
Mutawintji National Park

Mutawintji Historic Site

Mutawintji Nature reserve

**Mutawintji Local Aboriginal Land Council Lease
to the Minister for the Environment**

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Preamble

Whereas:

1. The lands now comprising Mutawintji National Park, Mutawintji Historic Site and Mutawintji Nature Reserve have always been part of the traditional country of the ancestors of the present day Aboriginal owners and a ceremonial centre for Wiimpatja^[1] from a wide regional area.
2. The lands are of special cultural significance to many Wiimpatja and contain a wide range of important features including creation places, rock engravings, paintings and evidence of past occupation.
3. Beginning about 130 years ago, Wiimpatja in the Mutawintji area were dispossessed of their traditional lands by the Colonial Government without their consent to make way for the development of the pastoral industry.
4. As a consequence, the population of Aboriginal owners and other Wiimpatja with a cultural association with Mutawintji was reduced and they were soon subjected to unprecedented cultural impacts including violence, disease and marginalisation.
5. Those descendants of the original inhabitants who survived remained in contact with their ancestral country by adopting an uneasy but necessary co-existence with the pastoral industry.
6. By the 1960's, the last of the Aboriginal owners who were born in the first years of dispossession were dying and their descendants had largely moved to live in nearby towns as a result of economic changes to the pastoral industry.
7. The increase in the population and the beginnings of political changes to recognise Wiimpatja rights led to a new awareness of their inheritance by the Aboriginal owners.
8. The first Government recognition of the cultural significance of Mutawintji was the reservation in 1927 of an area for the "Preservation of Caves, Native Fauna and Flora and Aboriginal Carvings and Drawings".
9. In 1967, the present Historic Site was established over this earlier reserve under the first *National Parks and Wildlife Act* to protect what was perceived by government to be the relics of an extinct or, at least, dying culture.
10. As a reaction to more than 100 years without proper recognition of Mutawintji's cultural significance, and without Wiimpatja control and good management, the Aboriginal owners and their supporters on 4 September 1983 blockaded the entrance to the Historic Site.
11. Through the blockade which had been triggered by the establishment of the National Park and the Nature Reserve, the Aboriginal owners asserted their desire to regain ownership, control and management of their sacred lands.
12. Between 1983 and 1991 the Mutawintji Local Aboriginal Land Council representing the Aboriginal owners and other Wiimpatja with a cultural association sustained a long and at times difficult campaign to persuade the New South Wales government to recognise their rights and interests in the Historic Site, National Park and the Nature Reserve.

13. In 1991 the first Bill was tabled in the Parliament to enable recognition of Wiimpatja ownership of certain national parks and reserves in New South Wales.
14. Between 1991 and 1996 the Mutawintji Wiimpatja negotiated with the New South Wales Government and continued to press the New South Wales Government for improvements to the proposed legislation and its ultimate enactment.
15. In December 1996 the *National Parks and Wildlife Amendment (Aboriginal Ownership) Act* was passed unanimously by both Houses of Parliament. That Act provides for this Lease between the Land Council and the Minister for the Environment.
16. The Lease has been negotiated over an 18 month period with the aim of resolving the historical conflicts over this area of such special cultural significance to the Aboriginal owners, whilst at the same time reserving the status of the Mutawintji lands as part of the conservation estate of New South Wales.

And Whereas:

By means of the execution and operation of this Lease, the Land Council and the New South Wales Government wish to make a significant contribution towards reconciliation between indigenous people and non-indigenous people of New South Wales.

Summary of the Arrangements

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

This sets out the history behind the hand back of Mutawintji to Wiimpatja. This does not form part of the legal terms of the lease.

1. The Lands

1.1 Description of the lands at the commencement of the Lease

The lands now known as the Mutawintji lands which are dealt with by this lease comprise those areas of land which were reserved or dedicated as the Mootwingee National Park, Mootwingee Historic Site and Coturaundee Nature Reserve immediately prior to their revocation for the purposes of vesting their title in the Land Council pursuant to [s.71Q of the Act](#). A map of the Mutawintji lands is appended as schedule 6 to but does not form part of this lease and copies of the instruments or extracts from the enactments of reservation or dedication are appended as schedule 7 to and form part of this lease.

This is the legal definition of the Mutawintji lands which are included in the lease.

1.2 Name of the lands

The parties agree that the names of the National Park, Nature Reserve and the Historic Site shall, in each case, be changed to Mutawintji.

This sets out that the new name of the Park, the Nature Reserve and the Historic Site will be Mutawintji.

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

1. The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the lands are held by the Land Council on behalf of the Aboriginal owners.
2. The Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the Land Council must act in the best interests of the Aboriginal owners when exercising its functions pursuant to s12 of the Land Rights Act with respect to the lands.

3. The Land Council agrees, to give effect to its obligations under this clause, 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 Mutawintji Land Council, the Minister and the Director-General of National Parks confirm the Land Council will not own the land for itself. This also says that the Land Council only holds the Mutawintji lands on behalf of the Aboriginal owners and will not do anything about this without the agreement of the Board members who are Aboriginal owners.

1.4 Classification of the lands

1. The parties agree that the existing classifications under the Act of those areas within the lands which are to be known as Mutawintji Historic Site and Mutawintji Nature Reserve will be reviewed through the Plan process.
2. The Minister agrees to use her best endeavours to have enacted any change of classification which might be agreed to by the Board as being appropriate through the Plan process and which is subsequently adopted as being appropriate in any new Plan for the lands.

This says that the issue of whether the Nature Reserve and or the Historic Site should become part of the National Park will be dealt with in the development of a new Plan for the Mutawintji lands. If this decides that there should be any changes, the Minister agrees to do her best to get the Parliament to agree.

1.5 Restrictions on dealings with the lands

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

The Mutawintji Land Council, the Minister and the Director-General agree the Wiimpatja freehold title is inalienable and that neither the Land Council or the Minister will otherwise deal with the Mutawintji lands without the written agreement of the other one of them.

1.6 Additions to the lands

1. The Minister agrees that any additions to the lands will only be with the consent of the Board and the Land Council .
2. The parties agree that, subject to the process described below, it is desirable that further land be reserved or dedicated as part of the lands.
3. The parties agree that, should other land in the vicinity of the lands be offered for sale, it would be appropriate that the parties consider whether negotiations should be undertaken by the Land Council and/or the Service to acquire all or part of that other land for reservation or dedication as additions to the lands.
4. Should such land as would permit the linking of the two separated sections of the lands (at the time of execution of this lease being the Nature Reserve and the National Park) be offered for sale, the parties agree that negotiations with the vendor for the acquisition of this land should be treated as a priority by the parties.
5. The parties agree to discuss not less frequently than each review of this lease pursuant to clause 5.8 the issue of possible additions to the lands.

This says that, if land in the vicinity comes on the market, talks will be held about whether any of it should be bought to add to the Mutawintji lands. If the land between the two sections is offered for sale, this should be the priority for any new land being added. In any event there should be regular discussions about possible additions. No land can be added without the Board and the Land Council agreeing.

2. Definitions and Procedural Matters

2.1 Definitions

(a) Defined terms

"Aboriginal owners"

means all those persons, from time to time, listed on the register of Aboriginal owners of the lands which register is established pursuant to the Land Rights Act and held by the Registrar appointed for such purpose under the Land Rights Act.

"Aboriginal cultural item"

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

"account"

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

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

"added lands"

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

"animal"

has the same meaning as in [the Act](#) as at the date of commencement of this lease.

"Board"

means the Board of Management to be appointed pursuant to [s71AN](#) of [the Act](#) and this lease for the management of the lands.

"Community Development"

includes development by the Land Council, by Aboriginal owners or by the Board of facilities for purposes such as:

1. residential housing - casual or permanent
2. camping facilities
3. meeting facilities
4. administration facilities
5. tourism enterprise facilities
6. recreation facilities
7. cultural facilities
8. cemetery
9. services facilities - comprising;
 - utilities - energy, water and waste management
 - health facilities
 - telecommunications
 - roads, tracks and airstrips
10. ancillary facilities

where those facilities are for the use (but not necessarily the exclusive use) of Aboriginal owners.

"Crown"

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

"cultural association"

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

"cultural area"

means the area which has been determined by the Land Council 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. A map of the cultural area is schedule 5 to and forms part of the lease for the purposes of clause 13.18 only.

"Director-General"

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

"Historic Site"

has the same meaning as in [the Act](#).

"Land Council"

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

"land management regulation"

means the National Parks and Wildlife (Land Management) Regulation 1995 or any regulation made under the Act which replaces it

"Land Rights Act"

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

"lands"

comprise those lands defined in clause 1.1 of this lease and depicted in maps 1 and 2 appended to (but not forming part of) this lease and (where applicable) includes any added lands.

"lease"

means this lease or any amended version of this lease.

"Minister"

means the Minister administering [the Act](#) from time to time.

"National Park"

has the same meaning as in [the Act](#).

"Nature Reserve"

has the same meaning as in [the Act](#).

"parties"

means

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

"Plan"

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

"Service"

means the National Parks and Wildlife Service established pursuant to [the Act](#).

[1]. "Wiimpatja"

means Aboriginal people.

"Wiimpatja with a cultural association"

means **"Wiimpatja"** with a cultural association with the lands as approved by the Land Council (and includes the Aboriginal owners).

"wilderness area"

means an area declared by the Minister to be a wilderness area pursuant to [s.59](#) of [the Act](#) or pursuant to the provisions of the [Wilderness Act, 1987](#) (NSW).

"World Heritage listed"

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

b. Use of Language

- i. 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,
 - ii. 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,
 - iii. 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,
 - iv. 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
- a reference to "power" does not encompass any mandatory obligation under any Act.

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

2.2 Applicable law

- 1. The parties agree that the laws applying to this lease are the laws of the State of New South Wales.

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

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

2.3 Notices

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

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

2.4 Preamble, headings and explanatory notes not part of the lease

1. The parties agree that the preamble, all headings and boxed "plain English" explanatory notes of this lease are for information purposes only.
2. The parties further agree the preamble, 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 preamble, all headings and explanations (in boxes like this) do not form part of the legal words of this document but are just put in to help explain the ordinary meaning of the legal words.

