

WORIMI CONSERVATION LANDS

LEASE AGREEMENT BETWEEN

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

AND

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

AND

WORIMI LOCAL ABORIGINAL LAND COUNCIL

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

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PREAMBLE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECITALS

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

The claims to land

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

The position of the NSW Government in respect of the Lands

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

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

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

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

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

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

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

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

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

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

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

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

Acknowledgement and Recognition

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

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

THE PARTIES AGREE

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

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

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

2. THE WORIMI CONSERVATION LANDS AND OTHER LAND

2.1. Description of the Lands subject to the Lease

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

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

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

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

2.3. Restrictions on dealings with the Lands

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

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

2.4. Change of classification of reserve land

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

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

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

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

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

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

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

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

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

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

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

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

2.8. Consent of Land Council to adding of Additional Lands

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

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

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

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

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

2.10. Additions to the Lands

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

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

2.11. Maps relating to the Worimi Conservation Lands

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

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

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

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

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

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

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

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

3. LEASE ISSUES

3.1. Purpose of and parties to the Lease

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

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

3.2. Lease of fixtures

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

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

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

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

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

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

3.4. Tin City

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

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

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

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

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

4. NATIVE TITLE

4.1. Reservation of native title

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

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

5. ACKNOWLEDGMENT OF PRINCIPLES

5.1. Acknowledgment Cultural and Nature Conservation Values

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

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

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

5.2. Land Management Principles

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

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

5.3. Joint Management Principles

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

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

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

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

6. COMMENCEMENT, TERM, REVIEWING AND RENEWING THE LEASE

6.1. Commencement of the Lease

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

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

6.2. Term of the Lease

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

The lease is for an initial term of 30 years.

6.3. Holding over at expiry of Lease

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

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

6.4. Renewing the Lease

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

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

6.5. Renewal process

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

further term of thirty (30) years, commencing on the expiration of the current term of the Lease, in accordance with its provisions.

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

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

6.6. Effect of the new lease

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

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

6.7. Rights to participate in consultations

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

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

6.8. Reviewing the Lease

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

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

6.9. Agreements to vary, amend or renew the Lease

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

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

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

7. MINISTER ENTITLED TO QUIET ENJOYMENT

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

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

8. RENT

8.1. Amount of rent

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

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

8.2. Amount of rent in first year of the Lease

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

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

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

8.3. Amount of rent in final year of the Lease

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

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

8.4. Date rent due

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

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

8.5. Payment of rent to be annual

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

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

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

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

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

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

8.7. Matters considered in negotiating the rent

- 1 In negotiating the rent the Parties and the Aboriginal Negotiating Panel have had regard to the following matters as required by s. 71AE (4) of the Act:
 - (a) the nature, size and location of the Lands and the nature of the infrastructure and improvements on the Lands,
 - (b) the nature of the ownership rights in the Lands that the Land Council possesses,
 - (c) the provisions of the Act and this Lease relating to the Lands,
 - (d) the extent to which the cultural significance of the Lands to the Traditional Owners restricts the use that may be made of the Lands under this Lease,
 - (e) the arrangements contained in the Act and this Lease for the care, control, management and development of the Lands,
 - (f) the amount of rent payable under leases of land adjoining or in the vicinity of the Lands,
 - (g) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the Lands.

- 2 The Parties acknowledge that in reaching agreement about the rent, the overall package of benefits provided through the Lease (such as employment, training, capacity building, separate vehicle access fee, preparation of the Plan, contracting opportunities, and ongoing Recurrent Funding) was considered. The Parties further acknowledge that the Minister offered and the Land Council accepted in the circumstances a rent less than the rent valuations which were obtained. The Parties acknowledge that this was on the basis that the overall package of benefits

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

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

8.8. Review of the rent

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

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

9. ESTABLISHMENT AND MANAGEMENT OF ACCOUNTS

9.1. Establishment of separate accounts

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

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

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

9.2. Money received in relation to the Part 4 Lands

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

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

9.3. Separate identification of accounts

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

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

9.4. The structure for identifying funds in each account

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

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

9.5. Director-General responsible for processing of money

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

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

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

9.6. Applications by the Board for external funding

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

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

9.7. Accrual of money in the Account

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

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

9.8. Payment of interest into the Account

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

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

10. INITIAL AND ONGOING RECURRENT AND ASSET ACQUISITION FUNDS

10.1. Recurrent Funds

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

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

10.2. Board costs

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

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

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

10.3. Asset Acquisition Funds

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

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

11. BUDGETS AND EXPENDITURE

11.1. Development of annual budget proposals

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

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

11.2. Payments from the Worimi Accounts

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

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

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

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

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

11.4. Use of funds in the Account

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

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

11.5. Employment of additional DEC staff from the Account

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

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

11.6. External grants

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

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

12. ESTABLISHMENT AND ROLE OF BOARD

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

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

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

12.2. Additional functions of the Board

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

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

- (d) access to the Lands by Aboriginal people; and
- (e) other matters which the Board considers appropriate.

3 In preparing policies on matters relevant to this Lease the Board must have regard to any applicable NSW Government or DEC policies.

