

**MERRIMANS LOCAL ABORIGINAL LAND COUNCIL**

**AND**

**BEGA LOCAL ABORIGINAL LAND COUNCIL**

**LEASE TO**

**THE MINISTER FOR THE ENVIRONMENT**

**FOR**

**BIAMANGA NATIONAL PARK**

**December 2005**

**LEASE FOR**  
**Biamanga National Park**  
**Merrimans and Bega Local Aboriginal Land Councils Lease**  
**to the Minister for the Environment**

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## **PREAMBLE**

The lands now comprising Biamanga and Gulaga National Parks lie within the traditional country of Yuin [Djuwin] people. Aboriginal people have inhabited Yuin Country since time immemorial.

Mumbulla Mountain is the central place of significance in Biamanga National Park. The land 'Mumbulla' is named after the respected elder Jack Mumbler whose 'tribal' name was Biamanga. Biamanga is recognised as a ceremonial meeting place, for Aboriginal men and women.

Gulaga Mountain is the central place of significance in Gulaga National Park. Aboriginal mythology describes Gulaga as the place of ancestral origin for Yuin people. Gulaga itself symbolises the mother and provides a basis for Aboriginal spiritual identity, for Aboriginal women and men.

A multitude of recorded and unrecorded sites exist outside Biamanga and Gulaga National Parks holding varying degrees of significance to Yuin people. Mythologically these lands are interconnected and are viewed as a single cultural landscape.

The land and waterways in and around Biamanga and Gulaga National Parks provide sustenance and vital natural resources to Aboriginal people. There is ample evidence of past occupation including campsites, artworks, grinding grooves, ceremonial rings and shell middens.

The Yuin Lores that govern the customs and traditions relating to Mumbulla and Gulaga mountains have been handed down through the generations and continue to be observed by Yuin people today. Both Biamanga and Gulaga National Parks contain teaching sites as well as gender restricted areas of significance.

Captain Cook was the first recorded European person in the region who on 22 April 1770 saw a sign of habitation, smoke, in the vicinity of Gulaga. Gulaga was one of the first landmarks on the east coast of Australia to be named by Captain Cook. He named it Mt Dromedary.

The first recorded contact with Europeans in the region was in 1797 when survivors of the shipwreck "Sydney Cove" walked through the area on their way from Gippsland to Sydney. Whaling and sealing vessels trading between Van Dieman's Land and Sydney would have been sighted off shore around the same time.

The lives of Yuin people were radically changed as the pastoral and whaling industries developed and the colonial government imposed protectionist policies, dispossessing Aboriginal people of their traditional lands and suppressing their traditional way of life. Unprecedented impacts included marginalisation, violence, disease and death.

The descendants of the original inhabitants remained in contact with their ancestral country and continued to undertake customary practices. Aboriginal people made a unique contribution to the development of the settlement in return for rations.

For almost 200 years, Aboriginal people were classed along with the flora and fauna. Protests against injustices against Aboriginal people became widespread and controversial. A referendum was held in 1967 which gave the Commonwealth the power to make laws regarding Aboriginal people and ordering that Aboriginal people be counted in the National Census.

In December 1996 both Houses of the NSW Parliament unanimously passed the *National Parks And Wildlife Amendment (Aboriginal Ownership) Act* providing for the return of traditional lands through leases between Aboriginal Land Councils and the Minister for the Environment. These lands became scheduled under Schedule 14 of the Act as a result of Regional Forestry Agreements.

In the 1970s destruction to the lands continued by extensive logging. In 1977 Gubbo Ted Thomas led Yuin people in protest against logging on Mumbulla Mountain. This heightened awareness of the significance of the lands to Aboriginal people. In 1980 part of the lands in and around what is now Biamanga National Park become an Aboriginal Place. Biamanga National Park was proclaimed in 1994 and extended in 1997 as part of the Eden Regional Forest Agreement.

In 2001, as part of the Southern Comprehensive Regional Forest Agreement and at the request of Yuin people, Gulaga National Park was created out of the existing Wallaga Lake National Park, Goura Nature Reserve, and Mt Dromedary Flora Reserve.

The Biamanga and Gulaga leases have been negotiated together over a two-year period with the aim of recognising the cultural significance of the land to Aboriginal people whilst at the same time reserving the status of the lands as part of the conservation estate of NSW.

The people appointed to the Aboriginal Negotiating Panel consisted of Violet Parsons and Donna Brennan [Dec] from Batemans Bay; Mary Duroux and Dave Tout from Moruya; Lionel Mongta and John Mumbler from Bodalla; Vivienne Mason and Keith Stewart from Narooma; Pam Flanders and Anne Thomas from Wallaga Lake; Kathy Jones and Mervyn Penrith from Bega, and B. J. Cruse from Eden. The Facilitator was Michael Williams, the Project Officer was Patricia Ellis, the Coordinator was Karen Lee, and the Aboriginal Negotiating Panel's legal advisor was barrister Adam McLean.

Biamanga National Park falls within the boundaries of both Bega and Merrimans Local Aboriginal Land Council (LALC) areas. Gulaga National Park falls within the boundaries of both Merrimans and Wagonga LALC areas. During lease negotiations, the Land Councils were represented by David Dixon (Bega LALC), Glenis Kelly (Wagonga LALC) and Noelene Leha (Merrimans LALC). The LALC's legal advisor was barrister Peter Kilduff.

The Minister was represented by Regional Manager, Tim Shepherd and Area Manager, Preston Cope and advised by Lenore Fraser and John Gibbins.



Future generations should be proud to stand where their ancestors stood, to drink from where their ancestors drank, and to take in the views, just as their ancestors did. Through cooperation we can achieve anything as these mountains are our heart and soul.

*The Preamble sets out the cultural, economic and political history relevant to Yuin people and their ancestors as it relates to the lands now known as Biamanga and Gulaga National Parks. This is not a legal part of the Lease.*

### **Summary of the Arrangements**

The lands known as Biamanga National Park and Gulaga National Park now comprise inalienable freehold land, held on behalf of the Aboriginal Owners by the Wagonga, Merrimans and Bega Local Aboriginal Land Councils. By this Deed Biamanga National Park is leased for 30 years to the Minister for the Environment under the Part 4A of the *National Parks and Wildlife Act 1974* (the Act). They remain part of the conservation estate of New South Wales but will henceforth be under the care, control and management of a Board of Management with a majority of Board members being Aboriginal Owners. The Act provides for a nominee of the Local Aboriginal Land Councils and for a representative of each of the National Parks and Wildlife Service, local government, conservation groups and neighbouring landowners also to be on the Board. The parties intend that a new Plan of Management for the Lands be prepared as a priority by the Board to reflect and enhance these joint management arrangements.

While Biamanga and Gulaga National Parks have separate leases, they were negotiated together to reflect that the lands form a single cultural landscape.

*This sets out the legal framework for the hand back of Biamanga and Gulaga National Parks to Yuin people. This is not a legal part of the Lease.*

## **THE PARTIES AGREE:**

### **1. SUMMARY OF THE ARRANGEMENTS, HEADINGS AND EXPLANATORY NOTES NOT PART OF THE LEASE**

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

*This means that the summary of the arrangements, all headings and plain English boxes (italicised like this) are not part of the legal words of this Lease but are there to explain the ordinary meaning of the legal words.*

## **2. THE LANDS**

### **2.1. Description of the Lands at the commencement of the Lease**

1. The lands known as Biamanga National Park which are dealt with by this Lease comprise those areas of land which were reserved or dedicated as Biamanga National Park immediately prior to their revocation for the purposes of vesting their title in the Land Councils pursuant to s. 71O of the Act.
2. A map of the Biamanga National Park is appended to but does not form part of this Lease.

*This is the legal definition of the Biamanga lands that are included in the Lease.*

### **2.2. Name of the Lands**

1. The name of the National Park shall remain Biamanga National Park.

*The name of the National Park will remain as Biamanga National Park.*

### **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, 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 Councils, or of the Land Councils if such dealing is by the Minister.
2. These restrictions will continue to apply to the Lands whether or not the Act is amended.

*The Merrimans and Bega Local Aboriginal Land Councils, the Minister and the Director-General of NPWS agree the Lands cannot be sold and that neither the Land Councils nor the Minister will deal with Biamanga National Parks without the written agreement of the other one.*

### **2.4. Additions to the Lands**

1. Any additions to the Lands will only be with the consent of the Board, the Land Councils and the Minister.
2. Subject to the process described below, it is desirable that further land be reserved or dedicated as part of the Lands.

3. Should other land in the vicinity of the Lands be offered for sale, it would be appropriate that the parties consider whether negotiations should be undertaken by the Land Councils and/or the Service to acquire all or part of that other land for reservation or dedication as additions to the Lands.
4. Additions to the Lands will be discussed not less frequently than each review of this Lease pursuant to clause 5.8.

*Other land can be added to Biamanga National Park if the Board, the Land Councils and the Minister agree. If land in the area is for sale, the Board, the Land Councils and the Minister will talk about whether all or part of it should be bought and added to the Biamanga National Park.*

### **3. NATIVE TITLE**

#### **3.1. Reservation of native title**

1. The parties acknowledge that this Lease is not intended in any way to 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 means that this Lease is not intended to effect any native title rights and interests which may exist over the Biamanga National Parks.*

### **4. ACKNOWLEDGEMENT OF PRINCIPLES**

#### **4.1. Acknowledgment of consideration of cultural values**

1. The parties acknowledge that, in their negotiation of this Lease, they have had regard to the Yuin people's cultural values and, in particular, that they have recognised the special significance of the Lands to the Yuin people.
2. The parties acknowledge that Biamanga and Gulaga National Parks form part of a single cultural landscape.
3. The management of the Biamanga and Gulaga National Parks shall be coordinated to reflect this cultural link.

*Yuin cultural values including the connection between Biamanga and Gulaga National Parks were considered in the negotiation of this Lease. The management of the Biamanga and Gulaga National Parks will be coordinated to reflect this cultural link.*

#### **4.2. Acknowledgment of consideration of nature conservation**

1. The parties acknowledge that they have had regard to the nature conservation values of the Lands in their negotiation of this Lease.
2. In addition, the parties acknowledge that, to Yuin people, the nature conservation values form an integral part of the cultural values of the Lands.