3. Native Title

3.1 Reservation of native title

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

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

4. Acknowledging of principles

4.1 Acknowledgment of consideration of Wiimpatja cultural values

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

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

4.2 Acknowledgment of consideration of nature conservation and wilderness values

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

This clause is an acknowledgment that the nature conservation and wilderness values of the Mutawintji lands were considered in the negotiation of this lease and that, to Wiimpatja with a cultural association, the natural values form an integral part of the cultural values of the lands.

5. Lease Issues

5.1 Purpose of and parties to the lease

The Land Council leases 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 formerly known as the Mootwingee National Park), as an Historic Site (with respect to those lands formerly known as the Mootwingee Historic Site) and as a Nature Reserve (with respect to those lands formerly known as the Coturaundee Nature Reserve).

This clause leases the three areas comprising the Mutawintji lands back to the Government as a National Park, Historic Site and Nature Reserve.

5.2 Term of the lease

1. The Land Council and the Minister agree that the date of execution of the lease is to be 4 September 1998 being the date of publication of the proclamation of the vesting of the lands in the Land Council and the re-dedication and re-reservation of the lands under the Act;
2. The Land Council and the Minister agree that the term of the lease will be for a period of thirty years commencing from 4 September 1998 being the date of publication of the proclamation recited in (1) above; and
3. The Land Council and the Minister agree that the lease is to expire at midnight on 3 September, 2028.

The lease is for thirty years finishing on 3 September 2028.

5.3 Renewability

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

This says that any renewal of the lease after 3 September 2028 must be for at least another 30 years and that there is no limit to how many times it can be renewed.

5.4 Holding over at expiry of lease

1. The parties acknowledge that, if, at the time of expiry of the term of this lease, the parties have not reached agreement for the extension of the term of this lease or for its replacement by a new lease, the Minister shall hold over in accordance with s71AL of the Act until the date of execution of a new lease.
2. During any such holding over period, the Land Council, the Minister and the Director-General agree to be bound by all the provisions of this lease by which they were bound prior to the expiry of the term of this lease.

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

5.5 Renewal process

1. The parties acknowledge that the renewal process shall be as set out in section 71AI of the Act.
2. The parties also acknowledge and agree that subject to that section and subject always to there being agreement pursuant to clauses 5.3 and 5.13 of this lease, the following shall apply:
 - a. Not before 4 September 2022 nor after 3 June 2023, the Minister shall by notice to the Director-General, the Land Council and the then Aboriginal owner Board members request them to meet to consider whether or not any one or more of the provisions of the lease should be amended to enable the lease to operate more effectively.
 - b. The Director-General, representatives of the Land Council and the Aboriginal owner Board members shall meet for this purpose as soon as practicable thereafter and in any event by not later than 3 September 2023.
 - c. If amendments are agreed to by the Director-General, the Land Council and the Aboriginal owner Board members by not later than 3 September 2026 and are approved by the Minister, a new lease shall be prepared incorporating the amendments, which new lease should, if at all possible, be executed in escrow by the Minister and the Land Council by not later than 3 March 2028 and shall take effect, in substitution for this lease, from 4 September 2028.
 - d. If there is disagreement between the Director-General, the Land Council and the Aboriginal owner Board members as to whether a provision in the lease requires to be amended or as to the wording of an amendment to such a provision or if an amendment agreed between the Director-General, the Land Council and the Aboriginal owner Board members is not approved by the Minister, the Minister or the Land Council may refer the matter for arbitration in accordance with section 71BJ of the Act (except with respect to the fixing of the first year's rent for the new lease which is to be undertaken by agreement or, if agreement cannot be reached, is to be dealt with as provided for in s71AE of the Act).
 - e. In conducting the arbitration, the arbitrators are to have regard to:
 - I. the preservation of the rights and interests of native title holders;
 - II. the views on the matter expressed by the Aboriginal owner Board members;
 - III. the preservation and protection of Wiimpatja ways of life, culture and tradition;
 - IV. the interests, proposals, opinions and wishes of Wiimpatja with a cultural association in relation to the management, use and control of the lands;
 - V. the growth and development of Wiimpatja social, cultural and economic structures;
 - VI. freedom of access to the lands by Wiimpatja with a cultural association and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their tradition;
 - VII. the preservation of the natural environment and wilderness values;
 - 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
 - f. the duties, functions and responsibilities of the Minister in relation to the lands. the decision of the arbitrators (including as to the wording of any amendment in dispute) shall be final and binding on the parties. A new lease shall be prepared incorporating the amendments determined by the arbitrators and any other amendments previously agreed to and approved by the Minister. Such new lease (where relevant) shall be executed in escrow by the Minister and the Land Council by not later than 3 September 2028 and take effect, in substitution for this lease, from 4 September 2028.

This sets out the timetable and process for negotiating the renewal of lease prior to its expiry on 3 September 2028.

5.6 Effect of the new lease

The parties agree that, if the parties renew the lease, such renewal will have the effect of completely replacing this lease except insofar as provisions of this lease are preserved by any such renewal or are required by any statute.

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

5.7 Rights to participate in consultations

The parties agree that consultations concerning the operation of the lease are to involve the Director-General and the Board.

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

5.8 Review of the lease

1. The parties acknowledge the requirements of S71AH of the Act and, in particular, that at least once every five years the Director-General on behalf of the Minister, the Land Council and the Aboriginal owner board members must review the provisions of this lease.
2. Where the parties and the Aboriginal owner board members agree to an amendment as a result of the review consultations, the parties agree that they shall execute a Deed to give effect to such agreement.
3. The parties agree that if a party to the Lease or the Aboriginal owner Board members fail to agree to an amendment proposed by another party, the disagreement is to be arbitrated in accordance with S71BJ of the Act and the decision of the arbitrators (including as to the wording of any amendment in dispute) shall be final and binding on the parties.
4. The parties agree that the arbitrators are to be instructed to have regard to the same matters as are set out in clause 5.4(e) of this Lease.
5. The parties also agree that the arbitrators' determination must in any event preserve the overall level of the benefits and the essential rights conferred on the Land Council and the Aboriginal owners by this Lease.

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

5.9 Breach of Lease

The parties agree that

1. if any one of them considers that another has breached any provision of this lease, that party shall notify the other parties to this lease of the alleged breach and the reasons why the act or omission is regarded as constituting a breach;
2. such notice shall give the party allegedly in breach fourteen days in which to rectify the alleged breach and notify the other parties of the steps taken in rectification;
3. if following the expiry of fourteen days after the giving of such notice of alleged breach, any party considers that the alleged breach has not been rectified, 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 alleged breach;
4. if any meeting is convened pursuant to (3) above, each of the parties shall attend such meeting either in person or by agent authorised to negotiate on that party's behalf;
5. during any meeting pursuant to (3), the parties (or their representatives) will negotiate bona fide and in good faith to agree on steps necessary to rectify the alleged breach;
6. if the parties are able to agree on how to rectify the alleged breach, the parties agree that all or any one of them will take all such steps as are necessary to give effect to the proposed rectification (including the execution of any necessary deed to vary this lease);
7. if the parties are unable to agree on how to rectify the alleged breach, the parties may appoint a mediator to assist them endeavour to resolve the matters in issue;
8. if the parties remain unable to agree on how to rectify the alleged breach, the alleged breach (and responsibility for any costs of the arbitration) shall be referred to arbitration pursuant to s71BJ of the Act, the results of which the parties agree shall be binding on each of them;
9. any arbitration pursuant to s71BJ shall include any issues of compensation to any party to this lease as a result of the alleged breach; and
10. The parties agree that, in conducting any arbitration, the arbitrators are to have regard to:
 - a. the preservation of the rights and interests of native title holders;
 - b. the views on the matter expressed by the Aboriginal owner Board members;
 - c. the preservation and protection of Wiimpatja ways of life, culture and tradition;

- d. the interests, proposals, opinions and wishes of Wiimpatja with a cultural association in relation to the management, use and control of the lands;
- e. the growth and development of Wiimpatja social, cultural and economic structures;
- f. freedom of access to the lands by Wiimpatja with a cultural association and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their tradition;
- g. the preservation of the natural environment and wilderness values;
- h. the continuing management of the lands under Part 4A of the Act
- i. the use of the lands for tourist and educational activities; and
- j. the duties, functions and responsibilities of the Minister in relation to the lands.

If any parties to the lease believe that there has been a major breach of the lease the party must notify the other parties in writing within fourteen days letting them know what the problem is. The parties can then appoint a mediator to help solve the problem. If the parties still can't agree on how to fix the problem an arbitrator will be appointed who will resolve the problem for the parties.

5.10 Director-General's breach of lease

The parties agree that, with respect to any clause of this lease to which the Director-General is a party and with respect to the subject of which the Director-General is subject to direction by the Minister, any continuing breach of that clause by the Director-General shall be regarded as a breach by the Minister.

Although the Director General is a party to some clauses of the lease, he is also a representative of the Minister. Therefore where there is a breach of the lease that involves an action of the Director General, the breach is really the responsibility of the Minister.

5.11 Matters the Land Council may treat as a fundamental breach

1. The parties agree that any breach by the Minister of the clauses set out in schedule 2 appended to and forming part of this lease may be regarded by the Land Council as a fundamental breach of this lease.
2. The parties agree that, upon the coming into effect of any legislation which, without the consent of the Land Council, substantially diminishes the rights or powers of the Land Council, the Board or the Aboriginal owners under the Act, the Land Rights Act or this lease, the Land Council may consider this lease to be fundamentally breached and so notify the Minister by notice in writing.
3. Except as provided for in (2) above, the Land Council agrees that prior to treating breach of the lease as a fundamental one, the Land Council shall give the Minister at least one month's notice in writing of the breach proposed to be so regarded.
4. The parties further agree that, should the Minister rectify any breach of which notice has been given pursuant to (3) above within one month of the date of such notice, the Land Council shall no longer be entitled to regard such breach as being a fundamental one.

