NATIONAL PARKS ASSOCIATION OF NSW
protecting nature through community action

Consultation on NPW Bill team
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7 August 2009

Dear Sir/Madam,

Comments on Consultation Draft of National Parks and Wildlife Amendment Bill 2009

Thank you for the opportunity to comment on the consultation draft of the National Parks and Wildlife Amendment Bill 2009. Due to the controversial nature of this legislation, NPA praises the process of putting out an exposure draft of the proposed legislation.

NPA apologies for the late completion of this submission and hope that these points can still be considered in the drafting process.

As well as comments on each of the provisions in the Bill, additional suggestions are also made under the 'Part 4A' provisions and the '*Amendment to insert various new miscellaneous provisions' provisions.*

Attached is NPA's Aboriginal Policy (**Attachment A**) at the end of this submission that provides our general views on issues relating to Part 4A Aboriginal owned parks and other Indigenous issues. This policy is currently under revision following our work with the Indigenous nations of the Riverina.

Previous Agreement Between Environment Groups and NSW Aboriginal Land Council

NPA notes that subsequent to the passing of amendments to the National Parks and Wildlife Act that inserted the Part4A aboriginal ownership provisions in 1996, NPA and other environmental group undertook extensive consultation with the NSW Government and the NSW Aboriginal Land Council following concerns raised about the legislation. These discussions led to formal negotiations facilitated by the Hon. Tim Moore between several NSW environmental groups (NPA, NCC, Colong Foundation for Wilderness and TEC), and the NSW Aboriginal Land Council. The negotiations lasted a number of years, took much effort and concluded in 2000.

The negotiations led to an agreement as a 'package' of recommendations. The agreement included 17 recommended changes to the NP&W Act. These changes are attached (**Attachment B**). The process involved many compromises from both sides and is not a list of proposals that are to be selectively implemented, but to be implemented as a whole. Advancing one recommendation and not advancing another would not be in the spirit of the final outcome.

These recommendations were presented to the NSW Government and the Minister for the Environment in 2000. No clear response was received and no action has been taken. In about 2006 Minister for the Environment, Bob Debus, agreed to revisit the recommendations and a further meeting was held between the Cultural Heritage Division of NPWS and NPA. No further action was taken after this meeting, despite NPA's continuing interest in the matter.

The consultation draft Bill advances five of these 17 recommendations:

1. Separate accounts for each part4A park (rec 2)
2. Local Council rates (rec 3)
3. Dividing fences (rec 4)
4. Role of Aboriginal Board members (rec 7)
5. Nature of tenure of Part4A lands (rec 12)

While we are pleased that this is the case, greater consideration should be given to advancing all of the 17 recommendations. As mentioned earlier, the recommendations were a package of changes and

were not meant to be selectively implemented. A detailed response on why the other 12 recommendations that are not being advanced should be provided to environment groups and the NSW Aboriginal Land Council.

RESPONSES TO PARTICULAR PARTS OF THE BILL

NPA now provides a response to each of the sections of the Bill described in the Explanatory Notes in turn.

Some additional suggestions are also made under the 'Part 4A' provisions and the '*Amendment to insert various new miscellaneous provisions' provisions.*

Schedule 1 Amendment of National Parks and Wildlife Act 1974

1. Amendments relating to terminology

These changes are supported. They make important improvements.

2. Amendments relating to administrative matters

These changes are supported. They deal with minor administrative matters.

3. Amendments relating to advisory committees

These changes are supported. They provide useful clarifications to the formation of new advisory committees.

4. Amendments relating to Part 4A Aboriginal lands

These changes are supported with the following qualifications.

The change in clause 16, while supported, may lead to difficulties if one Aboriginal board member objects to a new lease. This requirement to achieve consensus amongst the Aboriginal board members is a good principle. It may however prove difficult in some cases. The effectiveness of this mechanism could be monitored over the coming years.

The change in clause 17 clarifies that lands remain reserved under the NP&W Act if there is a period during which there is no Part 4A lease in place. This is strongly supported.