*The natural values of Biamanga National Park were considered when negotiating these leases because natural values are important to Yuin people.*

## **5. LEASE ISSUES**

### **5.1. Purpose of and parties to the Lease**

1. The Land Councils lease the Lands to the Minister for the purpose of their declaration and management pursuant to the Act as a National Park with respect to those lands known as Biamanga National Park.
2. Wherever in the Lease an obligation is placed upon the Director-General, the Minister agrees to issue appropriate directions to the Director-General in respect of the observance of the particular obligation.

*The LALCs will hold the title to Biamanga National Park on behalf of the Aboriginal Owners. The LALCs will lease the land back to the Government to be used as a National Park. The Minister will instruct the Director- General of NPWS to do the required work.*

### **5.2. Term of the Lease**

1. The date of execution of the Lease is the date of publication of the proclamation of the vesting of the Lands in the Land Councils and the re-dedication and re-reservation of the Lands under the Act.
2. The term of the Lease will be for a period of thirty years commencing from the date of publication of the proclamation recited in 5.2.1

*The Lease is to expire at midnight on the last day of the term of the Lease. The lease is for thirty years*

### **5.3. Renewability**

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

*When the first 30-year lease has finished, the next lease must be for 30 years or more. Also, there is no limit to how many times the Lease can be renewed so long as each party agrees.*

#### **5.4. Holding over at expiry of the Lease**

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

*This lease continues to operate until a new one replaces it - even if that is after the formal finishing date of this Lease. The Act and this Lease mean that there will always be a lease over these lands for a National Park.*

#### **5.5. Renewal process**

1. The parties acknowledge that the renewal process shall be as set out in s. 71AI of the Act.
2. The parties also acknowledge and agree that subject to that section and subject always to there being agreement pursuant to clauses 5.3 and 5.9 of this Lease, the following shall apply:
  - (i) 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 Councils, 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.
  - (ii) If it is agreed that a provision does require amendment, the Director-General, the Land Councils 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.
  - (iii) Any amendment prepared in accordance with this clause and agreed to by the Land Councils must be presented to the Minister for approval at least 18 months before the expiry of the current term of the Lease.
  - (iv) If an amendment is approved by the Minister, a new lease must be prepared incorporating the amended provision.
  - (v) At least 6 months before the expiry of the current term of the Lease, the new lease should, if at all possible, be executed in escrow by the Minister and the Land Councils.
  - (vi) A lease executed under this clause takes effect, in substitution for the previous lease between the Minister and the Land Councils, on the expiration of the term of the previous lease.

- (vii) If the Director-General and the Land Councils agree that no provisions of the Lease require amendment, the Lease between the parties operates for a further term of 30 years, commencing on the expiration of the current term of the Lease, in accordance with its provisions and the requirements of this clause.
  - (viii) The times specified by this clause 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.
3. If there is disagreement between the Director-General, the Land Councils and the Aboriginal Owner Board members as to whether a provision in the Lease requires amendment or as to the wording of an amendment or if an amendment agreed between the Director-General, the Land Councils and the Aboriginal Owner Board members is not approved by the Minister, the Minister or the Land Councils may refer the matter for arbitration in accordance with s. 71BJ of the Act (except with respect to the fixing of the first year's rent for the new lease which is to be undertaken by agreement or, if agreement cannot be reached, is to be dealt with as provided for in s. 71AE of the Act).
4. In conducting the arbitration referred to in clause 5.5.3, the arbitrators are to have regard to:
- (i) the preservation of the rights and interests of native titleholders;
  - (ii) the views on the matter expressed by the Aboriginal Owner Board members;
  - (iii) the preservation and protection of the Yuin people's ways of life, culture and tradition;
  - (iv) the interests, proposals, opinions and wishes of Yuin people in relation to the management, use and control of the Lands;
  - (v) the growth and development of Yuin social, cultural and economic structures;
  - (vi) freedom of access to the Lands by Yuin people and their freedom to carry out on the Lands rites, ceremonies and other activities in accordance with their tradition;
  - (vii) the preservation of the natural environment;
  - (viii) the continuing management of the Lands under Part 4A of the Act;
  - (ix) the use of the Lands for tourist and educational activities; and
  - (x) the duties, functions and responsibilities of the Minister in relation to the Lands.

*This sets out the timetable and process for negotiating the renewal of the Lease before this Lease finishes. The Minister can request that any disagreements be sorted out through arbitration. The arbitration process must consider a number of Yuin cultural matters.*

## **5.6. 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 statute.

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

## **5.7. Rights to participate in consultations**

1. In accordance with s. 71AD(2)(b) of the Act, consultations concerning the operation of the Lease are to involve the Director-General and the Board.
2. The Land Councils shall also have a right to be consulted concerning the operation of the Lease

*The Board of Management, the Land Councils and the Director-General NPWS are to be involved in any talks about how this Lease is to work.*

## **5.8. Review of the Lease**

1. The parties acknowledge the requirements of s. 71AH of the Act and, in particular, that at least once every five years the Director-General on behalf of the Minister, the Land Councils and the Aboriginal Owner Board members must review the provisions of this Lease.
2. Where the parties and the Aboriginal Owner Board members agree to an amendment as a result of the review consultations, the parties shall execute a Deed to give effect to such agreement.
3. 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 the decision of the arbitrators (including as to the wording of any amendment in dispute) shall be final and binding on the parties.
4. The arbitrators are to be instructed to have regard to the same matters as are set out in clause 5.5 of this Lease.
5. The arbitrators' determination must in any event preserve the overall level of the benefits and the essential rights conferred on the Land Councils and the Aboriginal Owners by this Lease.

*The parties to the Lease have to look at it every five years and decide if there are any changes to be made. If there is a difference in ideas between the parties about changes which effect the management of the Biamanga National Park the dispute can be arbitrated. Changes to the Lease cannot make the overall level of benefits to and rights of the Land Councils and the Aboriginal Owners lower than they already are.*

## **5.9. Agreement to vary, amend or renew the Lease**

1. Any variation, amendment or renewal of this Lease shall require the agreement of the parties (being, in the case of a variation or an amendment, the agreement only of those parties who are parties to the clause to be varied or amended) and shall also require the agreement of the Aboriginal Owner Board members.
2. Despite the provisions of 5.9.1, the parties shall take all such steps as are necessary to give effect to any determination from any arbitration, concerning the Lands, where such arbitration was conducted as a result of the provisions of this Lease or the Act.
3. Should any variation being effected pursuant to 5.9.2 require a direction to the Board from the Minister in any regard, the Minister shall give such direction as necessary for such purpose.

*This means that any changes to this Lease have to be agreed to by the Land Councils, Minister and Director-General and by the Aboriginal Owner Board members unless the change is a result of arbitration because the parties could not agree.*

## **6. RENT AND BOARD ESTABLISHMENT COSTS**

### **6.1. Amount of rent**

1. The Minister will pay rent of \$210,000 dollars per annum.
2. The rent is subject to adjustment pursuant to clause 6.10 and to review pursuant to clause 6.12. The financial year commences on 1 July and ends on 30 June of the following year.

*Each year the Government pays \$210,000 in rent to lease of Biamanga National Park. Other clauses say how this rent is adjusted each year and reviewed each five years.*

### **6.2. Amount of rent in first year of Lease**

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

*Because the first year of the Lease does not start at the beginning of the financial year 1<sup>st</sup> July, this clause says how the rent is to be paid from the start of the Lease until 30 June.*



### **6.3. Board Establishment funds in the financial years 2006/07 and 2007/08**

1. Establishment funds of \$40,000 per annum will be provided by the Minister in the financial years 2006/07 and 2007/08 into the Account.
2. The establishment funds will be used towards any additional costs associated with the establishment, training and initial operation of the Board and must only be used upon approval by the Board for the following purposes:
  - (i) governance training for the Board, to assist the Board in developing its protocols and procedures.
  - (ii) any public consultation and advice to the public regarding the establishment of the Board and the management of the Lands.
  - (iii) any skills audit for Yuin people and Land Council members, to assist the Board in the development of relevant community capacity building programs for the management of the Lands.
  - (iv) any additional Board meetings that may be needed in the first two years following the commencement of the Lease.
  - (v) any additional visits to the Lands for Board members and Yuin people needed to inform the Board about issues associated with the management of the Lands.
  - (vi) any visits by the Board to other Aboriginal joint managed or co-managed parks to learn from their experiences.

*An extra \$40,000 is paid each year for the first two years of the Lease to help set up the Board. This money must be used for Board training, consulting the public about the new Board of Management, plans for the land, finding out what skills Yuin people have and what they need and networking with other Aboriginal owned National Parks*

### **6.4. Amount of rent in final year of Lease**

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

*Because the last year of the Lease will not end on 30 June, this clause says how the rent is to be paid between 1<sup>st</sup> July and the end of the Lease.*

### **6.5. Date rent due**

1. 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.

*For rent purposes, the year starts on 1<sup>st</sup> July and the rent must be paid by 31<sup>st</sup> July*

### **6.6. Payment of rent to be annual**

1. Rent is payable annually, except as provided in Clauses 6.2 and 6.4, and is payable in advance.

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

### **6.7. Account for payment of rent**

1. Rent is to be paid by the Minister into the Account.

*Rent will be paid into a National Parks account. This account will be separate from other NPWS accounts.*

### **6.8. Payment of rent**

1. The parties acknowledge that the rent is not paid to the Land Councils but is used by the Board in accordance with this Lease.

*Rent is not paid to Land Councils but is used as directed by the Board.*

### **6.9. Expenditure from the rent sub-account in the account**

1. Rent is to be expended for purposes consistent with this Lease and in accordance with s. 139(5) of the Act.
2. For the avoidance of doubt, the Board may expend rent on Community Development, or with the consent of the Minister, on acquisition of land for addition to the Lands where that Community Development or acquisition complies with s. 139(5) of the Act and with the Plan.

*The Board must spend rent money as outlined in section 139(5) which includes community development programs and buying land to add to the Park.*

### **6.10. Adjustment of rent during term of Lease**

1. The rent is to be adjusted, each 1 July during the currency of the Lease, to such amount as shall be obtained by multiplying \$210,000 by the quotient obtained by dividing the Consumer Price Index figure for the period ending on 31 March immediately prior to such adjustment by the Consumer Price Index figure for the period ending 31 March 2006 (provided that no adjustment shall be made if the operation of this clause would lead to a reduction in the amount of the rent payable).