This says that if the Minister fails to comply with certain specified sections in the Lease then the Land Council can choose to consider that as a fundamental breach of the lease. It also says that any new laws which cut the rights or powers of the Land Council, the Board or the Aboriginal owners can be treated by the Land Council as a fundamental breach. Except for breaches by new laws, the Land Council has to give the Minister one month's notice to fix up the problem before the Land Council can treat the lease as being fundamentally breached.

5.12 Termination

1. The parties agree that, if this lease is terminated by a fundamental breach occasioned by the coming into effect of any legislation as described in clause 5.11.2 and the Land Council giving notice to the Minister of such breach:
 - the Minister shall remain in possession as if the provisions of this lease still apply until the parties have complied with the provisions of clause 5.9 and a new lease is entered into; and
 - this clause and clause 5.9 are severed from the remaining clauses of the lease and continue in force despite termination pursuant to clause 5.11.
2. The parties agree that, if this lease is terminated by a failure of the Minister to rectify, within one month, to the satisfaction of the Land Council, a breach of which notice has been given by the Land Council pursuant to clause 5.11.3:

- the Minister shall remain in possession as if the provisions of this lease still apply until the parties have complied with the provisions of clause 5.9 and a new lease is entered into; and
- this clause and clause 5.9 are severed from the remaining clauses of the lease and continue in force despite termination pursuant to clause 5.11.

If this lease is terminated by a fundamental breach, the Mutawintji lands continue to be managed under the terms of this lease until a new lease has been sorted out.

5.13 Agreement to vary, amend or renew the lease

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

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

6. Rent

6.1 Amount of rent

The parties agree that the rent is to be the amount of \$275,000.00 per annum (subject to adjustment pursuant to clause 6.9 and to review pursuant to clause 6.11).

The rent to be paid by the Government each year for the Mutawintji lands is \$275,000 but other clauses say how it is to be adjusted each year and reviewed each five years.

6.2 Amount of rent in first year of lease

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

Because the first year of the lease does not start on 1 July, this clause says how the rent is to be paid for the period until 30 June 1999.

6.3 Amount of rent in final year of lease

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

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

6.4 Date rent due

1. The parties agree that the rent is due on 1 July and is to be paid by the Minister by 31 July of each year except in the first year of this lease.
1. The parties agree, despite (1) that the rent for the period after commencement of the lease until 30 June 1999 is to be paid by the Minister by 31 October 1998.

This means that for rent purposes, the year starts on 1 July and that the rent must be paid by 31 July except

for the first rent payment which must be paid by the end of the second month after the Mutawintji lands are transferred to Wiimpatja ownership and joint management with the National Parks Service.

6.5 Payment of rent to be annual

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

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

6.6 Account for payment of rent

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

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

6.7 Purpose of rent

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

This clause means that the rent is compensation to the Land Council for the fact that the Mutawintji Land Council does not have complete control over the use of the Mutawintji lands.

6.8 Expenditure from the rent sub-account in the account

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

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

6.9 Adjustment of rent during term of lease

The parties agree that the rent is to be adjusted, each 1 July during the currency of the lease, to such amount as shall be obtained by multiplying \$275,000.00 by the quotient obtained by dividing the Consumer Price Index figure applicable to Sydney for the period ending on 31 March immediately prior to such adjustment by the Consumer Price Index figure applicable to Sydney for the period ending 31 March 1998 (provided that no adjustment shall be made if the operation of this clause would lead to a reduction in the amount of the rent payable).

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

6.10 Matters considered in negotiating the rent

1. The parties acknowledge that, in reaching agreement on the rent to be paid, they have had regard to the following matters:

- the nature, size and location of the lands and the nature of the infrastructure and improvements on the lands,
- the nature of the ownership rights in the lands that the Land Council possesses,
- the provisions of the Act and this lease relating to the lands,
- the extent to which the cultural significance of the lands to Wiimpatja restricts the use that may be made of the lands under this lease,
- the arrangements contained in the Act and this lease for the care, control, management and development of the lands,

- the amount of rent payable under leases of lands adjoining or in the vicinity of the lands the subject of this lease,
 - the amounts realised on recent sales of freehold or leasehold land adjoining or in the vicinity of the lands the subject of this lease.
2. The parties also acknowledge that, in reaching agreement on the rent to be paid, they have also had regard to the additional matters that the Valuer-General considered to be relevant and that he notified to the parties during his mediation on the rent.

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

6.11 Review of the rent

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

When the lease is reviewed, that review includes looking at the amount of the rent. When looking at the rent, the review will take into account any change in visitor numbers to the Mutawintji lands.

7. Mutawintji Local Aboriginal Land Council

7.1 Acknowledgment of the Land Council's responsibilities to Wiimpatja with a cultural association with the lands

In addition to and not derogating from the responsibilities and duties of the Land Council set out in clause 1.3, the Land Council expressly declares and the Minister and the Director-General expressly acknowledge and accept that the Land Council has responsibilities and duties with respect to the lands to Wiimpatja with a cultural association with the lands but who are not able to register under the Land Rights Act as Aboriginal owners of the lands.

In this clause, the Mutawintji Land Council agrees that it has responsibilities to Wiimpatja who have cultural links with the Mutawintji lands but who are not able to register as Aboriginal owners of the Mutawintji lands.

7.2 Land Council nomination of Board members

The Land Council agrees that at least one of the members of the Board nominated by the Land Council will be Wiimpatja with a cultural association with the lands who is not an Aboriginal owner.

This means that at least one of the Land Council members of the Board of Management will be Wiimpatja who has a cultural association but is not an Aboriginal owner.

7.3 Obligations of the Land Council and employees etc are obliged to observe land management statutes

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

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

7.4 Application by the Land Council for external funding to be expended on the lands

1. The parties agree that the Land Council, either solely or jointly with the Board and/or the Director-General, may apply for external funding to be expended on the lands in accordance with the Plan and may, with the consent of the Board, expend such funds on the lands.
2. The parties agree that any funds provided to the Land Council as a result of such application by the Land Council shall not be counted by the Minister or the Director-General as an offset to any funds which should otherwise be provided to the account pursuant to clauses 9.6 or 9.7

This clause means that the Land Council can apply for outside money, either by itself or with the Board or National Parks Service, to spend on the Mutawintji lands. It also means that any outside money can't be used to cut the amount of money which would normally come from the Parks Service to the Mutawintji lands.

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

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

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

7.6 Agreement for mutual assistance

1. In addition to the provisions of clauses 7.5 and 13.5, the parties agree that it is desirable that the management of the lands and of other land in the Western Division reserved or dedicated under the Act take place in a co-operative framework involving the Board and the Director-General.
2. The parties agree that the statement in (1) reflects the wishes of the parties but does not, in itself, place any specific binding obligations on either the Board or the Director-General.

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

7.7 Community development

The parties agree that zoning and guidelines for community development purposes will be provided for in the Plan to be prepared by the Board after the commencement of this lease.

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

7.8 Regulations for Community development

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

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

7.9 Directions to the Board concerning the exercise of powers

1. The Land Council agrees that it is appropriate that the Minister direct the Board that it is not to exercise any power, carry out any act nor implement any decision with respect to:
 - a. culling kangaroos or euros (otherwise than as provided for in clauses 12.6 and 12.7) ; or
 - b. harming or picking any threatened species, population or ecological community or damaging any habitat of a threatened species, population or ecological communitywithout the consent of the Director-General.
2. The Land Council agrees that it is appropriate that the Minister direct the Board that the Board notify the Director-General not less than 14 days prior to
 - a. carrying out any act or implementing any decision, including a decision to prepare an environmental impact statement in accordance with the [Environmental Planning and Assessment Act 1979](#), with respect to any "activity which is likely significantly to affect the environment" within the meaning of that [Act](#); or
 - b. the implementation of any decision to expend an amount in excess of \$100,000.00 on any single item or activity.

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

7.10 Insurance etc for MLALC members

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

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

8. Minister

8.1 Aboriginal training and employment

1. The Minister undertakes, including with respect to the lands, to use the Minister's best endeavours to implement the Aboriginal Employment and Training Plan 1991-1996 published by the Service in October 1991 or any plan replacing that Plan and, in particular, any timetable set out in such a plan.
2. The Minister undertakes that, with respect to the lands, the Minister will not replace the Aboriginal Employment and Training Plan 1991-1996 published by the Service in October 1991 (or any subsequent plan replacing that plan) without the consent of the Board and the Land Council
3. The Minister will direct the Board to provide her, each year, at a time to be agreed to between the Board and the Director-General, with information with respect to the lands to assist the Minister to report to the

Parliament on the implementation of the Aboriginal Employment and Training Plan, 1991-1996 or any successor plans.

4. The parties agree that the Service will consult with the Board about specific Aboriginal training and employment requirements for the lands including the need for an on site, purpose designed training program which could be implemented in addition to the Plan referred to in clause 8.1.1 above. If any specific Aboriginal training and employment program is developed for the lands, the parties agree that it will be subject to approval by the Board.
5. For the avoidance of doubt, the parties agree that development pursuant to (4) above of any specific Aboriginal training and employment program for the lands does not commit the Service to the provision of additional staff or funding for its implementation unless specifically agreed to by the Service.
6. The Minister and the Director-General agree that the creation, as a result of this lease, of any Aboriginal designated Service positions whose duty statements refer to duties on or exclusively or predominantly servicing the lands shall not affect the obligation of the Minister and of the Director-General to treat the lands and the Board equitably in the implementation of the Aboriginal Employment and Training Plan 1991-1996 published by the Service in October 1991 (or any subsequent plan replacing that plan).

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

8.2 Giving effect to decisions of the Board

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

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

except any decision where the Minister directs otherwise pursuant to [s71AO](#) of [the Act](#).

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

8.3 Indemnification of the Board

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

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

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

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

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

8.5 Minister to consult on regulations

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

- under [the Act](#), the [Wilderness Act, 1987](#) or the [Threatened Species Conservation Act, 1995](#); or
- under any other [Act](#) administered by the Minister and where their implementation is the responsibility of the Director-General

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

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

8.6 Minister not to make regulations applying solely to the lands without consent of Board

1. The parties agree that the Minister will not seek, without the consent of the Land Council, to have made, amended or repealed any regulations applying solely in respect of the lands.
2. The parties agree that, where the Minister has consulted the Land Council pursuant to clause 8.5 about making, amending or repealing any regulations applying solely to land (which includes the lands) dealt with pursuant to Part 4A of [the Act](#), the Minister will not seek, where the Land Council has not agreed to the proposal, to have made, amended or repealed any such regulations without

the Minister giving at least two weeks notice of such introduction to the Land Council.