The change in clause 19 to allow the delegation of the powers of the Board, while supported in a general sense, may mean that the Board may delegate some important powers that should remain with the Board. NPA holds general concerns with the delegation of any powers under the NP&W Act. Good safeguards and accountability provisions must be built into any delegations, and only a limited number of powers should be delegated where there are clear benefits in administration and that the accountability of that function warrants delegation to a lesser authority. Example are the authority to approve leases and licences and the authority to approve a plan of management. The Board should not be able to delegate these powers.

Additional changes to Part 4A Aboriginal Ownership provisions of the NP&W Act should be made:

a) Any new areas nominated for Aboriginal ownership should meet a standardised minimum set of agreed criteria for cultural significance.

   At present, if a new area becomes an Aboriginal-owned park, it is automatically included on Schedule 14 and becomes a benchmark park. This includes National Parks created as a result of negotiations under the ALR Act, where no traditional links are required, or reserves added to Schedule 14 by legislation as has happened over the last ten years arising from forestry decisions.

In keeping with original spirit of Aboriginal Ownership proposals, Schedule 14 should be limited to National Park estate lands where traditional links make Aboriginal ownership and management relevant and meaningful.

b) A notification process should be put in place so that NPA and other conservation groups are made aware of any parks proposed for Aboriginal ownership before they occur.

c) NPA believes that the provision that allows altering the status of a National Park or nature reserve to a State Recreation Area or a less secure tenure be deleted from the Aboriginal Ownership provisions of NP&W Act.

d) A statutory position should be provided for a jointly agreed NPA/Nature Conservation Council of NSW member for each Board of Management.

e) Where lands are proposed to be added to existing Schedule 14 reserves managed under Part 4A, the views of the National Parks and Wildlife Advisory Council should be sought and these views taken into consideration before the Minister makes the decision.

NPA's Aboriginal Policy (**Attachment A**) has further information on these changes.

Proposed Amendment regarding Part 4A by Peter Thompson

It has been suggested by Peter Thomson that an amendment is made to section 71BC allowing lands added to a Part 4A reserve to have a different reserve classification to the original Part 4A reserve.

The amendment suggested is to add a new subsection 71BC(1A):

> *Lands may be reserved under this section as part of an area even if they will have a different classification to the area, provided these additional lands will be managed in conjunction with the area. (or words to this effect)*

NPA thinks that this is a useful amendment to give greater flexibility to future management of lands acquired, often by the Board of Management. However, we have one qualification.

NPA considers that where any land is proposed to be added to an existing Part 4A reserve (that is listed in Schedule 14) that the National Parks and Wildlife Advisory Council is consulted and the views of the Council are passed onto the Minister before making a decision to add the lands. This gives the opportunity for the Council to consider the merits of the addition, particularly if there are some unusual circumstances.

5. Amendments relating to Aboriginal objects and Aboriginal places

These changes are supported,

They provide an alternative mechanism to protecting Aboriginal objects, replacing a system that had been shown not to work to preserve Aboriginal objects. In particular, the change of liability is supported where there is no longer a requirement to prove that the person knew that the object being harmed was an Aboriginal object. The due diligence protection under the proposed section 87(2) is a good safeguard.

6. Amendments relating to stop work orders, interim protection orders and remediation directions

These changes are strongly supported. They provide essential mechanisms of enforcement.

7. Amendments relating to protection of fauna

These changes are supported. They appear to be a useful strengthening of the powers of DECC officers.

8. Amendments increasing penalties for certain offences to include additional penalties for continuing offences

These changes are supported. Incentives to prevent continuing offences must be put in place.

9. Amendment relating to management plans for protected native plants

These changes are supported. The flora plan of management is supported because it improves flexibility and customisation of conditions to suit particular species.

10. Amendments relating to threatened species, populations and ecological communities, and their habitats, and critical habitat

These changes are supported. They make important improvements.

11. Amendments relating to licensing in respect of fauna, native plants and threatened species

These changes are supported. They make important improvements.

12. Amendments relating to finance

These changes are supported. They make important improvements. In particular, the change in Clause 59 was proposed in the joint recommendations between NPA, other environment groups and the NSW Aboriginal Land Council (recommendation 2) and is supported.