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

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

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

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

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

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

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

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

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

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

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

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

12.6. Membership of the Board

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

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

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

12.7. Aboriginal Owner Board members

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

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

12.8. DEC representative on the Board

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

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

12.9. Board member from neighbouring lands

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

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

12.10. Term of office of Board members

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

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

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

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

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

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

13. MEETINGS, DECISIONS AND REPORTING OF THE BOARD

13.1. Board meeting frequency

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

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

13.2. Board Quorum

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

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

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

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

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

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

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

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

13.4. Declaration of Pecuniary Interests by Members of the Board

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

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

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

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

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

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

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

13.6. Right to obtain independent advice

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

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

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

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

13.7. Copies of correspondence

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

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

13.8. Annual report information on the Lands

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

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

14. IMPLEMENTING BOARD DECISIONS

14.1. Giving directions to the Director-General

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

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

14.2. Direction by the Minister

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

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

14.3. Minister's powers to direct Board

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

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

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

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

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

14.5. Giving effect to decisions of the Board

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

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

14.6. Board to exercise functions in accordance with the Plan

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

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

14.7. Urgent action

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

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

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

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

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

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

14.9. Joint Management Coordinator

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

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

15. PLANS AND LAND USE PLANNING

15.1. Preparation of a Plan

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

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

15.2. Reviewing, amending or updating the Plan

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

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

15.3. Cost of the Plan of Management

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

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

15.4. Operational plans

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

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

15.5. Environmental Assessment

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

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

15.6. Community development

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

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

15.7. Subletting land

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

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

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

16.1. Reservation of Traditional Owner’s Rights to Use

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

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

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

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

16.2. Transfer of Aboriginal cultural items

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

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

17. EMPLOYMENT, CONTRACTING AND TRAINING

17.1. Staffing Strategy

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

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

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

17.2. Positions for local Aboriginal people

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

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

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

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

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

17.4. Selection procedures

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

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

17.5. Implementation of Aboriginal Employment and Development Strategy

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

The Minister will promote Aboriginal training and employment within DEC.

17.6. Training of DEC staff

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

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

17.7. General Training for Board Members

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

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

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

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

17.8. Cultural awareness training for the Board and DEC officers

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

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

17.9. Contracts and Services

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

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

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

17.10. Community capacity building, training and other opportunities

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

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

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

18. LAND MANAGEMENT AND OTHER STATUTORY FUNCTIONS

18.1. Obligations of the Board to observe land management statutes

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

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

18.2. Exercise of power

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

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

18.3. Annual works program

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

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

18.4. Occupational health and safety

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

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

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

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

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

18.6. Threatened species legislation

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

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

18.7. Application of other land management legislation

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

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

18.8. Use of DEC Equipment and Services

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

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

18.9. Rights of public access

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

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

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

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

18.10. Reservation of Right of Entry and Inspection

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

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

18.11. Agreement for mutual assistance

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

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

18.12. Land management arrangements with neighbours

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

Lands, with the owner or lessee of any other land concerning the management of that other land adjoining or in the vicinity of the Lands.

- 2 The Board may develop policies for the negotiation of conservation agreements under the Act with neighbouring land owners.
- 3 The Director-General agrees to provide the Board with information about opportunities for it to participate in the development of strategies relating to regional land use planning and resource management.

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

18.13. Consistent management of adjacent land

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

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

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

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

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

18.15. Removal of road reserves across the Lands

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

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

18.16. Implementation of Master Plan for Fern Bay subdivision

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

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

18.17. Management of neighbouring reserves

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

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

18.18. Law enforcement on the Lands

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

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

18.19. Commencement of prosecutions

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

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

18.20. Promotion of the Lands

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

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

19. FEES, LICENCES AND PERMITS

19.1. Setting of park entry and user fees

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

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

19.2. Commitment to establish separate vehicle entry fee

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

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

19.3. Waiver of fees

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

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

19.4. Continuation of existing licences, permits etc

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

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

19.5. Access from Gan Gan Road to certain LALC Lands

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

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

19.6. Hunter Water

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

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

19.7. Granting or renewal of licences, permits etc

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

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

19.8. Commercial activities

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

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

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

19.9. Tour operator permit holders

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

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

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

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

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

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

19.11. Visitor monitoring

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

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

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

20. HOLDING OF PROPERTY AND ACCEPTANCE OF GIFTS

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

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

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

20.2. Gifts etc on behalf of Aboriginal Owners

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

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

20.3. Gifts etc on behalf of the Board

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

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

21. INTELLECTUAL PROPERTY

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

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

22. CHANGES TO LEGISLATION

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

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

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

22.2. Minister to consult on regulations

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

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

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

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

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

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

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

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

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

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

24. DISPUTE RESOLUTION

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

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

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

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

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

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

24.3. Formal dispute resolution processes

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

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

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

25. INSURANCE, INDEMNITIES AND FUTURE TAX LIABILITIES

25.1. Public liability insurance

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

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

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

25.2. Workers Compensation insurance

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

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

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

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

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

25.4. Volunteers undertaking work approved by the Board

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

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

25.5. Indemnification of the Board

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

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

25.6. Indemnification of the Land Council and release

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

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

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

25.7. Future liability for Commonwealth or State taxes

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

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

26. DEFINITIONS AND PROCEDURAL MATTERS

26.1. Use of Language

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

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

26.2. Other procedural provisions

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

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

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

26.3. Severability

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

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

26.4. Applicable law

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

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

26.5. Notices

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

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

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

26.6. Registration of Lease

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

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

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

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

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

26.8. Definitions

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

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

“Aboriginal Object” is as defined in the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Urgent Action” includes responses to:

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

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

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

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

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

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

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

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

LEASE FOR WORIMI CONSERVATION LANDS

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

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

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

LIST OF SCHEDULES ATTACHED TO THIS LEASE

Schedule 1

Memorandum of Understanding Stockton Bight dated 13 February 2001.

Schedule 2

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

Schedule 3

Reservation instruments.

Schedule 4

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

Schedule 5

Map titled “Worimi Conservation Lands” dated 19 December 2006.

Schedule 6

Existing interests.