This means that the Minister will not make any special rules for the Mutawintji lands unless the Land Council agrees to them first.

8.7 Minister's powers to direct Board

The parties acknowledge that, 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:

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

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

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

1. The parties acknowledge that 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](#).
1. The Director-General acknowledges and agrees that 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 staff can do their lawful duties at Mutawintji but they must look after the interests of the Aboriginal owners.

8.9 Minister to consult Land Council on Board appointments

The Minister agrees to seek and have regard to the advice of the Land Council prior to any appointment of Board members pursuant to [s71AN](#)[3][a], [c], [e] or [f].

This means that the Minister agrees to consult the Land Council on appointments of Board members who are not nominated by the Land Council.

8.10 Accepting gifts etc on behalf of Aboriginal owners

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

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

8.11 Accepting gifts etc on behalf of the Board

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

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

8.12 Land Management Regulation

1. The parties agree that it is desirable that the Board is the "park authority" for the purposes of the land management regulation.
2. The Minister agrees to cause the land management regulation to be amended so that the Board is the "park authority" for the purposes of that regulation.
3. The Minister agrees to use her best endeavours to have this regulatory amendment implemented by 30 September 1998.
4. In addition, to take account of exceptional circumstances in which there may be insufficient members to form a Board, the parties agree that, to cover the period pending appointment of new Board members by the Minister, the regulations should provide for the "park authority" to revert to being the Director-General during such period.

This says that the Board is to be confirmed as the decision maker for the Mutawintji lands by making a regulation under the National Parks Act.

8.13 Deputies for Board members

1. The parties agree that it is desirable that there be formally appointed deputies for Board members.
2. The Minister agrees to introduce regulations to provide for the appointment of deputies for Board members.
3. The Minister agrees to use her best endeavours to have this regulatory amendment implemented by 30 September 1998.

This means that everyone agrees it is desirable that if a Board member can't go to a meeting, they should be able to send an appointed deputy. The Minister agrees to try to have this happen by 30 September 1998.

8.14 Delegation of Minister's Powers

1. The Minister agrees not to delegate, with respect to the lands, any power vested in the Minister pursuant to [s71AO of the Act](#).
2. The Minister agrees to have regard to the views of the Board prior to giving any direction pursuant to [s12 of the Act](#) in respect of the lands where, in the absence of the Minister's direction pursuant to [s12 of the Act](#), the works or activities would otherwise be under the control of the Board under this lease or [the Act](#) and the works or activities are not subject to a direction to the Board pursuant to [s71AO of the Act](#).
3. The parties agree that, in the case of an emergency, the Minister may issue such a direction pursuant to [s12 of the Act](#) without consulting the Board. In such emergency circumstances, the Minister agrees to notify the

Board forthwith of such direction and to have regard to the views of the Board on the continuation of operation of such direction.

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

9. Director-General

9.1 Exercise of powers

1. The Director-General agrees not to exercise or permit to be exercised, without the consent of the Board, any power vested in the Director-General under the [Act](#) or any other legislation (other than the [Wilderness Act 1987](#) or the [Threatened Species Conservation Act 1995](#)) where such exercise of the power is exclusively with respect to or impacting on the lands or any Aboriginal cultural items on the lands. However, the parties agree that in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise if so directed by the Board.
2. The Director-General agrees not to exercise or permit to be exercised, without the consent of the Board, any power vested in the Director-General under [the Act](#) or any other legislation (other than the [Wilderness Act 1987](#) or the [Threatened Species Conservation Act 1995](#)) to the extent that such exercise is proposed to be with respect to or impacting on the lands or any Aboriginal cultural items on the lands and where such exercise is not proposed to be exclusively with respect to or impacting on the lands or any Aboriginal cultural items on the lands. However, the parties agree that in the case of an emergency the Director-General may exercise such power. In such emergency circumstances, the Director-General agrees to notify the Board forthwith and to cease such exercise with respect to the lands if so directed by the Board.
3. The Land Council agrees that it is appropriate that the Minister direct the Board that it is not to withhold, unreasonably, consent to the Director-General exercising any power to which the Director-General seeks consent of the Board to exercise pursuant to sub-clause (2) of this clause.
4. The Director-General agrees not to carry out or cause to be carried out any mandatory requirement under [the Act](#) or any other legislation (other than the [Wilderness Act 1987](#) or the [Threatened Species Conservation Act 1995](#)) without consulting with and having regard to the views of the Board.
5. Without prejudice to any other provision of this clause, the Director-General agrees not to authorise or permit to be authorised any prosecution (other than a prosecution arising from a failure to satisfy a penalty notice for an offence declared to be a penalty notice offence pursuant to the land management regulation) arising out of any act or omission on or concerning the lands without seeking the advice of the Board on the proposed prosecution.

This clause deals with the Director-General's exercise of powers on the Mutawintji lands and says that the Director-General will not exercise such powers without the Board's consent except in an emergency but that the Board must be reasonable in considering such requests. The Director-General also will not prosecute anyone for an offence relating to the Mutawintji lands without advice from the Board.

9.2 Giving effect to decisions of the Board

1. The Director-General agrees to do all such things as are necessary and within the Director-General's power to ensure that effect is given to decisions of the Board (except where the Minister has directed otherwise pursuant to [s71AO](#) of [the Act](#)) for:
 - the care, control or management of the lands, or
 - the preparation of plans of management for the lands, or
 - payments from the Fund with respect to the lands.
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 Mutawintji monies to be kept in a separate account

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

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

9.4 Creation of principal sub accounts in the account

1. The Director-General agrees that, within the account, there will be four separate sub-accounts:
 - a sub-account into which the rent is to be paid (s138(1)(b1))
 - a sub-account into which the annual funds for the management of the lands are to be paid (s138(1)(a))
 - a sub-account into which any capital works funds for the lands provided through the Service are to be paid (s138(1)(a))
 - a sub-account into which all revenue earned from the lands (together with any gifts, devises or bequests pursuant to clauses 8.11 or 9.11) is to be paid (s138(1)(b)).
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 separate account for the rent and other budget money for the Mutawintji lands will have four sub-accounts to keep the different receipts separate and clearly identified.

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 Land Council agrees that it is appropriate that the Minister may direct the Board that, when the Board determines the structure for accounting for funds within the various sub-accounts in the account, the Board is to conform with the general accounting practices adopted by the Service.

The Board will decide how the accounts are to be set up but they will need to comply with normal Parks Service accounting standards.

9.6 Credit of ordinary annual operating funds to the account

1. The Director-General agrees to ensure that the annual funds for the management of the lands provided in accordance with [s138\(1\)\(a\)](#) of [the Act](#) are to be paid into the separate sub-account established for this purpose in the account.
2. The Director-General also agrees that the proportion of the Service's operational funds provided to the lands at the commencement of this lease shall continue to be reflected equitably in future operational funding for the lands.

The normal Mutawintji lands money from the Parks Service's budget will be paid into the separate account. Any changes in the general budget monies for the Mutawintji lands will be in line with any changes throughout the Parks system generally.

9.7 Credit of capital works funds to the account

The Director-General agrees to ensure that any capital works funds for the lands provided through the Service are to be paid into the separate sub-account established for this purpose in the account.

Funds for the capital works program will also go into the separate account set up for the Mutawintji Lands.

9.8 Credit of special allocation funds to the account

The Director-General agrees to ensure that any special allocation of funds for the lands will be paid into the sub-account in the account agreed to by the Board and the Director-General as being appropriate having regard to the purposes for which such special allocation has been made.

Funds for any special allocations for the Mutawintji lands will also be put into the separate account set up for the Mutawintji lands.

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

The Director-General agrees to ensure that all revenue earned from the lands (together with any gifts, devises or bequests pursuant to clauses 8.11 or 9.11) is to be paid into the separate sub-account established for this purpose in the account.

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

9.10 Accepting gifts etc on behalf of Aboriginal owners

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

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

9.11 Accepting gifts etc on behalf of the Board

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

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

9.12 Promotion of the lands

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

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

9.13 Service representative on the Board

1. The Director-General agrees that the officer of the Service to be nominated to the Board pursuant to [s71AN\(3\)\(d\)](#) shall be the person holding the office of Regional Manager of the Service for the Region in which the lands are located.
2. When the regulations provide for deputies to Board members, the Director-General agrees to nominate an officer of the Service to be the deputy to the officer appointed pursuant to [s71AN\(3\)\(d\)](#) but not so to nominate unless the Land Council has agreed to such nomination.

This means that the Parks Service representative on the Board will be the local Regional Manager or a deputy agreed to by the Land Council.

9.14 Land management arrangements with neighbours

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

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

9.15 Annual report information on the lands

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

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

10. Board of Management

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

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

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

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

The Land Council agrees that the Minister may direct the Board that the Board and its employees, contractors and agents must comply with the provisions of the [Act](#) and any other [Act](#) applying to the lands, the regulations and any Plan in force with respect to the lands, including provisions concerning the protection of animals, trees, timber, plants, flowers and other vegetation.

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

10.3 Membership of the Board

1. The Minister agrees that the Board will consist of thirteen members with the Land Council nominating the thirteenth member in addition to the member nominated pursuant to [s71AN\[3\]\[b\] of the Act](#).
2. If the Land Council requests the Minister to do so, the Minister agrees to appoint an additional Aboriginal owner pursuant to [s71AN\(3\)\(a\)](#) instead of the Land Council nominating such thirteenth member.
3. The parties agree that the Minister will not appoint any person to the Board who occupies the position of Joint Management Co-ordinator described in clause 11.1.
4. The Minister and the Land Council agree that the Minister will direct the Board that it is not to appoint, pursuant to [s71AN\(5\) of the Act](#), any Service officer to be its chairperson.

There will be thirteen Board members. The thirteenth member is picked by the Land Council or the Land Council can get the Minister to pick an extra Aboriginal owner for the Board. The Joint Management Co-ordinator can't be on the Board but other Park Service staff can but can't be the Chair of the Board.