13. Amendments relating to leases, licences, easements etc

These changes are partly supported.

The first change, Clause 65, extends access rights to occupiers. We have been wary of granting long-term access rights across land reserved under the NP&W Act except in exceptional circumstances. NPA questions whether the access granted to the owner of the land can include the ability of an occupier to access the land, subject to the same conditions. Access rights should be heavily qualified and for short periods.

The second change, Clause 66 and 67, is not supported because NPA opposes the placement of broadcasting towers in lands reserved under the NP&W Act. Conditions are to apply as they do to telecommunication facilities. There may need to be a higher level of justification (or compensation) for placing broadcasting towers in reserves because these towers provide no direct benefit to the conservation reserves.

14. Other miscellaneous amendments

These changes are supported. They make important improvements.

The notes relating to the change in Clause 104 regarding a protocol between Ministers or Plans of Management do not appear to relate to any legislative amendment.

15. Amendment to insert various new miscellaneous provisions

These changes are partly supported. <u>The proposed new sections 188C and 188D are not supported in their present form.</u>

The proposed new sections 188A, 188B and 188E are supported and appear to be important improvements.

The proposed new section 188C introduces a new mechanism of changing the boundary of land reserved under the NP&W Act and is not support without significant changes.

At present, an Act of Parliament is required for any boundary changes. Most of the new parks created under the Labor Government's forestry decisions, starting with the new parks created through the Forestry and National Parks Estate Act 1998, provide a limited period for boundary adjustments through a prescribed process.

A number of 'adjustment of areas' amendments to the NP&W Act were also passed since 2001. When the first Bill of this type was introduced, new procedures were introduced after the NPWS reported to the Minister for the Environment on procedures for future park boundary revocations. Subsequently most of these recommendations were codified in a new NPWS Policy on reserve boundary changes.

The proposed subsection 188C (2) allows the changing of a park boundary to be adjusted at any time to allow a boundary to follow the 'formed path' of the road or 'an appropriate setback'. This is too flexible.

It is agreed that sometime very minor changes to a park boundary may be necessary. For example, where a new park is created, the park edge may be defined to align with a surveyed line that is meant to be a road edge, aiming to exclude the road in full. The actual road may lie in a different location to a surveyed line, especially if the survey was taken many years before the park creation.

This road variation mechanism should be improved in the following ways:

- Ensure that the park boundary cannot be changed to exclude a road that was previously included in the park (changing the park boundary from one side of the road to another).
- Ensure that the mechanism cannot be used to move a park boundary where the 'path of the road' has moved closer to or into a park after the park was reserved or vested with the Minister. The mechanism should not be able to be used if the park boundary was moved to provide for a new setback if the road was widened or realigned since the park creation.
- Remove the possibility with the present wording (confirm if this interpretation is possible) to vary a park boundary to align with a new 'path of the road' that is yet to be built. One scenario could be for the park boundary to change at the same time as a new road is formed on the ground. This possibility does not appear to be ruled out.
- Ensure that the setback cannot be increased to accommodate a change in the usage of the road after the adjacent land was reserved or vested with the Minister for the Environment. Road widenings and any subsequent park revocation should go through the usual procedures of accountability and NPWS revocation policy and Act of Parliament, including consultation with regional advisory committees, the Advisory Council and broader consultation if the proposal may be controversial.
- Set a maximum setback of the road to be 25 metres from the road centreline. This should be sufficient for even the largest highways. Ten metres should be the usually setback applied from a road centreline.
- Require consultation with the relevant regional advisory committee and the National Parks and Wildlife Advisory Council about any proposed variation (this policy is currently in place regarding any proposed park boundary changes). Consider broader community consultation or public advertisement for larger or more controversial changes. A draft notice could be published in the Government Gazette three months prior to the final notice to allow for public notification and input.

The proposed new section 188D is now considered.