*The rent is to be adjusted for inflation each year after the first year.*

### **6.11. Matters considered in negotiating the rent**

1. In reaching agreement on the rent to be paid, the Parties have had regard to the following matters as required by s. 71AE(4) of the Act:
  - (i) the nature, size and location of the Lands and the nature of the infrastructure and improvements on the Lands;
  - (ii) the nature of the ownership rights in the Lands that the Land Councils possess;
  - (iii) the provisions of the Act and this Lease relating to the Lands;
  - (iv) the extent to which the cultural significance of the Lands to Yuin people restricts the use that may be made of the Lands under this Lease;
  - (v) the arrangements contained in the Act and this Lease for the care, control, management and development of the Lands;
  - (vi) the amount of rent payable under leases of lands adjoining or in the vicinity of the Lands the subject of this Lease;
  - (vii) the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the Lands the subject of this Lease.
2. The parties acknowledge that in reaching an agreed rent and establishment funds for Biamanga and Gulaga National Parks, a single amount of money was negotiated for rent and establishment funds and then allocated on a 50:50 basis. This was done to enable the Boards for Biamanga and Gulaga National Parks to manage the two parks as a single cultural landscape on an equitable basis.

*This sets out the things that were considered in the rent negotiations. The Biamanga and Gulaga Boards will be allocated the same amount of money each year so that the two National Parks can be managed as a single cultural area.*

### **6.12. Review of the rent**

1. In the course of a review of the provisions of the Lease in accordance with clause 5.8, those conducting the review will consider the provisions relating to rent (including the amount of the rent).
2. If a party proposes, in any arbitration to be conducted pursuant to this Lease, that the then existing rent should be varied, that party shall give not less than one month's notice in writing of their intention so to argue and the bases upon which such argument is founded.
3. Any decisions relating to the review of the rent for the Lands should reflect the principle that the rent be negotiated for the Biamanga National Park and Gulaga National Park together as parts of a whole cultural landscape and then allocated between the two parks on a 50:50 basis.

*When the Lease is reviewed, that review includes looking at the amount of the rent. Any changes to the rent must be based on the criteria, which set the original rent. Regardless of changes to rent payment, the rent will be allocated to Biamanga National Park and Gulaga National Park on a 50:50 basis.*

## **7. MERRIMANS AND BEGA LOCAL ABORIGINAL LAND COUNCILS**

### **7.1. Acknowledgment of the Land Councils' holding the Lands on behalf of Aboriginal Owners and the Land Councils' responsibilities to them**

1. The Land Councils expressly declare and the Minister and the Director-General expressly acknowledge and accept that the Lands are held by the Land Councils on behalf of the Aboriginal Owners.
2. The Land Councils expressly declare and the Minister and the Director-General expressly acknowledge and accept that each Land Council must act in the best interests of the Aboriginal Owners when exercising its functions pursuant to s. 52 of the *Aboriginal Land Rights Act 1983 (NSW)* with respect to the Lands.
3. Each Land Council agrees, in order to give effect to its obligations under this clause, that it will not exercise such functions with respect to the Lands without first consulting the Board members who are Aboriginal Owners and obtaining the consent of them.

*The Merrimans and Bega Local Aboriginal Land Councils, the Minister and the Director-General understand that the Land Councils do not own Biamanga National Park for themselves. The Land Councils hold the Lands on behalf of the Aboriginal Owners. The LALCs must act in the best interests of the Aboriginal Owners and cannot do anything to the land without the agreement of the Aboriginal Owners on the Board of Management.*

### **7.2. Land Councils and employees etc to observe land management statutes**

1. The Land Councils acknowledge that the Land Councils and their employees, contractors and agents must comply with the provisions of the Act and any other Acts applying to the Lands, the regulations and any Plan in force with respect to the Lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and other vegetation.

*This clause means that the laws and rules including those protecting animals, plants and vegetation apply to the Merrimans and Bega Land Councils and anyone working for them.*

### **7.3. Acknowledgment of the Land Councils holding other property on behalf of Aboriginal Owners for use as directed by the Board**

1. The Land Councils expressly declare and the Minister and the Director-General expressly acknowledge and accept that all other property (other than

Aboriginal cultural items) transferred to the Land Councils by or as a consequence of this Lease is held by the Land Councils on behalf of the Aboriginal Owners for use as directed by the Board for the care, control and management of the Lands (and, if requested by or on behalf of the Director-General, of any other lands reserved or dedicated under the Act) .

*This says that the Land Councils hold and can use property (other than Aboriginal cultural items) they get with the Biamanga National Park as directed by the Board.*

#### **7.4. Insurance for LALC members**

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

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

### **8. MINISTER**

#### **8.1. Giving effect to decisions of the Board**

1. The Minister agrees to do all such things as are necessary and within the Minister's power to ensure that effect is given to decisions of the Board for:
  - (i) the care, control or management of the Lands, or
  - (ii) the preparation of plans of management for the Lands, or
  - (iii) payments from the Fund with respect to the Lands,except any decision where the Minister directs otherwise pursuant to s. 71AO of the Act.

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

## **8.2. 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 its members from legal action if they are acting legally.*

## **8.3. Minister seeking legislative change applying to the Lands but not applying solely to the Lands without consulting the Board and the Land Councils**

1. The Minister agrees not to introduce nor to cause to be introduced, without consulting the Board and the Land Councils, any Bill into the NSW Parliament for legislation where such legislation is to apply to the Lands and affects the care, control or management of the Lands by the Board or would significantly affect any rights or powers of the Land Councils 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 8.3.1, if enacted, would substantially diminish any rights or powers of the Land Councils, the Board or the Aboriginal Owners under this Lease or the Act, the Minister agrees not to introduce nor to cause to be introduced any Bill into the NSW Parliament for such legislation, without the Minister giving at least four weeks notice in writing of such introduction to the Board and the Land Councils.
3. The Minister agrees not to introduce nor to cause to be introduced, without the Minister giving at least eight weeks notice in writing of such introduction to the Board and the Land Councils, any Bill into the NSW Parliament applying solely in respect of the Lands or applying solely to land (which includes the Lands) dealt with pursuant to Part 4A of the Act.
4. The Minister agrees that, if he becomes aware of any Bill which has been tabled in the Parliament which it appears to him may apply to the Lands he will advise the Board forthwith.
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 Councils have a say before the Minister can propose new laws to Parliament where those new laws will affect the Biamanga National Park. The Minister has to give four weeks notice if the rights of Yuin people in relation to the Lands are significantly changed.*

#### **8.4. Minister to consult on regulations**

1. The Minister will consult the Board and the Land Councils before the making, amending or repealing of any regulations:
  - (i) under the Act or the *Wilderness Act 1987*, or the *Threatened Species Conservation Act 1995*; or
  - (ii) under any other Act administered by the Minister and where their implementation is the responsibility of the Director-General in her role as Director-General of the Service but not otherwisewhere 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/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.

*This means that the Minister will not make any rules that apply to the Biamanga National Parks unless the Board and the Land Councils have been consulted first.*

#### **8.5. Minister not to make regulations applying solely to the Lands without consulting the Board and the Land Councils**

1. The Minister will not seek, without consulting the Board and the Land Councils, to have made, amended or repealed any regulations applying solely in respect of the Lands.
2. Where the Minister has consulted the Land Councils and the Board about making, amending or repealing any regulations applying solely to land (which includes the Lands) dealt with pursuant to Part 4A of the Act, the Minister will not seek, where the Land Councils has not agreed to the proposal, to have made, amended or repealed any such regulations without the Minister giving at least four weeks notice of such introduction to the Land Councils and the Board.
3. The Minister agrees to consider any written submissions made by the Board and/or the Land Council/s with respect this clause and have regard to the views of the Board and/or Land Council and will reply in writing as to the Minister's decision.

*This means that the Minister will not make any special rules for the Biamanga National Park unless the Land Councils and the Board are consulted.*

#### **8.6. 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:
  - (i) the contents of any report, advice, information or recommendation that is to be or may be made or given by the Board, or

- (ii) any decision of the Board, that is not inconsistent with the Act and the Plan for the Lands, relating to the care, control and management of Aboriginal heritage and culture within the Lands.

*The Minister can't tell the Board what advice to give or what to do about the care, control or management of Aboriginal heritage if the Board is following the Act and the Plan of Management.*

### **8.7. Exercise of statutory powers on lands by employees of Minister on the Lands**

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

*National Parks and Wildlife Service staff can do their lawful duties at Biamanga National Park but they must look after the interests of the Aboriginal Owners.*

### **8.8. Accepting gifts on behalf of Aboriginal Owners**

1. The Minister agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Aboriginal Owners in respect of the Lands is transferred to the Land Councils 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 Councils on behalf of the Aboriginal Owners.*

### **8.9. Accepting gifts on behalf of the Board**

1. The Minister agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Lands or the Board is credited to the account (if in monetary form) or transferred to the Land Councils (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 Biamanga National Park or the Board, the Minister will make sure that the money is paid into the Biamanga Board's account. If anyone leaves something in their will that isn't money or gives it to the Minister for the Biamanga National Park or the Board, the Minister will make sure that the gift is made the property of the Land Councils on behalf of Aboriginal Owners to be used as the Board says.*

## **8.10. Delegation of Minister's Powers**

1. The Minister agrees not to delegate, with respect to the Lands, any power vested in the Minister pursuant to s. 71AO of the Act.
2. The Minister agrees to have regard to the views of the Board prior to giving any direction pursuant to s12 of the Act in respect of the Lands where, in the absence of the Minister's direction pursuant to s12 of the Act, the works or activities would otherwise be under the control of the Board under this Lease or the Act and the works or activities are not subject to a direction to the Board pursuant to s. 71AO of the Act.
3. In the case of an emergency, the Minister may issue such a direction pursuant to s12 of the Act without consulting the Board. In such emergency circumstances, the Minister agrees to notify the Board forthwith of such direction and to have regard to the views of the Board on the continuation of operation of such direction.