10.4 Local Government Board member

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

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

10.5 Development of annual budget proposals

1. The parties agree that the Minister will direct the Board to submit to the Service, through the Regional Manager, after consultation with the Service's District Manager for the Service's District within which the lands are situated, by 30 November each year, its capital and recurrent budget estimate for the care, control and management of the lands for the following financial year.
2. The Minister and the Director-General agree that the Service will include this estimate in its budget submission to the NSW Treasury.

The Board has to finalise the budget submissions for its operations and capital works programs by 30 November each year and the Parks Service will submit them without change to the Government as part of the overall Parks Service proposed budget. This does not mean that these will automatically be agreed to by the Government.

10.6 Board meeting frequency

The Minister agrees, pending any regulation so to provide, to direct the Board that it meet at least 4 times in each financial year.

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

10.7 Board Quorum

1. The Minister agrees, pending any regulation so to provide, to direct the Board that a quorum at any meeting should be seven members including (if deputies to members are provided for) deputies for any absent members and that more than half the number of members counted toward such quorum must be Aboriginal owners appointed pursuant to [s71AN\(3\)\(a\)](#) including (if deputies to such members are provided for) deputies for any such absent Aboriginal owner members.
2. The Minister also agrees pending any regulation so to provide, to direct the Board that any person who is obliged to be absent, temporarily, from any meeting as a result of the application of clause 10.12 shall continue to be counted, during such absence, toward the existence of a quorum.

To make a proper decision, the Board must have a quorum of at least 7 members (or their deputies) of which at least 4 have to be Aboriginal owner members (or their deputies). Also if one of the members is temporarily out of the meeting because of having a "pecuniary interest" (see clause 10.12 below), they can still be counted as part of the quorum although they can't vote.

10.8 Voting at Board meetings

The Minister agrees, pending any regulation so to provide, to direct the Board that no resolution may be carried by the Board unless:

- a majority of Board members [including (if deputies to members are provided for) deputies for any absent members] present and voting vote in favour; and
- a majority of the members present and voting who are Wiimpatja with a cultural association [including (if deputies to such members are provided for) deputies for any such Wiimpatja members who are absent from that meeting] also vote in favour.

This means that a majority of Wiimpatja members with a cultural association voting on any decision of the Board must support the decision or it is not valid.

10.9 Aboriginal owner Board members

1. The Minister agrees that in appointing Aboriginal owners pursuant to [s71AN\(3\)\(a\)](#) there will be appointed (subject to (3) below) at least one Board member from each family grouping in (4) below and not more than two from that family grouping.
2. However, the parties agree that if sufficient persons from any one or more family grouping are unable or unwilling to be nominated for appointment to the Board pursuant to [s71AN\(3\)\(a\)](#) to fill all positions under that provision, the Minister may appoint additional persons from the remaining family groupings.
3. The parties further agree that any such additional appointments shall not result in any family groupings being represented on the Board by a number of [s71AN\(3\)\(a\)](#) Board members which exceeds by more than one any other family grouping from which sufficient members are willing and able to be nominated for the Board to comply with this provision.
4. The parties acknowledge that for the purposes of this clause as at the date of this lease, the Land Council and its members have identified four family groupings of Aboriginal owners and that those groupings are known as the Dutton, Quayle, Tyler/Barlow and Gibson family groups.
5. In making such appointments, the parties agree that the Minister is entitled to rely on the advice of the Land Council as to the family grouping to which any person belongs and as to the existence of any other family grouping.

This says that the Minister must try and get an even balance of family interests as Aboriginal owner representatives on the Board when making Board member appointments.

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

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

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

10.11 Sitting fees etc for Board members

1. The parties agree that members of the Board will be paid such sitting fees and travel allowances as are determined by the Minister.
2. The parties agree that, in setting such sitting fees and travel allowances, the Minister shall have regard to the categorisation of and conditions established for Boards from time to time by the NSW Premier's Department.
3. The parties agree that Board sitting fees and travel allowances will be met from the Board's funds.

Board members will be paid sitting fees and travel costs as decided by the Minister and the money will come from Board funds. The rates will be the same as similar government boards.

10.12 Declaration of pecuniary interests by Members of the Board.

1. The Minister agrees, pending any legislative change so to provide, to direct the Board that:
 - a. If:
 - a member has a direct or indirect pecuniary interest in a matter that is being considered or is about to be considered at a meeting of the Board, and
 - the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

- b. A disclosure by a member at a meeting of the Board that the member:
- is a member, or is in the employment, of a specified company or other body, or
 - is a partner, or is in the employment, of a specified person, or
 - has some other specified interest relating to a specified company or other body or a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under (a) above.

- c. Particulars of any disclosure made under this clause are to be recorded by the Board in a book kept for the purpose and that book is to be open at all reasonable hours to inspection by any person.
- d. After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Board otherwise determines, be present during any deliberation of the Board, or take part in any decision of the Board, with respect to the matter.
- e. A contravention of (a) to (d) does not invalidate any decision of the Board.
2. The Minister agrees that, for the purposes of the direction to be given pursuant to this clause, consideration by the Board of:
- matters affecting all Aboriginal owners without discrimination between any groups of such owners; and
 - matters affecting all Wiimpatja with a cultural association with the lands without discrimination between any groups of such persons

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

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.

10.13 Term of office of Board members

1. The Minister agrees, pending any regulation so to provide, that the ordinary term of appointment for members of the Board shall be for 4 years provided that in the case of the Board member appointed pursuant to [s71AN\(3\)\(c\)](#), that person remains an elected member of a local council where that council's area includes or adjoins the lands.
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 Central Darling Shire 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.

10.14 Delegation by the Board

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

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

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

10.15 Financial supervision by the Board

1. The parties acknowledge that [s71AQ](#) of [the Act](#) requires the Board to:
 - cause proper accounts and records to be kept in relation to all of its operations;
 - prepare financial statements for each financial year in accordance with [section 41B](#) (1) of the [Public Finance and Audit Act 1983](#);
 - submit such financial statements for verification and certification to an auditor who is a registered company auditor within the meaning of the [Corporations Law](#);
 - prepare and submit such financial statements to such auditor not later than 6 weeks after the end of the financial year to which they relate; and
 - furnish to the Minister the audited financial statements required by [s71AQ](#) and a certificate of the auditor, in a form prescribed by the regulations, not later than 4 months after the end of each financial year.
2. The parties agree that the financial year and accounting period for the Board will be from 1 July each year to the following 30 June except in the first year of the lease when it will be from the date of commencement of the lease until the following 30 June.
3. The parties agree that the financial dealings of the Board and the operation of the account will be subject to the scrutiny of the Service's ongoing internal audit program in the same manner and to the same extent as the scrutiny given to the accounting processes and financial dealings of the Service District within which the Mutawintji lands are located.
4. The Land Council agrees that the Minister may direct the Board to accept the scrutiny of the Service's internal auditors consistent with (3) of this clause
5. The parties agree that no costs for internal audit services provided for in (3) and (4) will be charged to the account.
6. The parties acknowledge that the Board may choose pursuant to clause 10.16, in the absence of a direction to the contrary from the Minister, to use auditors other than the Service's auditors to meet the Board's obligations pursuant to [s71AQ\(5\)](#).
7. The Land Council agrees that the Minister may direct the Board to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to [s71AQ\(5\)](#) provided such auditors are qualified in the manner required by [s71AQ\(3\)](#).
8. The parties agree that, should the Board choose to use the Service's external auditors for the purposes of complying with the Board's obligations pursuant to [s71AQ\(5\)](#) or the Minister directs pursuant to (7) that it do so and the Service apportions and charges costs to each of the Districts of the Service for audit services for such District, 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 District within the Service and the parties expressly agree that there shall be no disadvantage in this regard because the lands are held by the Land Council under Part 4A of [the Act](#).
9. The Land Council agrees that the Minister may direct the Board to comply with the Service's Accounting Manual in the administration of its account payment and other accounting and financial administration practices.
10. In addition, to take account of exceptional circumstances in which there may be insufficient members to form a Board, the parties agree that, to cover the period pending appointment of new Board members by the Minister, the Director-General will cause the financial administration of the account to be consistent with the obligations of a Board pursuant to [s71AQ](#) and this clause during such period.

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

10.16 Right to obtain independent advice

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

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

10.17 Preference to be given to Land Council in contracting for certain services

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

This means that the Board can give preference to the Mutawintji Land Council in contracts for works on the Mutawintji lands where the Board is allowed by law to do so.

10.18 Cultural awareness training

1. The Minister agrees that all persons appointed to the Board, who are not Wiimpatja with a cultural association, will be required to undertake an appropriate short course of cultural awareness training to be run by or approved by the Land Council.
2. The Land Council agrees to conduct or approve such a course within one month of notification by the Minister of proposed appointments to the Board.
3. The parties agree that, in the event that the Land Council fails to conduct or approve such a course within the time required by this clause, the Minister may proceed to make such appointments without such training having been undertaken.
4. However, the parties agree that such training for members appointed to the first Board under this lease shall be held prior to 31 December 1998.
5. The parties agree that the reasonable cost of cultural awareness training for Board members will be met from the Board's funds.
6. The parties agree that all Service officers who are not Wiimpatja with a cultural association who are appointed to or are to act for any continuous period longer than two months in
 - the position of District Manager for the Service District 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 Land Council.

7. However, the parties agree that such training for such Service officers who are not Wiimpatja with a cultural association at the commencement of this lease shall be held prior to 31 December 1998 and for such Service officers who fall under this provision after the commencement of this lease, within one month of the requirement arising.
8. The parties agree that the reasonable agreed cost of cultural awareness training for such Service officers who are not Wiimpatja with a cultural association will be met by the Service.

This clause means that Board members and Service staff working on the Mutawintji lands will have to do Wiimpatja cultural awareness training run or approved by the Land Council if they are not Wiimpatja with a cultural association.

10.19 Application by the Board for external funding

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

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

10.20 Direct dealings with other Government departments

The Land Council agrees that 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.