The first part of the proposed new section 188D provides some useful flexibility for maintaining roads where this may require minor work within NP&W reserve lands, provided the purpose of the road remains the same as when the land was vesting with the Minister. This is an important qualification and NPA supports that qualification. If the road is to be upgraded, and this requires works in lands vested with the Minister or reserves under the NP&W Act, then the park boundary should be changed by an Act of Parliament.

The second part of proposed Section 188D deals with the width of access roads excluded from parks by orders under the various Acts arising from the forestry decisions. These subsections provides some useful clarity about the width of roads that are to remain vested with the Minister for the Environment.

NPA submits that the maximum width of the access roads should be 20m, not 30m as proposed. All roads except major highways are usually able to fit within a 20m corridor, especially since the proposed Bill ensures that the centre of the road corridor is aligned to the centreline of the physical road. NPA is not aware of any roads created by the forestry legislation and currently vested with the Minister for the Environment that would require a road corridor greater than 20 metres.

New provision relating to seizure and impoundment of property and vehicles
NPA seeks the addition of a new provision that allows NPWS officers to seize and temporarily impound property or vehicles. This may include illegally used mountain bikes and trail bikes. It could include the seizure and holding of a wheel of a bike.

This would be a useful tool in many circumstances, such as areas like Illawarra SCA and Royal NP where the challenge of illegal downhill riding on walking tracks and off track an increasing problem. In some national parks in New Zealand, the confiscation of a front wheel of a mountain bike is a simple thing to do when bikes are found in a track illegal. It punishes the rider and makes it easy for a law enforcement officer to carry out.

At present we do not believe that there are such provisions in place in the NP&W Act and this would improve the range of tools available to officers seeking to enforce the regulations applying to parks.

16. Amendments relating to criminal and other proceedings and the layout of the Principal Act

These changes are supported. They make important improvements.

17. Savings and transitional amendments

These changes are supported.

18. Amendments relating to the Aboriginal Cultural Heritage Advisory Committee

These changes are supported. They make important improvements.

Schedule 2 Amendment of Threatened Species Conservation Act 1995

1. General amendments

These changes are supported. They make important improvements.

2. Amendments relating to criminal and other proceedings and TSC Act structure

These changes are supported. They make important improvements.

3. Amendment to insert various new miscellaneous provisions

These changes are supported. They make important improvements.

4. Savings and transitional amendment

These changes are supported.

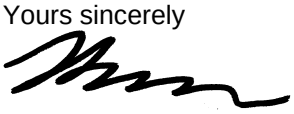
Schedule 3 Amendment of other Acts

These changes are supported. They make important improvements.

In particular, Schedule 3.1 dealing with the Dividing Fence Act and Schedule 3.5 dealing with rates for land reserved under Part4A is strongly supported. They formed part of the joint agreement with the NPA, other environment groups and the NSW Aboriginal Land Council.

Please contact NPA if you need any further information.

Yours sincerely



Andrew Cox
Executive Officer

ATTACHMENT A

POLICY NO 21: *ABORIGINAL POLICY: Aboriginal Land Rights Issues and their Relationship to National Park Dedication and Management and the Conservation of Natural Values Within NSW*

GENERAL POLICY POSITION

NPA recognises

- That Aboriginal people are the original inhabitants of Australia and, therefore, the doctrine of Terra Nullius is a legal fiction,
- That Aboriginal people never voluntarily relinquished their sovereignty over Australia,
- That as a result, Aboriginal people should be compensated on fair and just terms, including the return of land,
- That Aboriginal peoples, as mentioned in this policy, refers to all Aboriginal people in NSW today,
- That NPA members and Aboriginal people share a love of and respect for our land and environment and a determination to care for it;
- That we believe this can be facilitated by close cooperation between the Aboriginal community and the conservation movement.
- That NPA should take all opportunities to communicate with Aboriginal people so as to build understanding, and maximise opportunities for positive conservation outcomes.

In relation to land ownership

- NPA ***recognises*** *Aboriginal ownership* and joint management of appropriate **(defined in terms of Schedule 14 of the Aboriginal Ownership provisions of the NP&W Act owing to their cultural significance)** national parks, marine parks, wilderness areas and other conservation reserves throughout NSW.
- NPA believes that such lands should be held under inalienable community-freehold title.