*Normally the Minister would not delegate authority to direct the Board that something is done on the Biamanga National Park except, if an emergency occurred and quick action is needed. If this happens, the Board must be told as soon as possible and the Board can have a say on the action taken.*

## **9. DIRECTOR-GENERAL**

### **9.1. Exercise of powers**

1. The parties acknowledge that, upon reservation of the Lands as a National Park, the Director-General was vested with powers and duties pursuant to the Act and other legislation.
2. The Director-General agrees not to exercise or permit to be exercised, without consulting the Board, any power vested in the Director-General under the Act or any other legislation where such exercise of the power is exclusively with respect to or impacting on the Lands or any Aboriginal cultural items on the Lands. However, in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise if so directed by the Board.
3. The Director-General agrees not to exercise or permit to be exercised, without consulting the Board, any power vested in the Director-General under the Act or any other legislation to the extent that such exercise is proposed to be with respect to or impacting on the Lands or any Aboriginal cultural items on the

Lands and where such exercise is not proposed to be exclusively with respect to or impacting on the Lands or any Aboriginal cultural items on the Lands. However, in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise with respect to the Lands if so directed by the Board.

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

*Except in an emergency, the Director-General will not exercise powers without consulting the Board. Also, the Director-General will not prosecute anyone for an offence relating to the Biamanga National Park without advice from the Board.*

## **9.2. Giving effect to decisions of the Board**

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

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

## **9.3. Biamanga monies to be kept in a separate account**

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

*Rent will be paid into a National Parks account. This account will be separate from other NPWS accounts. The money for any other Aboriginal Owned National Parks will be kept separate from Biamanga money.*

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

1. The Director-General agrees that, within the account, there will be three separate sub-accounts:
  - (i) a sub-account into which the rent is to be paid.
  - (ii) a sub-account into which revenue earned from the Lands (together with any gifts, devises or bequests) is to be paid.
  - (iii) a sub-account into which any external grants to the Land Councils or the Aboriginal Owners or the Board for the management of the land can be paid.
2. Notwithstanding this or any other provision of the Lease, the Director-General and the Board may agree to the creation of additional sub-accounts for specific purposes if agreed to by them as being desirable.

*The Biamanga National Park account will have three sub-accounts to keep the different forms of income separate and identifiable. 1 Rent money, 2 Lease and Licence money and 3 external grants. Also, annual NPWS money for land management and any capital works will also be clearly identifiable within the NPWS accounting system.*

#### **9.5. Structure of the "chart of accounts" within the account**

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

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

#### **9.6. Separate identification of ordinary annual operating funds for the Lands within the NPWS accounting system**

1. The Director-General agrees to ensure that the annual funds for the management of the Lands provided in accordance with s. 138 (1)(a) of the Act are to be clearly identified within the Service's accounting system.

2. The Director-General also agrees that the proportion of the Service's Recurrent Funds provided to the Lands at the commencement of this Lease shall continue to be reflected equitably in future recurrent funding for the Lands.

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

### **9.7. Separate identification of capital works funds for the Lands within the NPWS accounting system**

1. The Director-General agrees to ensure that any Capital Works Funds for the Lands provided through the Service are to be clearly identified in the Service's accounting system.

*Funds for the capital works program for the Biamanga National Park will be clearly identified in the NPWS accounting system*

### **9.8. Credit to the account of permit and other fees derived from the Lands**

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

*Money that is earned from the Biamanga National Park from camping and other fees or any money gifts will be put into the separate account set up for the Biamanga lands.*

### **9.9. Accepting gifts etc on behalf of Aboriginal Owners**

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

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

### **9.10. Accepting gifts etc on behalf of the Board**

1. The Director-General agrees to take such steps as are necessary to ensure that any gift, devise or bequest expressed to be for the benefit of the Lands or the Board is credited to the account (if in monetary form) or transferred to the

Land Councils on behalf of the Aboriginal Owners) to be dealt with as directed by the Board (if in non-monetary form).

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

### **9.11. Promotion of the Lands**

1. The Director-General agrees to promote the Lands as part of the ordinary promotion of the National Parks system of NSW.
2. The Director General shall not include any new and substantial mention of the Lands in Service promotional publications without consent of the Board.

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

### **9.12. Service representative on the Board**

1. The Director-General agrees that the officer of the Service to be nominated to the Board pursuant to s. 71AN(3)(d) shall be the person holding the office of Regional Manager of the Service for the Region in which the Lands are located.
2. The Director-General agrees to nominate an officer of the Service to be the deputy to the officer appointed pursuant to s. 71AN(3)(d) who will have the power of the Regional Manager with respect to the Service's function and duties on the Board.

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

## **10. BOARD OF MANAGEMENT**

### **10.1. Powers vested in the Board**

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

*This clause says that the Board is responsible for the care, control and management of the Biamanga National Park. This is the main clause that gives the Board the power to run the park.*

## **10.2. Board's functions while there is no plan of management**

1. While there is no Plan for the Lands, the Board in the exercise of its functions with respect to the care, control and management of the Lands, is to consult with and have regard to advice of the Director-General.

*Whilst there is no Plan of Management for the Parks, the Board will consult with the Director-General of National Parks & Wildlife regarding the management of the lands.*

## **10.3. 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, the regulations and any Plan in force with respect to the Lands.
2. The Board shall be responsible for performing all obligations of owners, occupiers and managers of land under the *Rural Fires Act 1997*, the *Noxious Weeds Act 1993*, the *Wild Dog Destruction Act 1921* and (in relation to pests) the *Rural Lands Protection Act 1998*.
3. The Land Councils agree that if they receive a notice pursuant to the Acts mentioned in this clause they will immediately advise and provide a copy to the Board, and will not carry out any activity on the Lands under those Acts except with the consent of the Board
4. The Director-General may exercise her functions under the *Rural Fires Act 1997*, but before doing so will give two weeks written notice to the Board.
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 of that consideration.
6. In the case of an unscheduled fire, the Director-General may exercise her functions under the *Rural Fires Act 1997*, without consulting the Board. In such circumstances, the Director-General agrees to notify the Board forthwith of such action and to have regard to the views of the Board on the continuation and conduct of operation of such action.
7. The Board will indemnify the Land Councils against any liabilities under Acts referred to in this clause, except where liability has arisen in relation to a failure of the Land Councils to comply with sub-clause 3.
8. The Minister agrees to issue directions to the Board to ensure compliance with this clause.

*This clause means that the laws and rules protecting animals, plants and other vegetation apply to the Board and anyone working for them.*

#### **10.4. Membership of the Board**

1. The Minister agrees that the Board will consist of 13 members.
2. As acknowledgement that Biamanga and Gulaga National Parks form part of a single cultural landscape, the Minister shall consider the desirability of having a number of Aboriginal Owner members of the Biamanga National Park Board also sitting as members on the Gulaga National Park Board.

*There will be 13 Board members. As Biamanga and Gulaga National Parks form part of a single cultural landscape, the Minister may have some members of one Board also sitting on the other Board. That way those people can make sure that the management is coordinated.*

#### **10.5. Aboriginal Owner Board members**

1. The Aboriginal Owner Board members shall be selected from those Aboriginal Owners 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 shall have regard to such matters as the gender, cultural affiliation and family grouping of the nominee in an endeavour to ensure that a representative group of members is appointed.
3. In appointing Aboriginal Owner Board members pursuant to this clause, the Minister shall also have regard to the geographical location of Aboriginal communities with respect to the Lands.
4. The Minister shall also have regard to the recommendations of any body or group formed by Aboriginal people who have a cultural association with the Lands.
5. The Minister may appoint deputies for each Aboriginal Owner to the Board who shall sit on the Board when the nominee is unavailable.
6. The Aboriginal Owner deputies Board members shall be selected from those Aboriginal Owners who are nominated by themselves or by another Aboriginal Owner of the Lands with the consent of the nominee.

*The Minister must try and get an even balance of Aboriginal Owner representation on the Board when appointing Board members. Any group formed by Aboriginal people who have a cultural association with the Lands can make recommendations to the Minister. Aboriginal Owner Board members can have deputies.*

#### **10.6. Local Aboriginal Land Council Board member**

1. The Minister agrees to appoint two Land Council representatives to the Board, one from Bega Local Aboriginal Land Council and one from Merrimans Local Aboriginal Land Council.

*There will be two LALC representatives on the Board. Bega LALC and Merrimans LALC will be represented on the Biamanga Board.*

### **10.7. Local Government Board member**

1. The Minister agrees that any person appointed to the Board pursuant to s. 71AN (3)(c) shall be an elected member of a local council where that council's area includes the Lands.

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

### **10.8. Development of annual budget proposals**

1. The Minister will direct the Board to submit to the Service, through the Director, Southern Branch after consultation with the Service's Regional Manager for the Service's Region within which the Lands are situated, its capital and recurrent budget estimate for the care, control and management of the Lands for the following financial year, within the timeframes required by the Service corporate planning cycle.

*The Board has to finalise the budget submissions for its operations and capital works programs within the timeframes required by the NPWS corporate planning cycle. This does not mean that the Government will automatically agree to these.*

### **10.9. Board meeting frequency**

1. The Minister agrees, pending any regulation so to provide, to direct the Board that it meet at least four times in each financial year.
2. The Minister further agrees that at least one meeting each financial year shall be a joint sitting of the Biamanga and Gulaga National Park Boards.
3. The Boards may agree that additional Board meetings may be joint sittings of the Biamanga and Gulaga National Parks.
4. At any joint sitting, each Board must have a quorum and each Board shall pass separate resolutions

*The Board has to meet at least four times each financial year. One of these meetings must be a joint meeting for both Biamanga and Gulaga Boards.*

### **10.10. Board Quorum**

1. The Minister agrees, pending any regulation so to provide, to direct the Board that a quorum at any meeting should be seven members including (if deputies to members are provided for) deputies for any absent members and that more than half the number of members counted toward such quorum must be Aboriginal Owners appointed pursuant to s. 71AN(3)(a) including (if deputies



to such members are provided for) deputies for any such absent Aboriginal Owner members.

2. The Minister also agrees pending any regulation so to provide, to direct the Board that any person who is obliged to be absent, temporarily, from any meeting as a result of the application of clause 10.15 shall continue to be counted, during such absence, toward the existence of a quorum.