10.21 Board meetings by telephone or video conference

The parties agree that, pending any legislative or regulatory change to deal with this issue, the Minister will direct the Board that it may conduct meetings by video or telephone link provided that, if any meeting is so conducted, each member participating in such meeting is able to hear what is said by every other member so participating.

This means that the Board can meet by telephone conference but only if everyone can hear what everyone else is saying.

11. Joint Management Principles and Issues

11.1 Joint Management Co-ordinator

1. The Land Council and the Director-General agree that the Service staff member who occupies the Service position with respect to the lands which is designated by the Board to be known as the "Joint Management Co-ordinator" will:
 - monitor the implementation of the decisions of the Board
 - report directly to the Board on the implementation of the Board's decisions; and
 - ensure that the Board has appropriate information on which to base decisions.
2. The Land Council and the Director-General also agree that the "Joint Management Co-ordinator" will be responsible to the Board for direction and control with respect to that person's day to day activities and responsibilities whilst remaining responsible to the District Manager for personnel, training and other staff administration requirements.
3. The Land Council and the Director-General also agree that the "Joint Management Co-ordinator" will be involved co-operatively with the Assistant District Manager Mutawintji in ensuring that effect is given to the decisions of the Board with respect to the care, control and management of the lands
4. The Land Council and the Director-General also agree that the "Joint Management Co-ordinator" will develop and implement training programs for all Service officers who are not Wiimpatja with a cultural association and who are appointed to or are to act for any continuous period longer than two months in
 - the position of District Manager for the Service District in which the lands are situated; or
 - any Service positions located on or exclusively or predominantly involved in the management of the lands.
5. The parties also agree that no person who is a member of the Board is to be eligible to be appointed as the "Joint Management Co-ordinator" but that any appropriately qualified Board member may apply for this position but must relinquish Board membership prior to appointment to the position if selected for appointment to it.
6. The parties also agree that the filling of the position of "Joint Management Co-ordinator" for any period of longer than three months shall be by competitive advertised recruitment unless the Board decides to fill it otherwise.

This sets out the duties and role of the Joint Management Co-ordinator. This person can't be on the Board. It also means that the Joint Management Co-ordinator will report to the Board and will assist the Board with making joint management of the Mutawintji lands run smoothly by working cooperatively with the Service's Assistant District Manager at Mutawintji.

11.2 The relationship between the Board and the Regional Manager

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

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

11.3 Aboriginal designated positions

1. The parties agree that of the Service positions whose duty statements refer to duties on or exclusively or predominantly servicing the lands, the positions of:-
 - the Joint Management Co-ordinator; and
 - all Field Officer positions of any grade; and
 - any Ranger (or equivalent level) position; and
 - any Trainee Ranger (or equivalent level) position; and
 - any administrative position

will be Aboriginal designated positions.

2. The parties also agree that all Aboriginal designated Service positions on or exclusively servicing the lands will have a knowledge of the Wiimpatja culture and land management of the lands as a desirable skill in the position description.
3. The parties also agree that, to the extent permitted by law, preference shall be given to otherwise qualified Wiimpatja with a cultural association in the filling of all Aboriginal designated Service positions on or exclusively servicing the lands (whether such filling is on a temporary or permanent basis).
4. Where suitable Wiimpatja (with appropriate qualifications and training) are not available for recruitment, the parties also agree that the Board may agree that such Aboriginal designated Service positions may be filled (including filled temporarily):
 - by non-Wiimpatja; or
 - at a lower grade or on a trainee basis, by Wiimpatja with a cultural association.

There is agreement that the joint management co-ordinator, rangers, field officers, administration officers and trainee positions for the Mutawintji lands will be Aboriginal designated positions. It also means that the Board can have non-Wiimpatja staff or extra trainees if suitable Wiimpatja do not apply but this will be decided by the Board.

11.4 The role of the Board in the staff recruitment process

The parties agree that, subject to the Regional Manager ensuring that the requirements of the Public Sector Management Act are met, the Board will be responsible for recruitment for all Service positions on or exclusively or predominantly servicing the lands (including the preparation of duty statements and selection criteria for such positions).

The Board will be responsible for appointments to work on the Mutawintji lands and the Board will have to follow the normal public service rules for appointments.

11.5 Application of the Public Sector Management Act

The parties acknowledge that all Service positions in clauses 11.3 and 11.4, without exception, are subject to the Public Sector Management Act.

This means that everyone agrees that all Park Service positions (including Aboriginal designated positions) spending all or most of their duties looking after the Mutawintji lands are subject to all normal public service rules.

11.6 Payment of Service staff from the Account

The parties agree that the Minister may direct the Board to approve the payment of Service staff salaries from the account for those Service positions whose recruitment is the responsibility of the Board pursuant to clause 11.4 with such payment reflecting the extent to which each position so services the lands.

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

Mutawintji lands.

11.7 Review of positions

The Land Council and the Director-General further agree that the Director-General and the Board will jointly review the functions and duties of each Service position recruited pursuant to 11.4 twelve months after the first appointment is made to such position.

The parties agree to review the jobs being done by Park Service staff looking after Mutawintji to see if the sort of work being done should be changed. This will happen for each job one year after someone is employed in it for the first time.

12. Land Management Principles and Issues

12.1 Transfer of Aboriginal cultural items

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

This means that the Land Council will own and the Board will control all items of Wiimpatja heritage on the Mutawintji lands.

12.2 Rights of public access

1. The parties acknowledge that the public has a right of general access to the lands, in accordance with Section 71AD(1)(m) of the Act and that this general right of access is to be subject to the Act and the Plan.
2. The parties agree that the principles to be applied by the Board which will guide the management of public access to the lands are:
 - the promotion and enhancement of appropriate use, understanding and enjoyment of the lands
 - ecological sustainability
 - equity
 - regional planning
3. The parties also agree that general public rights of access to the land will be maintained subject to any restrictions:
 - declared under the Act, this lease, the Plan or any other Act for the purposes of dealing with natural disasters howsoever caused, urgent land management or urgent public health considerations (determination of urgency and sufficiency for this purpose to be solely by the Board); or
 - limiting methods of access (particularly vehicular access or equine access) for the purposes of wilderness protection.
4. The parties agree that the Board will be able to apply any declarations of restrictions on access to visitors, staff or Wiimpatja as the Board considers appropriate.

5. Because the lands are of special cultural significance to Wiimpatja with a cultural association, the parties agree that a number of specific matters relating to restrictions on access should be set out in this lease. These are:
- The guiding principle of managing public access will be to meet visitor needs to increase their awareness, understanding and appreciation of the cultural significance of the lands to Wiimpatja.
 - In addition, public access will be managed to increase visitor awareness, understanding and appreciation of the nature conservation values of the lands
 - The Board having the power to preclude or restrict public access to ceremonial places or other cultural sites by zoning or other mechanism including restrictions based on gender necessary for the cultural protection of such ceremonial places or other cultural sites.
 - Access for self reliant bush walking will be managed by the Board in a manner which ensures safety and protects culturally sensitive areas and nature conservation values.
 - Some areas will be permanently or temporarily zoned by the Plan for Wiimpatja cultural and management purposes. Such areas will not generally be open to public access.
 - The Board may, at the request of the Land Council or a group of Aboriginal owners or on its own volition:

I. declare the whole or part of the lands a "no grog" area for short periods for cultural reasons; and II. declare a defined area of the lands to be a "no grog" area for any term or permanently, by prohibiting the possession and/or consumption of alcohol within the lands or the defined area.

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

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

12.3 Reservation of Wiimpatja Rights to Use and Occupy

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

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

12.4 Reservation of Right of Entry and Inspection

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

This means that the Land Council can send a person onto the Mutawintji lands to inspect that the lease is

being obeyed but that this is subject to some conditions concerning things like staff privacy etc.

12.5 Minister entitled to quiet enjoyment

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

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

12.6 Acknowledgment of hunting etc rights

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

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

12.7 Board to control cultural activities including hunting and gathering

The parties acknowledge that the Board has the function of considering proposals for the carrying out, by Aboriginal owners or other Wiimpatja, 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 Wiimpatja hunting and gathering on the Mutawintji lands.

12.8 Planning and building approvals

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

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

12.9 Planning generally

1. The parties agree that, in addition to and not inconsistent with the Plan, the Board may from time to time request the preparation of specific operational practices for particular management issues.
2. The parties agree that the Plan to be prepared pursuant to clause 12.21 shall authorise the adoption and implementation of such additional specific operational practices.
3. The parties acknowledge that, if any specific operational practice developed by the Board requires amendment to the Plan:
 - the processes set out in [the Act](#) for amending Plans of Management will need to be observed; and
 - such specific operational practice cannot be implemented until the Plan is amended to permit its implementation.
4. With respect to specific operational practices requiring an amendment to the Plan, the parties agree that the Minister may direct the Board not to implement such specific operational practice until the Plan is amended to permit its implementation.

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

12.10 World Heritage issues

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

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

12.11 [Wilderness Act](#)

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

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

12.12 Setting of park entry and user fees

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

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

12.13 Recognition of state wide Service entry permits

1. The Land Council agrees that the Minister will direct the Board to recognise state wide Service annual entry permits and not charge any additional entry fee for the lands unless such additional charge is approved by the Minister.
2. The Minister and the Director-General acknowledge that, in consequence, the Board is entitled to expect the fair and equitable promotion of the lands by the Service to holders of state wide Service annual entry permits.
3. The parties acknowledge that the rent payable under this lease includes compensation for any loss of entry fee income for the Board likely to result from the Board's recognition of state wide Service annual entry permits (after taking into account the value of indirect benefits which may arise from the expected promotion).

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

12.14 Tour operator permit holders

1. The parties agree that the lands will not be added to any tour operator's permit without the approval of the Board.

2. The parties agree that the Board will set conditions for authorised tour operators operating on the lands.
3. The parties agree that the Board will consult with and have regard to the views of the Service when setting conditions for such authorised tour operators.
4. The parties agree that the Board will have power to issue specific permits authorising tour operators to operate on the lands.
5. The parties agree that any per capita charge on visitors brought to the lands by authorised tour operators will be paid into the account.
6. The parties agree that permits of tour operators current at the date of commencement of lease will be recognised by the Board for the unexpired period of such permit.
7. The parties agree that where five or fewer parks are on the schedule for any individual tour operator's permit, the fee for that permit is to be paid pro rata into the account.

