Wildlife Service staff working at Mt Grenfell and the Board will only pay as much of the cost as the Upper Darling Region was charged in the past.

13.12 Intellectual Property

1. The parties agree that any intellectual property in any Ngiyampaa Wangaaypuwan art or designs on the lands shall, to the extent it is currently vested in the Service, be vested in the Land Council on behalf of the Aboriginal owners from the commencement of this lease.
2. The parties further agree that, to the extent that any other intellectual property (such as but not confined to objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation) and including; human remains and tissues, all items of immovable (including burials, sacred and historically significant sites) and movable cultural property, literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages, words, symbols and designs) and also traditional, scientific, agricultural, technical and ecological knowledge (including genes, tissues, cultigens, medicines pharmaceutical products, and the phenotypes of flora and fauna) derived exclusively from the lands is vested in the Crown and within the administration of the Minister or the Director-General, this lease transfers such intellectual property to the Land Council on behalf of the Aboriginal owners.
3. The parties further agree that the Land Council will permit the Service, under the supervision of the Board, to make use of such intellectual property without charge where such use is for the benefit or promotion of the lands or of the NSW National Parks system or nature conservation generally.
4. The Minister agrees to use his best endeavours to seek to have transferred to the Land Council any intellectual property of the types covered by 13.12.2 which is vested in the Crown and which is not within the administration of the Minister or the Director-General.

This clause means that Ngiyampaa Wangaaypuwan art and designs and other cultural property at Mt Grenfell will be owned by the Aboriginal owners, through the Cobar Local Aboriginal Land Council, but that the National Parks and Wildlife Service may use them for free to promote Mt Grenfell or the National Parks system.

13.13 Registration of Lease

1. The parties agree that each of them will take all such steps as are necessary to effect the lodgement and/or registration of all documents required to be lodged and/or registered pursuant to s71AG of the Act.
2. The Director-General agrees to co-ordinate the lodgement and/or registration process required of the parties pursuant to (1).

This means that the lease and other necessary documents will be registered as required by the Aboriginal ownership Act.

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

Signed by
Chair of the Cobar Local Aboriginal Land
Council in the presence of:
Date:

Signed sealed and delivered by
Lisa Corbyn, in her capacity as the
Director-General of National
Parks and Wildlife in the presence of:
Date:

Schedule 1

Reference Clause 2.1(a) - Definition of "parties"

Clauses of this lease to which the Director-General is not a party.

Clause	Clause	Clause
1.5.1		
5.1	10.4	12.22
5.2	10.5	13.3.2
5.3.1	10.7	13.12.4
8.1.1 & 8.1.2	10.8	
8.2	10.11	
8.3	10.13 & 10.14	
8.4	10.15	
8.5	10.20.1	
8.6	12.3.3	
8.9	12.11.1 & 12.11.2	
8.11.1 & 8.11.2	12.20.4	

Schedule 2

Reference Clause 13.7 - Existing licences, permits etc

List of existing licences, permits etc and relevant details

There are no current licences, permits etc

Schedule 3

Reference Clause 1.1 – Description of the lands etc

Copies of the instruments or extracts form the enactments of reservation or dedication.