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

### **10.11. 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 to be submitted to the Minister for approval within one year of its appointment.
2. The protocols and procedures are to address the following as a minimum and may address any other matters the Board or the Minister considers appropriate:
  - (i) Role of the Board;
  - (ii) Guiding principles;
  - (iii) Functions of the Board;
  - (iii) Roles and responsibilities of the Chairperson and Board members
  - (iv) Terms and conditions of Board appointment including term of appointment, remuneration and removal of members and creation of vacancies;
  - (iv) Standards of conduct for Board members, which would include: due diligence, decision making, conflict of interest including pecuniary and non-pecuniary interests, fraud, corrupt conduct, acceptance of gifts, hospitality or benefits, use of public resources, accountability of the Board for public expenditure, accountability of the Board for decision making;
  - (v) Public speaking and media contact;
  - (vi) Protocols between the Board, the Service and the Land Councils.
  - (vii) Conduct of Board meetings including location of meetings, quorums, voting, decisions of Board, agendas for meetings, minutes of meetings, attendance at Board meetings, confidentiality of Board documents.
  - (viii) Evaluation and reporting;
  - (ix) Training and corporate governance.

*The Board must develop protocols and procedures within one year to set up how the Board will go about Board business.*

### **10.12. Voting at Board meetings**

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

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

### **10.13. Insurance of Board members and their vehicles whilst on Board duties**

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

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

### **10.14. 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 the Service's Annual Report.

*The Director-General may ask the Board to give information each year to assist in preparation of the NPWS Annual Report.*

### **10.15. Declaration of pecuniary interests by Members of the Board**

1. The Minister agrees, pending any legislative change so to provide, to direct the Board that:

- (i) If a member has a direct or indirect pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board, the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
  - (ii) a disclosure by a member at a meeting of the Board that the member:
    - (a) is a member, or is in the employment, of a specified company or other body, or
    - (b) is a partner, or is in the employment, of a specified person, or
    - (c) 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 (i) above.
  - (iii) 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.
  - (iv) 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.
  - (v) A person does not breach (i) to (iv) 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.
  - (vi) A contravention of (i) to (iv) does not invalidate any decision of the Board.
2. The Minister agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of:
  - (i) matters affecting all Aboriginal Owners without discrimination between any groups of such owners; and
  - (ii) matters affecting all Yuin people without discrimination between any groups of such personsis not to be regarded as giving rise to any direct or indirect pecuniary interest for any member of the Board who is a Yuin person.
3. The Minister also agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of matters affecting employment issues relating to any Service officer or position is not to be

regarded as giving rise to any direct or indirect pecuniary interest for any member of the Board who is a Service officer unless that consideration concerns or impacts such officer specifically rather than Service employment matters generally.

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

### **10.16. Declaration of non-pecuniary interests by Members of the Board**

1. The Minister agrees, pending any legislative change so to provide, to direct the Board that if:
  - (i) 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
  - (ii) that interest appears to raise a conflict with the proper performance of the members duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
2. Particulars of any disclosure made under this clause are to be recorded by the Board in the minutes and in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
3. After a member has disclosed the nature of an interest in any matter, the Board must determine whether it is appropriate for the member to be present during any deliberation of the Board or take part in any decision of the Board, with respect to the matter.
4. A contravention of (1) to (3) does not invalidate any decision of the Board.
5. The Minister agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of:
  - (i) matters affecting all Aboriginal Owners without discrimination between any groups of such owners; and
  - (ii) matters affecting all Yuin people without discrimination between any groups of such personsis not to be regarded as giving rise to any direct non-pecuniary interest for any member of the Board who is a Yuin person.
6. The Minister also agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of matters affecting employment issues relating to any Service officer or position is not to be regarded as giving rise to any non-pecuniary interest for any member of the

Board who is a Service officer unless that consideration concerns or impacts such officer specifically rather than Service employment matters generally.

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

### **10.17. Term of office of Board members**

1. The Minister agrees, pending any regulation so to provide, that the ordinary term of appointment for members of the Board shall be for 4 years provided that in the case of the Board member appointed pursuant to s. 71AN(3)(c), that person remains an elected member of a local council where that council's area includes the Lands, in the case of the Board member appointed pursuant to s. 71AN(3)(d) the person remains an employee of the Service and in the case of the Board member appointed pursuant to s. 71AN (3)(f) the person continues to represent the interests of those people who nominated them.
2. In the event of a member of the Board being replaced during a term, the Minister agrees that any new member appointed as a replacement shall only be appointed for the unexpired portion of the term of the member being replaced.

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

### **10.18. Training for the Board**

1. Board members shall have access to appropriate Service training courses subject to availability of places and the Board meeting any additional costs.
2. Within one year of the Board's appointment, the Board members will undertake training to assist them in undertaking their functions as Board members and that the training will address:
  - (i) the issues listed in clause 10.11
  - (ii) their legislative responsibilities under land management legislation (including legislative responsibilities under the *National Parks and Wildlife Act 1974*, the *Rural Fires Act 1974*, the *Noxious Weeds Act 1993*, the *Rural Lands Protection Act 1998* and the *Wild Dog Destruction Act 1921*)
  - (iii) 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, and will arrange for appropriate training to be undertaken.

*Board members should have training, including in their legal responsibility. An assessment of training needs will be done each year and the appropriate training arranged.*

### **10.19. Financial supervision by the Board**

1. The Board must cause proper accounts and records to be kept in relation to all of its operations.
2. The Minister may direct the Board to establish a budget management framework that includes:
  - (i) preparing an annual budget and monitoring expenditure and revenue against the budget
  - (ii) preparing quarterly reports
  - (iii) preparing an annual financial report that is provided to the Director General
  - (iv) preparing budgets and reports in accordance with the Service's financial management and budget standards in place at the time.
3. The financial year and accounting period for the Board will be from 1 July each year to the following 30 June except in the first year of the Lease when it will be from the date of commencement of the Lease until the following 30 June.
4. The financial dealings of the Board and the operation of the account will be subject to the scrutiny of the Service's ongoing internal audit program in the same manner and to the same extent as the scrutiny given to the accounting processes and financial dealings of the Service Region within which Biamanga National Park is located.
5. The Minister may direct the Board to accept the scrutiny of the Service's internal auditors.
6. No costs for internal audit services provided for in this clause will be charged to the Account.
7. In the absence of a direction to the contrary from the Minister, the Board may choose to use auditors other than the Service's auditors to meet the Board's obligations.
8. The Minister may direct the Board to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to s. 71AQ of the Act.
9. Should the Board choose to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to s. 71AQ or the Minister directs pursuant to subclause 7 that it do so, and the Service apportions and charges costs to each of the Regions of the Service for audit services for such Region, the recovery of such cost from the Account for such audit services shall be on the same basis as any such recovery from the budget of any other Region within the Service and the parties expressly agree that there shall be no disadvantage in this regard because the Lands are held by the Land Councils under Part 4A of the Act.
10. The Minister may direct the Board to comply with the Service's Accounting Manual in the administration of its account payment and other accounting and financial administration practices.

11. In circumstances in which there may be insufficient members to form a Board, pending appointment of new Board members by the Minister, the Director-General will cause the financial administration of the Account to be consistent with the obligations of a Board pursuant to s. 71AQ and this clause during such period.

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

### **10.20. Right to obtain independent advice**

1. The Board may seek independent professional advice from persons who are not employees of the Service on such topics as the Board sees fit.
2. Should the Board choose to seek independent professional advice from persons who are not employees of the Service, 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.

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

### **10.21. Cultural awareness training**

1. The Minister agrees that all persons appointed to the Board, 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.
2. The reasonable cost of cultural awareness training for Board members will be met from the Board's funds.
3. All Service officers who are not Yuin people who are appointed to or are to act for any continuous period longer than two months in the position of Regional Manager for the Region in which the Lands are situated, or any Service positions located on or exclusively or predominantly involved in the management of the Lands will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Board.
4. Such training for such Service officers who are not Yuin people at the commencement of this Lease shall be held within six months of the date of publication of the proclamation recited in 5.2.1 and for such Service officers who fall under this provision after the commencement of this Lease, within one month of the requirement arising.
5. The reasonable agreed cost of cultural awareness training for such Service officers who are not Aboriginal people will be met by the Service.

*Non Aboriginal Board members and NPWS staff working on the Biamanga National Park will have to do cultural awareness training operated or approved by the Board.*

### **10.22. Application by the Board for external funding**

1. The Board may apply to bodies other than the Service or the NSW Treasury for funds to be expended for the care control or management of the Lands and to purchase lands for addition to the Lands.
2. Any funds provided to the Board as a result of such application by the Board shall not be counted by the Minister or the Director-General as an offset to any funds that should otherwise be provided to the Account pursuant to this Lease.
3. The Minister agrees to direct the Board that any funds provided to the Board as a result of such application by the Board shall be paid into the Account and shall be expended for the purposes for which it was provided and subject to any conditions attached to their provision to the Board.

*The Board can apply to outside organisations for money to spend on the Biamanga National Park and, if successful, its ordinary budget will not be reduced as a result. The Board must spend any money it gets from outside bodies for the purposes the money is given.*

### **10.23. Direct dealings with other Government departments**

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

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

### **10.24. Payments from the Account**

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

*Any payments of money from the Biamanga Account must be approved by the Board.*

### **10.25. The Board's obligations**

1. The Minister may direct the Board to ensure the Board complies with its obligations.

*The Minister may tell the Board to do what the Lease says it must do*



## 11. EMPLOYMENT, CONTRACTING AND TRAINING

### 11.1. Positions for indigenous persons

1. The parties recognise that four Aboriginal identified positions have been established in Far South Coast Region following the Eden Comprehensive Regional Assessment and the Southern Comprehensive Regional Assessment. These staff will take part in the administration care, control or management of Biamanga and Gulaga National Parks as a planned component of the overall operations of the Central Area, Far South Coast Region. The positions are:
  - (i) Project Officer
  - (ii) Two Field officers
  - (iii) A Ranger who is responsible for, or substantially involved in, the day to day care, control or management of Gulaga National Park.
2. An existing Ranger position will be an Aboriginal identified position who will be responsible for, or substantially involved in, the day-to-day care, control or management of Biamanga National Park.
3. The parties recognise that a further two Aboriginal Cultural Heritage Officer positions were established following the Eden Comprehensive Regional Assessment. These staff will be available on an as needs basis to take part in the care, control or management of the lands.
4. The positions outlined in clause 1, 2 and 3 shall be maintained by the Service.
5. If any additional positions that created for the area, the Director General will consider the views of the Board with respect to identifying further positions as Aboriginal identified positions.
6. The Board may choose to appoint additional staff to carry out care, control and management of the lands using funds available to the Board. These staff will be employed under the *Public Sector Management Act* and will be employees of the Service.
7. The Minister may direct the Board to approve the payment of Service staff salaries from the Account for those additional positions created pursuant to this clause
8. The Director-General shall specify as a criterion for the appointment or employment of any Aboriginal identified position that will take part in the administration care, control or management of the Lands, that the person has knowledge and a cultural association with the Lands and local Aboriginal community.
9. To the extent possible the Aboriginal Identified staff shall be involved in the care, control and management of the Lands.