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

12.15 Exemption from fees

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

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

12.16 Kangaroo management

Subject to any direction from the Minister pursuant to clause 7.9.1, the parties agree that the Board shall develop operational practices for kangaroo management on the lands.

This means that the Board can develop kangaroo plans for the Mutawintji but cannot permit any commercial or other culling if the Minister says that this cannot occur.

12.17 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 (and, in particular, for the Yellow-footed Rock-wallaby) whose habitats include all or part of the lands if the proposed recovery plan may include steps to be implemented on or in the vicinity of the lands.
2. The Minister and the Director-General agree not to exercise or permit to be exercised any power under the [Threatened Species Conservation Act 1995](#) which relates to or impacts on the lands without the consent of the Board.
3. The Minister and the Director-General agree not to carry out or cause to be carried out any mandatory requirement under the [Threatened Species Conservation Act 1995](#) without consulting with and having regard to the views of the Board.
4. The Minister agrees not to cause the Board to be declared a public authority for the purposes of the [Threatened Species Conservation Act 1995](#) without the consent of the Land Council as to the terms of any such declaration.

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

12.18 Conservation of the Yellow-footed Rock-wallaby

1. The parties note the special significance of the Yellow-footed Rock-wallaby to Wiimpatja with a cultural association with the lands.

2. The Minister and the Director-General agree, as soon as practicable after commencement of this lease, to consult with and have regard to the views of the Board concerning the draft recovery plan or threat abatement plan under the [Threatened Species Conservation Act 1995](#) for the Yellow-footed Rock-wallaby.
3. The parties agree that the Minister and the Director-General will not permit any Yellow-footed Rock-wallaby to be removed from the lands or the vicinity of the lands without the consent of the Land Council and the Board.
4. The Land Council agrees that it will not (and that it is appropriate that the Minister direct the Board that the Board is not to) withhold, unreasonably, consent to the removal of any Yellow-footed Rock-wallaby from the lands or the vicinity of the lands.
5. The parties also agree that, in the case of an emergency, the Minister or the Director-General may cause any Yellow-footed Rock-wallaby to be removed from the lands or the vicinity of the lands without the consent of the Land Council or the Board. In such emergency circumstances, the Minister and the Director-General agree to notify the Board forthwith and to return any animals so removed if so directed by the Board.

This means that the Board will be consulted about the Yellow-footed Rock-wallaby recovery plan as soon as possible. It also means that no Yellow-footed Rock-wallaby will be removed from the Mutawintji population without the agreement of the Board and the Land Council - except in an emergency.

12.19 Visitor monitoring

1. The parties agree that the Minister will direct the Board to take part in Service state wide monitoring of Park visitor numbers.
2. The Director-General agrees to implement, to the extent reasonably practicable, any modifications to the state wide monitoring programme 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 Mutawintji lands.

12.20 Keeping or taking of domestic animals on the lands

1. The parties agree that the establishment of a policy on having domestic animals on the lands will be undertaken by the Board.
2. The Land Council agrees that the Minister direct the Board to develop a policy on having domestic animals on the lands subject to approval by the Director-General (which approval is not to be withheld unreasonably).

The Board will decide whether domestic animals such as dogs, cats and horses can be kept on the Mutawintji lands and on rules for this but this is subject to agreement by the Director-General - who can't be unreasonable about it.

12.21 Preparation of a new Plan

The Land Council and the Minister agree that the Minister will direct the Board to commence, not later than 31 December 1998, the process of preparation of a new Plan for the lands.

The Board will have to get the preparation of a new plan of management started by the end of December 1998.

12.22 Law enforcement on the lands

1. The parties agree that enforcement, on the lands, of [the Act](#), other Acts for which the Service has primary or delegated responsibility and any regulations under such Acts are to be undertaken by Service officers.
2. The parties agree that the Minister may direct the Board to develop a law enforcement policy for implementation on the lands subject to approval of such policy by the Minister.
3. The Director-General agrees to give consent pursuant to [s179](#) of [the Act](#) to the implementation of proceedings when requested to do so by the Board unless the Director-General considers it would be unreasonable to give such consent.
4. The parties agree that nothing in this clause shall be construed as limiting the right of the Land Council (or any other body or person) to bring proceedings in accordance with [s176A](#) of [the Act](#).

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

12.23 Establishment of a Cemetery on the lands

1. The parties agree that a cemetery may be located on the lands for interment of deceased Wiimpatja with a cultural association with the lands subject to the Plan and the consent of the Board and Land Council.
2. The parties also agree that, if a cemetery is located on the lands, other deceased persons may be interred in the cemetery with the consent of the Board and Land Council.

This means that there can be a cemetery at Mutawintji for Wiimpatja with a cultural association with the Mutawintji lands. The Board and Land Council can agree that other people may be buried there when a cemetery is established.

12.24 Enterprises on the lands

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

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

12.25 Training

1. The parties agree that Service staff based on the lands will continue to have access to general Service training programmes.
2. The parties also agree that Board members will have access to appropriate Service training courses subject to availability of places

Park Service staff on the Mutawintji lands will have access to a fair share of training programs within the normal Park Service training structure and that Board members can take part if there is room on courses.

13. Miscellaneous Provisions

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

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

1. in the first instance, the Joint Management Coordinator will seek to resolve the matter in issue with the Assistant District Manager Mutawintji;
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 Regional Manager.

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

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

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

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

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

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

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

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

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

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

13.4 Formal dispute resolution processes

1. The parties agree that, if after the steps as relevantly set out in clauses 13.1, 13.2 or 13.3 are unsuccessful in resolving any dispute, any one of the parties in dispute considers that the matter remains unresolved, that party shall notify, in writing, the other parties to the dispute of the matters continuing to be in dispute;
2. such written notice shall give those other parties fourteen days in which to resolve the matter in dispute and notify the other parties of the steps taken or to be taken in resolution;
3. if following the expiry of fourteen days after the giving of notice pursuant to (1) above, any party considers that the matter has not been resolved, that party shall convene, within twenty one days of the expiry of such notice, a meeting of the parties (which meeting shall be held on the lands) to discuss the matter in dispute;
4. if any meeting is convened pursuant to (3) above, they shall attend such meeting either in person or by agent authorised to negotiate on their behalf;
5. during any meeting pursuant to (3), the parties (or their representatives) will negotiate bona fide and in good faith to agree on steps necessary to resolve the matter in dispute;
6. if the parties are able to agree on how to resolve the matter in dispute, the parties agree that all or any one will take all such steps as are necessary to give effect to the proposed resolution;
7. if the parties are unable to agree on how to resolve the matter in dispute, the parties may appoint a mediator to assist them endeavour to resolve the matters in dispute;
8. if the parties remain unable to agree on how to resolve the matter in dispute, the matter in dispute (and responsibility for any costs of the arbitration) shall be referred to arbitration pursuant to [s71BJ](#) of [the Act](#) (or, should [s71BJ](#) not apply to the dispute, the parties agree that the arbitration shall be conducted as if it did apply), the results of which the parties agree shall be binding on each of them;
9. any arbitration pursuant to [s71BJ](#) shall include any issues of compensation to any party to this lease as a result of the matter in dispute; and
10. The parties agree that, in conducting any arbitration, the arbitrators are to have regard to:
 - a. the preservation of the rights and interests of native title holders;
 - b. the views on the matter expressed by the Aboriginal owner Board members;
 - c. the preservation and protection of Wiimpatja ways of life, culture and tradition;
 - d. the interests, proposals, opinions and wishes of Wiimpatja with a cultural association in relation to the management, use and control of the lands;
 - e. the growth and development of Wiimpatja social, cultural and economic structures;
 - f. freedom of access to the lands by Wiimpatja with a cultural association and their freedom to carry out on the lands rites, ceremonies and other activities in accordance with their tradition;
 - g. the preservation of the natural environment and wilderness values;
 - h. the continuing management of the lands under Part 4A of [the Act](#)
 - i. the use of the lands for tourist and educational activities; and
 - j. the duties, functions and responsibilities of the Minister in relation to the lands.

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

13.5 Use of Service Equipment and Services

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

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

13.6 Current dividing fences liability

Should the Land Council be liable, pursuant to the Dividing Fences Act, at the commencement of this lease, to make any contribution to the costs of fencing the lands or any part of them or associated with maintenance of existing fences, the Minister agrees that the cost of such contribution will be met by the State 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 the Board will not have to pay any fencing costs at the start of the lease.

13.7 Future dividing fences liability

1. Should the Land Council be liable to make any future contribution pursuant to the Dividing Fences Act solely as a result of the lands being vested in the Land Council (rather than being retained by the Crown) to the costs of fencing the lands or any part of them, the Minister agrees that the cost of such contribution will be met by the State in addition to any other monies payable pursuant to this lease or pursuant to the normal budgetary allocations by the Service for the management of the lands.
2. Should the Land Council be liable to make any future contribution pursuant to the Dividing Fences Act as a result of all lands reserved and dedicated pursuant to the Act being liable to the costs of fencing pursuant to the Dividing Fences Act, the Land Council agrees that the cost of such contribution will be met by the Board.

This clause means that the Board will not have to pay any future fencing costs unless it chooses to do so or all National Parks have to do so.

13.8 Future dividing fences policy

1. The parties agree that the establishment of a policy on funding of construction of dividing fences with the lands will be undertaken by the Board.
2. The Land Council agrees that the Minister direct the Board to develop a policy on funding of construction of dividing fences with the lands and that the Board should have regard to the Service's policy on dividing fences in such policy development.

This means that the Board will have to work out how it wants to deal with fences with Park neighbours. It will have to look at what the Parks Service does about fences with neighbours when it does so.

13.9 Future liability for Commonwealth or State taxes or Local Government Rates

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

Commonwealth or State taxes or charges or local government rates, the Land Council agrees that the cost of such Commonwealth or State taxes or charges or local government rates will be met by the Board.