*A number of Aboriginal identified NPWS jobs have been or will be created to work within Biamanga and Gulaga National Parks - one Project Officer, two Field Officers and two Rangers. These jobs will be maintained by NPWS. Two existing Aboriginal Cultural Heritage Officers will be involved in Biamanga and Gulaga National Park if needed. The Minister will consider making any other jobs in the area Aboriginal identified and will ensure that an employment criterion is local knowledge and cultural association with the area and local community.*

## 11.2. Selection procedures

1. The Director-General shall consult with the Board and have regard to the recommendations of the Board about the procedures to be adopted for the selection and appointment of a person to a position with the Service where the duties and functions of the position shall require the officer to be responsible for, or to take part in the day-to-day care, control or management of the Lands.
2. Subject to sub-clause 3, the Board shall be entitled to one (1) person nominated by them as a member on any selection committee convened to consider applicants for appointment to a position with Service where the duties and functions of the position shall require the officer to be responsible for and substantially involved in, the day to day care, control or management of the Lands.
3. The Board shall be entitled to nominate the majority of persons of any selection committee convened to consider applicants for appointment to a position with Service where the position is funded from the Account.
4. The Board shall be entitled to nominate the majority of persons of any selection committee convened to consider applicants for appointment of the Joint Management coordinator.

*The Director-General will ensure that there is a Board member on any selection committee for staff employed using funds controlled by the Board.*

## 11.3. Aboriginal training and employment

1. The Minister undertakes, including with respect to the Lands, to use the Minister's best endeavours to implement the current Aboriginal Employment and Development Strategy which has replaced the Aboriginal Employment and Training Plan 1991-1996 and subsequent plans 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 the NPWS including at Biamanga and that Biamanga will get fair treatment under the National Parks and Wildlife Service general Aboriginal employment plan in addition to the new Aboriginal jobs created by this Lease.*

## 11.4. Contracts and Services

1. To the extent permitted by law, the Board may give preference to Aboriginal organisations, including the Land Councils, for contracts to undertake works for the care, control or management of the Lands including but not restricted to feral animal control, weed control, cultural heritage protection measures, fencing, road works, facilities construction, maintenance of existing facilities, tour guiding and provision of other facilities relating to land and water management and tourism activities.
2. To the extent permitted by law, the Board may set conditions for tenders and contracts to undertake works for the care, control or management of the Lands including but not restricted to the employment and training of Aboriginal people.

*This means that the Board can give preference to Aboriginal organisations in contracts for works on the Biamanga National Park where the Board is allowed by law to do so.*

### **11.5. Application of the Public Sector Management Act**

1. The parties acknowledge that all Service positions without exception, including positions funded by the Board, are subject to the *Public Sector Management Act*.

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

### **11.6. Occupational health and safety**

1. The Board shall comply with all relevant legislation and Service policies relating to occupational health and safety.

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

### **11.7. Workers Compensation insurance**

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

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

### **11.8. Insurance for volunteers undertaking work approved by the Board of Management**

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

<p><i>Volunteers will be covered under the NPWS Miscellaneous Insurance Policy. Volunteers will be insured against injury if doing approved work at the time of injury. Volunteers will need to do approved training and be supervised by NPWS staff.</i></p>
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### **11.9. Training**

1. The Board may establish an Aboriginal Employment and Training program for the employment, education and skills training of Aboriginal persons in skills necessary for the management of the Lands using funds controlled by the Board.
2. The Director-General agrees to seek opportunities for training programs provided by other organisations to complement or extend training programs funded by the Board.
3. The Director-General shall ensure that Aboriginal persons employed by the Service in the administration or care, control or management of the 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.
4. 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.
5. The training of Aboriginal persons whose employment is funded from the Service's Recurrent Funds shall be provided by the Service at its cost and within the course of employment of the employee.
6. The training of Aboriginal persons whose employment is funded by the Board shall be provided by the Service, subject to any additional costs being met by the Board.

*The Board may establish an Aboriginal Employment and Training Program. NPWS agree to seek, promote and build upon training established by the Board. NPWS will fund training for Board employees.*

## **12. JOINT MANAGEMENT COORDINATOR**

1. The Service staff member who occupies the Service position as “Aboriginal Project Officer”, Central Area, Far South Coast Region, will be the “Joint Management Co-ordinator” with respect to the Lands.
2. The Joint Management Co-ordinator is supervised by and will report to the Area Manager (Central) for that person’s day-to-day activities.
3. The Joint Management Co-ordinator 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:
  - (i) monitor the implementation of the decisions of the Board;
  - (ii) report to the Board and Area Manager on the implementation of the Board’s decisions; and
  - (iii) ensure the Board has appropriate information on which to base decisions.
  - (iv) coordinate Board meetings as needed;
  - (v) implement communication mechanisms between the Board and the Service; and
  - (vi) 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.
4. The Service will pay the salary and operating expenses of the Joint Management Co-ordinator position.

*The Joint Management Co-ordinator will manage day-to-day Board business. They will report to the Board and to the NPWS Area Manager and ensure the Board are making informed decisions.*

## **13. LAND MANAGEMENT PRINCIPLES AND ISSUES**

### **13.1. Cultural Management**

1. As acknowledgment that Biamanga and Gulaga National Parks form part of a single cultural landscape, the Board shall seek to coordinate the performance of its functions with the management of Gulaga National Park.
2. The Board shall consult with the Board of Gulaga National Park on a regular basis to ensure coordination of management between the parks.
3. The Parties acknowledge that there shall be at least one joint sitting of the two Boards per year and it is desirable to have additional joint sittings of the Boards of Biamanga and Gulaga National Parks and that there is one plan of management prepared for both parks.

4. The Director-General will continue to be responsible for considering applications for permits and consents under sections 87 and 90 of the Act respectively. In doing so it is noted that under current procedures Local Aboriginal Land Councils are explicitly consulted in the course of an application being made.

*Because Gulaga and Biamanga are part of a single cultural landscape, the two Boards must develop a single plan of management and talk about park management issues in joint meetings.*

### **13.2. The relationship between the Board and the Regional Manager**

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 Service officers to the extent that this is required to give effect to such decisions.
2. The Central Area of the Far South Coast Region will carry out 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 of Management.
3. Management operations on the lands will take place in a way which is integrated with the overall responsibilities of Central area. Management operations on the lands will be detailed in an annual works program which will be agreed between the Board and the Area Manager Central. If new or unexpected work is required the Board will consult with the Area Manager Central in order to program the works.
4. If structural arrangements within the Service change, management operations on the lands will be carried out by the unit within the Service with geographic responsibility for the lands
5. The Regional Manager, the Area Manager Central and the Service will use their best endeavours to give effect to the joint management arrangement, including committing time to activities that contribute to these arrangements. This may include Service staff mentoring, supervising and training any new Aboriginal staff employed through Board funds, Service staff preparing grant applications for community capacity building programs and Service staff developing programs with other Government and non-Government organisations on joint management issues.

*Operational works required within Biamanga National Park will be integrated into the Central Area works program. The Regional Manager will implement Board decisions by directing NPWS staff and allocating time to Biamanga matters.*

### **13.3. Use of Service Equipment and Services**

1. The present practice of mobility and temporary assignment or transfer of Service equipment shall continue so that equipment located elsewhere in

Service areas can be also used on the Lands when its use is requested by the Board and it is available for such use.

2. The same provisions shall apply to advice or other professional services and advice from other Service officers.
3. A right of access to the Lands with the consent of the Board, does not give any rights to use of the services, goods, plant, machinery or utilities on or for the Lands without the express authorisation of the Board.

*This means that equipment located elsewhere in NPWS areas can be used at Biamanga when available. Advice from other Service professional staff will also be available to the Board.*

#### **13.4. Agreement for mutual assistance**

1. It is desirable that the management of the Lands and of other land in the Far South Coast Region reserved or dedicated under the Act take place in a co-operative framework involving the Board and the Director-General.
2. Subclause 1 reflects the wishes of the parties but does not, in itself, place any specific binding obligations on either the Board or the Director-General.

*Everyone thinks co-operation between the Board and NPWS and between all the parks in the cultural area is a good idea.*

#### **13.5. Co-operative agreements for land management**

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 or care of that other land adjoining or in the vicinity of the Lands.
2. Any agreement or arrangement entered into by the Director-General with respect to the care, control or management of land reserved under the Act does not apply to the Lands except with the approval of the Board and the Director-General. In granting approval the Board and the Director-General may agree that an agreement or arrangement applies in whole or in part.

*The Director-General of NPWS will implement Board decisions as agreed to by the Board.*

#### **13.6. Transfer of Aboriginal cultural items**

1. The parties acknowledge that having regard to s.83 of the Act, some uncertainty may exist as to the extent to which Aboriginal cultural items that are in or on the Lands are now vested in the Land Councils by virtue of the proclamation vesting the Lands in the Land Councils. In recognition, in particular, of the paramount powers of the Board under s. 71AO(5) of the Act

in relation to the care, control and management of Yuin heritage and culture within the Lands, the parties wish, as far as practicable, to remove the uncertainty.

2. Accordingly, the Director-General and the Land Councils agree that, if directed to do so in writing by or on behalf of any Aboriginal Owner, the Director-General will transfer the Aboriginal cultural items which are in or on the Lands (to the extent that they may not have already been vested pursuant to the proclamation) to the Land Councils pursuant to s. 85A of the Act, subject to the following conditions:
  - (i) the Land Councils will be deemed to have included the Aboriginal cultural items as part of the Lands the subject of this Lease; and
  - (ii) the Board will have care, control and management of the Aboriginal cultural items.
3. The Director-General agrees not to withhold, unreasonably, any consent sought by the Board pursuant to s.90 of the Act to permit the Board to deal with an Aboriginal cultural item in a fashion considered appropriate by the Board.