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

13.10 Continuation unvaried of existing licences, permits etc

The parties acknowledge that the lease is subject to any existing interest within the meaning of Section 39 of the Act, any licence issued under Part 9 of the Act, any lease, licence, franchise or easement granted under Part 12 of the Act and any authority or consent issued under this Act or the regulations affecting the lands, or any part of the lands, that is current on the date on which the lands are vested in the Land Council, which interest etcetera including details as to expiry date is listed in Schedule 3 appended to and forming part of this lease.

This clause means that all existing permits etc to use the Mutawintji lands continue when the Mutawintji lands transfer to Wiimpatja ownership.

13.11 Granting or renewal of licences, permits etc

1. The parties acknowledge that any power to grant, extend or extinguish any interest, etcetera of a kind referred to in clause 13.10 or otherwise under the Act or any other Act may only be exercised with the approval of the Board provided that notice pursuant to clause 12.24 (when required) has been given.
2. In the case of such extension or extinguishment, the parties acknowledge that the extension or extinguishment is subject to any instrument under which the interest etcetera was granted, provided that the purposes of such interest etcetera is not in conflict with any provision of this lease or of the Act or of any other enactment applying to the lands.

This means that the Board must agree if any new permit etc to use the Mutawintji lands is to be given when the Mutawintji lands transfer to Wiimpatja ownership.

13.12 Payments from the account

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

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

13.13 Transfer of plant and equipment to the Board

The parties agree that all plant and equipment on the lands for exclusive use on the lands as at 3 August 1998 and detailed in the plant audit (Schedule 4 to and forming part of this lease) will be transferred to the ownership of the Board.

This clause means that the tools and machinery used at Mutawintji now will be transferred to the Board when the Mutawintji lands are handed over to the Land Council.

13.14 Public liability insurance

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

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

13.15 Workers Compensation insurance

1. The parties agree that the Service will remain liable for the arrangement of workers compensation insurance for Service employees working on the lands. The parties agree that the Service can recover from the account the cost of such insurance but only to the extent that such costs become apportioned to each of the Districts of the Service for Service employees working within such District.
2. The parties agree that if the Service apportions and charges workers compensation insurance for Service employees to the each of the Districts of the Service for Service employees working within such District, 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 District within the Service and the parties expressly agree that there shall be no disadvantage in this regard because the lands are held by the Land Council under Part 4A of the Act.

This means that the Parks Service will remain responsible for workers compensation insurance for Parks Service staff working at Mutawintji and the Board will only pay as much of the cost as the Broken Hill District was charged in the past.

13.16 Intellectual Property

1. The parties agree that any intellectual property in any Wiimpatja art or designs on the lands shall, to the extent it is currently vested in the Service, be vested in the Land Council on behalf of the Aboriginal owners from the commencement of this lease.
2. The parties further agree that, to the extent that any other intellectual property (such as but not confined to objects, sites and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation) and including; human remains and tissues, all items of immovable (including burials, sacred and historically significant sites) and movable cultural property, literary, performing and artistic works (including songs, music, dances, stories, ceremonies, symbols, languages, words, symbols and designs) and also traditional, scientific, agricultural, technical and ecological knowledge (including genes, tissues, cultigens, medicines pharmaceutical products, and the phenotypes of flora and fauna) derived exclusively from the lands is vested in the Crown and within the administration of the Minister or the Director-General, this lease transfers such intellectual property to the Land Council on behalf of the Aboriginal owners.
3. The parties further agree that the Land Council will permit the Service, under the supervision of the Board, to make use of such intellectual property without charge where such use is for the benefit or promotion of the lands or of the NSW National Parks system or nature conservation generally.
4. The Minister agrees to use her best endeavours to seek to have transferred to the Land Council any intellectual property of the types covered by 13.15.2 which is vested in the Crown and which is not within the administration of the Minister or the Director-General.

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

13.17 Appointment of Honorary Rangers

1. The Director-General agrees not to appoint, for the lands, any honorary ranger under the Act or under any other Act without the consent of the Board.
2. The parties agree that the Director-General shall not be bound to appoint, if requested to do so by the Board, any person as an honorary ranger for the lands unless the Director-General is satisfied that such person is fit and proper to be so appointed.
3. The Director-General agrees to negotiate with the relevant organisations of employees representing Service staff to seek their agreement to the appointment of Wiimpatja with a cultural association as honorary rangers for the lands.

This clause means that no honorary park ranger will be appointed for Mutawintji unless approved by the Board and that the person must pass proper checking before appointment.

13.18 Mineral exploration in the cultural area

1. The Director-General acknowledges that mineral exploration or mining in the cultural area may impact on the Wiimpatja cultural values of the lands.

2. The Director-General therefore agrees to consult with and have regard to the views of the Board before expressing any opinion on the merits of any mineral exploration or mining in the cultural area.

The Director-General agrees to consult with the Board before saying anything about any mineral exploration or mining in the cultural area.

13.19 Contaminated Land Management Act

1. If any order or notice under the [Contaminated Land Management Act 1997](#) is served on the Land Council requiring it to undertake any investigation or remediation on the lands, the parties agree the cost of such investigation or remediation will be met by the Board and that the Minister will so direct the Board.
2. The parties agree that nothing in this lease nor in the acceptance by the Land Council of ownership of the lands constitutes or is to be construed as granting any indemnity to the Crown, the Minister, the Director-General or the Service for any obligations on or liability of any one or more of them which might arise under the [Contaminated Land Management Act 1997](#) in respect of any acts or omissions of the Service, its servants, contractors or invitees during the period for which the Crown was the owner and occupier of the lands.

This clause deals with what happens if a notice under the Contaminated Land Management Act 1997 is given to the Land Council requiring it to investigate or fix up any contamination on the lands. It also deals with who pays for it.

13.20 Best endeavour on regulations

Except as provided for in clauses 8.12 and 8.13, the Minister agrees to use her best endeavours to ensure the making by 30 June 1999 of all regulations provided for in this lease (inclusive, as dealt with in clause 7.8, of a definition in the regulations of "community development").

This means that the Minister will try to have all the regulations made by 30 June 1999 except those about deputies for Board members and making the Board the "park authority". These two should be done by 30 September 1998.

13.21 Registration of Lease

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

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

Signed sealed and delivered by
Pamela Diane Allan, Minister for the
Environment in her capacity as the
Minister administering the National
Parks and Wildlife Act in the presence of:

Signed by William Charles Bates,
Chair of the Mutawintji
Local Aboriginal Land
Council in the presence of:

Signed sealed and delivered by
 Brian John Gilligan, in his capacity as the
 Director-General of the National
 Parks and Wildlife Service in the presence of:

Schedule 1

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

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

Clause	Clause	Clause
1.4.2	8.6	10.8
1.6.1	8.9	10.9.1
5.1	8.10	10.12
5.2	8.12.2 & 8.12.3	10.13
5.3.1	8.13.2 & 8.13.3	10.18.1
5.11 (except 5.11.2)	8.14.1 & 8.14.2	12.3.3
8.1.1 & 8.1.2	10.2	12.11.1 & 12.11.2
8.2	10.3 (except 10.3.3)	12.17.4
8.3	10.4	12.21
8.4	10.6	13.3
8.5	10.7	13.16.4

Schedule 2

Reference Clause 5.11 - Fundamental Breaches

Clauses a breach of which by the Minister may be considered by the Land Council to be a fundamental breach of this lease

Clause	Clause	Clause	Clause	Clause
6.4	8.12.2	9.9	11.1.5	12.18.2&3&5
7.7	8.13	9.13	11.2	12.21
8.1.6	8.14.1	10.3	11.3	12.24

8.2	9.1.1 & 2	10.8	11.4	13.12
8.3	9.2.1 & 2	10.9	12.1	13.13
8.4	9.3	10.10.1	12.3.3	13.14
8.5	9.6	10.13.2	12.10.1	13.15
8.6	9.7	10.18.1	12.11 (but not .4)	13.16.1
8.9	9.8	10.19.3	12.17	13.20

Schedule 3

Reference Clause 13.10 - Existing licences, permits etc

List of existing licences, permits etc and relevant details

Existing interest within [s.39](#) of the [National Parks and Wildlife Act 1974](#) No. 80.

Telstra have an existing interest in Mutawintji National Park to maintain the facilities that provide communication services to staff [and their families] who live and work there. Telstra require access to their equipment approximately 2 times/year for proactive maintenance, however this can vary depending on the level of maintenance required. Telstra have indicated that the current facilities are capable of meeting any future short term demand and as such the need for any major changes or developments to the equipment within the park(s) in the next 5 years is doubtful.

Licences issued under Part 9 of the [National Parks and Wildlife Act 1974](#) No. 80.

Scientific Licences

Licence No.	Project	Licensee	Expiry Date
A2226	Devonian geology of the Amphitheatre Creek area	Neef, Gerrit. Dr.	30 Sept. 1998
A1726	Fox predation & Yellow-footed Rock-wallaby	Sharpe, Andy. Mr.	31 Dec. 1998
A1728	Diet of Wedge-tailed Eagles	Sharpe, Andy. Mr.	31 Dec. 1998

General Licences

Name of Licensee	Purpose / Activities	Commencement Date
Thompson, Peter Weston	Park for the purposes of subsistence use and providing assistance in pest animal control	23 June 1998
Bates, William	Hunt rabbits, goats, kangaroos and emus in Mootwingee National Park for domestic purposes and for ceremonial and cultural purposes in accordance with the tradition of the Aboriginal owners	1997

Name of Licensee	Purpose / Activities	Expiry Date
Langford, Torin	1080 fox baiting and free-feed baiting in MNP & CNR	30 September 1998
Johnson, Jeff	Muster and remove goats from MNP & CNR	30 September 1998

Licences issued under Part 12 of the [National Parks and Wildlife Act 1974](#) No. 80.

Commercial Tour / Outdoor Recreation Licences

Name of Licensee	Purpose / Activities	Expiry Date
Australian Habitat Tours	Camping, drive through tours, picnics, fauna watching, photography	18 May 1999
Col Wills Aussie Tours	Drive through tours, picnics, camping, walking tracks, fauna watching	26 January 1999
Country Road Adventures	Drive through tours, picnics, walking tours	31 March 1999

Schedules 4 to 7 are not reproduced

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