*If requested the Director General of NPWS will hand the ownership of Yuin heritage items within the Biamanga National Park to the Land Councils. The control of these items will be with the Board.*

### **13.7. Rights of public access**

1. The parties acknowledge that the public has a right of general access to the Lands, in accordance with s. 71AD(1)(m) of the Act and that this general right of access is to be subject to the Act and the Plan.
2. The principles to be applied by the Board which will guide the management of public access to the Lands are:
  - (i) the protection of Aboriginal cultural values;
  - (ii) the promotion and enhancement of appropriate use, understanding and enjoyment of the Lands;
  - (iii) ecological sustainability;
  - (iv) equity; and
  - (v) regional planning.
3. General public rights of access to the land will be maintained subject to any restrictions declared under the Act, this Lease, the Plan or any other Act for the purposes of dealing with natural disasters howsoever caused, urgent land management or urgent public health considerations (determination of urgency and sufficiency for this purpose to be solely by the Board).
4. The Board will be able to apply any declarations of restrictions on access to visitors, staff or Yuin people as the Board considers appropriate. Because the lands are of special cultural significance to the Yuin people, the parties agree that a number of specific matters relating to restrictions on access should be set out in this lease. These are:



- (i) 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 Yuin people.
- (ii) In addition, public access will be managed to increase visitor awareness, understanding and appreciation of the nature conservation values of the Lands.
- (iii) 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.
- (iv) Access for self-reliant bush walking will be managed by the Board in a manner which ensures safety and protects culturally sensitive areas and nature conservation values.
- (v) Some areas will be permanently or temporarily zoned by the Plan for Yuin cultural and management purposes. Such areas will not generally be open to public access.
- (vi) The Board may, at the request of the Land Councils or a group of Aboriginal Owners or on its own volition:
  - (a) declare the whole or part of the Lands a "no alcohol" area for short periods for cultural reasons;
  - (b) 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
  - (c) the Board shall define the meaning of the term "alcohol" for the purposes of such prohibition.

*This clause sets out some principles, which will guide the Board in setting conditions for public access to the Biamanga National Park.*

### **13.8. Reservation of Yuin people's Rights to Use**

1. The parties acknowledge that Aboriginal Owners, and other Yuin people, have the following rights, which will operate subject to the directions or decisions of the Board with respect to health, safety or privacy -
  - (i) the right to enter upon the Lands and use the Lands to the extent that the entry, use or occupation is in accordance with tradition;
  - (ii) the right to engage in the traditional use of any area of the Lands for hunting or food gathering in accordance with this Lease; and
  - (iii) the right to engage in the traditional use of any area of the Lands for ceremonial purposes.
2. The Land Councils reserves the right to request the Minister to sub-let any reasonable part of the Lands for Community Development purposes.
3. The Minister will not unreasonably refuse to grant such a sub-lease where it is in accordance with the Act and the Plan.

*This sets out the rights of Aboriginal Owners to go on to and use the National Park in accordance with Aboriginal tradition but that this entry and use of the National Park has to be in accordance with the rules and laws governing the National Park.*

### **13.9. Acknowledgment of hunting fishing and gathering rights**

1. The parties acknowledge that the Aboriginal Owners of the Lands, and any other Aboriginal people who have the consent of the Aboriginal Owner Board members, are entitled (subject to s. 71AO(2) of the Act), and to other provisions of the Act, to any other Act applying to the Lands and to the 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 Yuin People.
2. For the purpose of this clause, firearms will not be used.

*This clause acknowledges Yuin hunting and gathering rights of foods for domestic purposes and for ceremonial and cultural purposes. The Aboriginal Negotiating Panel decided that guns were not to be used in the Park for hunting by Traditional Owners.*

### **13.10. Board to control cultural activities including hunting and gathering**

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

*This clause means that the Board will set the rules for Yuin hunting and gathering on the National Park.*

### **13.11. Reservation of Right of Entry and Inspection**

1. For the purpose of ensuring and monitoring compliance with this Lease, the Land Councils reserves a right in favour of the Chairperson of the Land Councils and any person authorised in writing by the Land Councils, after reasonable notice and at all reasonable times, to enter upon the Lands or any part of them and to inspect the Lands and any improvements on the Lands.
2. Access is to be subject to:
  - (i) such reasonable constraints as may be contained in the Plan;
  - (ii) 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
  - (iii) such restrictions as may arise under any industrial award or agreement relating to staff residences on the Lands.

*This means that the Land Councils can send a person onto the National Park to inspect that the Lease is being obeyed but that this is subject to some conditions concerning things like staff privacy etc.*

### **13.12. Law enforcement on the Lands**

1. Law enforcement, on the Lands, of the Act, other Acts for which the Service has primary or delegated responsibility and any regulations under such Acts are to be undertaken by Service officers.
2. The Minister may direct the Board to develop a law enforcement policy for implementation on the Lands subject to approval of such policy by the Minister.
3. The Director-General agrees to give consent pursuant to s. 179 of the Act to the implementation of proceedings when requested to do so by the Board unless the Director-General considers it would be unreasonable to give such consent.
4. Nothing in this clause shall be construed as limiting the right of the Land Councils (or any other body or person) to bring proceedings in accordance with s. 176A of the Act.

*This means that NPWS staff will remain responsible for law enforcement on Biamanga National Park and the Director-General will agree to reasonable requests from the Board to prosecute. It also says that the Lease will not remove any existing rights of the Merrimans and Bega Local Aboriginal Land Councils or anyone else to take legal action under the Parks Act.*

### **13.13. Directions to the Board concerning the exercise of powers**

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

*This means that there maybe some restrictions on how or when the Board can harm threatened species. The Board must notify the Director General when it plans to spend more than \$100,000 on any item or do an activity that needs planning permission.*

## **14. PLANNING**

### **14.1. Preparation of a Plan**

1. The Minister will direct the Board to commence, not later than 12 months from the date of execution of this Lease, the process of the preparation of a Plan for the Lands.
2. As acknowledgement that Biamanga and Gulaga National Parks form part of a single cultural landscape, the parties agree that it is desirable to prepare a single Plan for Biamanga and Gulaga National Parks.
3. The Service shall be responsible for the costs associated with the Plan including the costs of public exhibition of the draft plan, public consultations and other actions as required by the Act.
4. The Board shall be responsible for the costs of any additional public consultation over and above that which the Service would normally expend on preparing and exhibiting a plan of management.

*The Board will have to start preparing a new plan of management within 12 months of the start of the Lease. It is preferred that one Plan of Management will be developed for the two National Parks.. The ordinary costs of preparing a Plan of Management will be paid for by NPWS. The Board will have to pay for any extra meetings that they want.*

### **14.2. Operational Plans**

1. The Board may from time to time request the preparation of specific operational plans for particular management issues.

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

### **14.3. Environmental Assessment**

1. The Director General shall assist the Board with respect to its duties pursuant to s. 71BL of the Act for environmental assessment.
2. The Minister may direct the Board that the Board notify the Director-General not less than 14 days prior to the carrying out any act or implementing any decision, including a decision to prepare an environmental impact statement in accordance with the *Environmental Planning and Assessment Act 1979*, with respect to any "activity which is likely significantly to affect the environment" within the meaning of that Act.

*The Director-General shall assist the Board with Environmental Impact Assessment. The Minister may ask the Board to give the Director-General notice before doing an Environmental Impact Assessment.*

#### **14.4. Community development**

1. The Plan to be prepared by the Board after the commencement of this Lease may provide for Community Development purposes prescribed by the regulations.
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 new Plan of Management to be prepared by the Board will say where and how new community facilities can be built. The Minister agrees to try to have the words "community development" mean the same thing in the regulations as it means in the Lease.*

#### **14.5. Threatened species legislation**

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

*This clause deals with how the Threatened Species Act will work on the Biamanga National Park in relation to input from the Board.*

## **15. FEES, LICENCES AND PERMITS**

### **15.1. Setting of park entry and user fees**

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

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

### **15.2. Recognition of State-wide Service entry permits**

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

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

### **15.3. Tour operator permit holders**

1. The Lands will not be added to any tour operator's permit without the approval of the Board.
2. The Board will set conditions for authorised tour operators operating on the Lands.
3. The Board will consult with and have regard to the views of the Service when setting conditions for such authorised tour operators.
4. The Board will have power to issue specific permits authorising tour operators to operate on the Lands.
5. Any per capita charge on visitors brought to the Lands by authorised tour operators will be paid into the Account.
6. Permits of tour operators current at the date of commencement of Lease will be recognised by the Board for the unexpired period of such permit.
7. Where five or fewer parks are on the schedule for any individual tour operator's permit, the fee for that permit is to be paid pro rata into the Account.
8. The Board may require, when considering permits for new or renewal of tour operators permits, the use of trained Yuin people to ensure appropriate interpretation of cultural values.

*This clause deals with how commercial tour operators' permits, which allow entry to Biamanga, are controlled by the Board.*

#### **15.4. Exemption from fees**

1. The Board may exempt Aboriginal people and members of the Land Councils from the payment of entry, camping or any other fees for use of or access to the Lands.
2. Such use or access without fees does not give any rights to use of the services, goods, plant, machinery or utilities on or for the Lands.

*Aboriginal people including Land Council members may not have to pay fees if they apply to Gulaga and Biamanga National Parks; they will only have access to Park equipment that is available to the general public.*

#### **15.5. Visitor monitoring**

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

*This deals with monitoring of visitor numbers to the Biamanga National Park.*

#### **15.6. Continuation of existing licences, permits etc**

1. The parties acknowledge that the Lease is subject to any existing interest within the meaning of Section 39 of the Act, any licence issued under Part 9 of the Act, any lease, licence, franchise or easement granted under Part 12 of the Act and any authority or consent issued under this Act or the regulations affecting the Lands, or any part of the Lands, that is current on the date on which the Lands are vested in the Land Councils.
2. Details of existing interests for which the Parties are aware are listed in Schedule 1 appended to and forming part of this Lease.

*This clause means that all existing permits to use the Biamanga National Park continue when Biamanga National Park is transferred to the Land Council.*

#### **15.7. Granting or renewal of licences, permits**

1. The parties acknowledge that any power to grant, extend or extinguish any interest, licence, lease, franchise, easement, authority or consent of a kind referred to in clause 15.6 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 15.8 (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 or of the Act or of any other enactment applying to the Lands.

*This means that any extension of licences etc must have Board approval.*

### **15.8. Enterprises on the Lands**

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

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

### **16. WORLD HERITAGE, NATIONAL HERITAGE , 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 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* 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 Councils and the Board.

*This clause deals with how the Wilderness Act will operate on the Biamanga National Park including in relation to input from the Board.*

## **17. DISPUTE RESOLUTION**

### **17.1. Preliminary steps for resolution of disputes between the Board and the Minister or the Board and the Director-General**

1. If there is a dispute between the Board and the Minister or the Board and the Director-General, the Chair of the Board will seek to resolve the matter in issue with the Regional Manager.
2. If such discussion is not able to resolve the matter in issue, the Chair of the Board will seek to resolve the matter in issue with the Southern Branch Director.
3. If such discussion is not able to resolve the matter in issue, the process set out in clause 17.4 is to be followed.

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

### **17.2. Preliminary steps for resolution of disputes between the Land Councils and the Minister or the Land Councils and the Director-General**

1. If there is a dispute between the Land Councils and the Minister or Land Councils and the Director-General, the Chair of the Land Councils will seek to resolve the matter in issue with the Regional Manager
2. If such discussion is not able to resolve the matter in issue, the Chair of the Land Councils will seek to resolve the matter in issue with the Southern Branch Director.

3. If such further discussion is not able to resolve the matter in issue, the process set out in clause 17.4 is to be followed.

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

### **17.3. Preliminary steps for resolution of disputes between the Land Councils and the Board**

1. If there is a dispute between the Land Councils and the Board, in the first instance, the Chairs of the Land Councils will seek to resolve the matter in issue with the Chair of the Board.
2. The Land Councils and the Minister agree that the Minister will direct the Board that, if there is a dispute between the Land Councils 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 Councils.
3. If such discussion is not able to resolve the matter in issue, the process set out in clause 17.4 is to be followed and that the Minister will direct the Board to do so in all such circumstances.

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

### **17.4. Formal dispute resolution processes**

1. If after the steps as relevantly set out in clauses 17.1, 17.2 or 17.3 are unsuccessful in resolving any dispute, any one of the parties in dispute considers that the matter remains unresolved, that party shall notify, in writing, the other parties to the dispute of the matters continuing to be in dispute.
2. Such written notice shall give those other parties fourteen days in which to resolve the matter in dispute and notify the other parties of the steps taken or to be taken in resolution.
3. If following the expiry of fourteen days after the giving of notice pursuant to subclause 1 above, any party considers that the matter has not been resolved, that party shall convene, within twenty one days of the expiry of such notice, a meeting of the parties (which meeting shall be held on the Lands) to discuss the matter in dispute.
4. If any meeting is convened pursuant to subclause 3 above, the parties to the dispute shall attend such meeting either in person or by agent authorised to negotiate on their behalf.
5. During any meeting pursuant to subclause 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, all or any one of the parties will take all such steps as are necessary to give effect to the proposed resolution.

7. If the parties are unable to agree on how to resolve the matter in dispute, the parties may appoint a mediator to assist them endeavour to resolve the matters in dispute.
8. If the parties remain unable to agree on how to resolve the matter in dispute, the matter in dispute (and responsibility for any costs of the arbitration) shall be referred to arbitration pursuant to s. 71BJ of the Act (or, should s. 71BJ not apply to the dispute, the arbitration shall be conducted as if it did apply), the results of which shall be binding on each of them.
9. Any arbitration pursuant to s. 71BJ shall include any issues of compensation to any party to this Lease as a result of the matter in dispute; and in conducting any arbitration, the arbitrators are to have regard to
  - (i) the preservation of the rights and interests of native titleholders;
  - (ii) the views on the matter expressed by the Aboriginal Owner Board members;
  - (iii) the preservation and protection of traditional ways of life, culture and tradition;
  - (iv) the interests, proposals, opinions and wishes of Yuin people in relation to the management, use and control of the Lands;
  - (v) the growth and development of Yuin social, cultural and economic structures;
  - (vi) freedom of access to the Lands by Yuin people and their freedom to carry out on the Lands rites, ceremonies and other activities in accordance with their tradition;
  - (vii) the preservation of the natural environment;
  - (ix) the continuing management of the Lands under Part 4A of the Act
  - (x) the use of the Lands for tourist and educational activities; and
  - (xi) the duties, functions and responsibilities of the Minister in relation to the Lands.

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

## **18. MISCELLANEOUS PROVISIONS**

### **18.1. Minister entitled to quiet enjoyment**

1. The Minister when observing and performing the obligations of the Minister in this Lease and procuring the observation and performance by the Director-General of obligations of the Director-General, may peaceably possess and enjoy the Lands without any interruption or disturbance from the Land Councils or any person lawfully claiming by, from, under or in trust for the Land Councils.

*This means that the Land Councils is not entitled to interfere with the Minister doing what is required by the Lease.*

## **18.2. Future liability for Commonwealth or State taxes**

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

*This clause means that if any future new taxes or rates must be paid just because the Biamanga National Park is Aboriginal owned, the Land Councils will not have to pay them.*

## **18.3. Public liability insurance**

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

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

## **18.4. Intellectual Property**

1. Any intellectual property in any traditional art or designs on the Lands shall, to the extent it is currently vested in the Service, be vested in the Land Councils on behalf of the Aboriginal Owners from the commencement of this Lease.
2. To the extent that any other intellectual property 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 Councils on behalf of the Aboriginal Owners.
3. The Land Councils grant an irrevocable licence to the Director-General to use such Intellectual property.
4. The Director-General shall not use such intellectual property without the written consent of the Board
5. The Land Councils shall not grant a licence for use of the intellectual property to any other person without written consent of the Board.
6. The Board may direct the Land Council to grant a licence to any other person on terms and conditions as set by the Board and any fee charged for the licence shall be paid into the Account

7. The Service will not use such intellectual property without the written consent of the Board.
8. The Land Council or the Board may set conditions on the use of the intellectual property.
9. The Land Council or the Board agree not to charge the Service a fee if the use is for the promotion of the Lands or of the National Park system.
10. The Minister agrees to use his best endeavours to seek to have transferred to the Land Councils any intellectual property of the types covered by the Lease which is vested in the Crown and which is not within the administration of the Minister or the Director-General.

*This clause means that Traditional art and designs and other cultural property at Biamanga will be owned by the Aboriginal Owners, through Merrimans and Bega Local Aboriginal Land Councils, but that the National Parks and Wildlife Service may use them for free to promote Biamanga or the National Parks system.*

### **18.5. Use of Language**

1. a word or expression that indicates one or more particular genders shall be taken to indicate every other gender unless the contrary is expressly intended to give effect to the expression in context,
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, and
5. a reference to "power" does not encompass any mandatory obligation under any Act.

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

### **18.6. Applicable law**

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

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

### **18.7. 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 shall be in writing and shall be sent by prepaid post to the following address as relevant:
  - (i) when to the Minister - to Parliament House, Macquarie Street, Sydney;
  - (ii) 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;
  - (iii) when to the Merrimans Local Aboriginal 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.
  - (iv) when to the Bega Local Aboriginal Land Councils - 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. 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. Any such notice given by any one of them to either or both of the others by electronic transmission shall be in substitution for the requirement that such notice be in writing and sent by prepaid post to the relevant address pursuant to subclause 1 above.

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

### **18.8. Registration of Lease**

1. Each party 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 subclause 1.

*This means that the Lease and other necessary documents will be registered as required by the Act.*

## 19. DEFINITIONS

### 19.1. Definitions

#### 1. Defined terms

"Aboriginal cultural item" means "Aboriginal object" as defined in the Act as at the date of commencement of this Lease.

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

"Aboriginal Owner Board members" means those Board members who are Aboriginal owners appointed by the Minister under s71AN (3)(a) of the Act.

"Account" means the separate account in the National Parks and Wildlife Fund known as the Biamanga Lands Management account.

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

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

"animal" has the same meaning as in the Act as at the date of commencement of this Lease.

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

"Capital items" means items purchased from Capital Works funds.

"Capital Works Funds" means funds used for the creation or enhancement of assets as defined by Treasury.

"Community Development" means

- (i) recreation facilities; or
- (ii) cultural facilities; or
- (iii) general park facilities; or
- (iv) activities that will improve the capacity of the Yuin people to participate in the management of the Lands that are appropriate for a National Park.

"Consumer Price Index" 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 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 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 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.

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

“Fund” has the same meaning as in sections 137 and 138 of the Act

"Land Councils" means the Merrimans Local Aboriginal Land Council and Bega Local Aboriginal Land Council established pursuant to the *Aboriginal Land Rights Act 1983*.

"the Lands" comprise those lands defined in clause 11 of this Lease and depicted in the map appended to (but not forming part of) this Lease and (where applicable) includes any added lands.

"the Lease" means this Lease or any amended version of this Lease.

"Minister" means the Minister administering the Act from time to time.

"National Park" has the same meaning as in the Act.

“National Heritage list” has the same meaning as in the *Environment Protection and Biodiversity Conservation Act 1999*.

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

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

"parties" means the Land Councils, the Minister and the Director-General.

“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:

- (i) 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



- (ii) 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:

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

"Plan" means the plan of management under the Act in force from time to time applying to the Lands.

"Recurrent expenses" means expenses funded from Recurrent Funds

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

"Regional Manager" means the person from time to time holding the position referred to in clause 9.12.1.

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

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

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

"Yuin people" 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 they are registered as Aboriginal Owners.

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

*Signed by,  
Chair of the Bega Local Aboriginal Land  
Council in the presence of:*

*Signed by,  
Chair of the Merrimans Local Aboriginal Land  
Council in the presence of:*

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

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## **Schedule 1**

*Reference Clause 15.6 - Existing licences, permits etc  
List of existing licences, permits etc and relevant details*