In relation to land management

- NPA believes that all lands of high conservation value should be managed sustainably, so that the full ecological values are retained for the present and following generations.
- NPA believes that all lands of high conservation value should be maintained and managed according to the standards established by the World Conservation Union and that the categories established by the IUCN should be reflected in management plans for such lands.
- NPA supports the right of Aboriginal communities to pursue traditional hunting and fishing activities and to practice cultural beliefs, subject always to the overriding responsibility to assure public safety and enjoyment and conserve and maintain the full range of species, biodiversity and diverse natural habitats; and
- NPA supports the right of Aboriginal people to have an interest in the control and care of Aboriginal items and places of cultural and spiritual significance.

[The general policy below outlines NPA's support for Aboriginal land rights within NSW. We hope and trust that there will be little or no conflict between the goals and aspirations of Aboriginal people and conservation requirements within this State. There are areas where NPA considers that ownership and management conditions require stating explicitly to avoid any misunderstandings. Further, we feel that NSW Government legislation requires amendment to correct current defects in relation to the land claims process under the NSW Aboriginal Land Rights Act (1983) and certain aspects of the Aboriginal Ownership provisions of the National Parks and

Wildlife Act (1974). Finally, as with many policy documents and position statements (such as NPA's constitution), specific policies are required in case problems and conflicts do occur.]

SPECIFIC POLICIES

Policy on land claims made under the NSW Aboriginal Land Rights Act (1983) (ALR Act)

Background

NPA considers that the conflict between the NPA and the National Parks and Wildlife Service (NPWS) on the one hand and Aboriginal land councils on the other, over claims for much of the remaining vacant Crown land of high nature conservation value within NSW to be most unfortunate.

Almost invariably, these lands have low economic value, as they constitute the remnants following more than 200 years of continuous and systematic disposal of lands by successive Governors and State governments. However, despite their low economic value, they often have very important scenic and nature conservation values, and as such would make extremely valuable additions to the National Parks estate.

The initial intent of the ALR Act was that granted lands have inalienable community-freehold title. This was amended in 1990, so that granted lands (both before and after this time point) have fee simple freehold title - meaning that these lands can be bought and sold. Due to high land capability constraints, and the need to pay council rates and government charges, local land councils may feel pressure to sell these lands so as to provide better opportunities for economic return for their people. In the process, granted land becomes subject to likely development for rural / residential subdivision and industrial uses (two of the many possible uses). The proposed sale (1999) of the Terry Hills lands by the Metropolitan Local Aboriginal Land Council is an example of this process.

NPA's preferred position is that these lands of high conservation value should remain in public ownership and be dedicated as conservation reserves. However, NPA believes there are ways to fulfill both Aboriginal and conservation needs in relation to this issue.

Firstly, for lands *of high conservation value* granted to date, NPA believes:

- That in common with other land of high conservation value, these lands should be zoned for environmental protection.
- That these lands should be given priority by the NPWS for voluntary conservation agreements or National Park dedication under the Aboriginal Ownership provisions of the NP&W Act. As part of such agreements, these lands should be exempt from all government rates and charges.
- That any development proposals for these lands should be addressed via the development application process and the provisions of the EP&A Act.
- That if any local land council decides to sell granted lands of high conservation **value**, the State Government should purchase them so that they can be added to the National Parks estate.
- That the expired land tax provision of the ALR Act should be reinstated to specifically provide a funding source for acquiring granted lands of high nature conservation value no longer required by Aboriginal communities.

Secondly, for lands of high nature conservation value currently under claim or liable to claim in the future, NPA believes:

- That the expired land tax provision of the ALR Act be reinstated to specifically provide an alternative to Aboriginal communities to claimed lands that are required for nature conservation purposes.
- That if Aboriginal groups have a desire to care for and manage lands of high conservation value claimed and granted under the ALR Act, then this should be formalised under either the Aboriginal Ownership provisions of the NP&W Act or voluntary conservation agreements

arranged with the NPWS. These lands should then be exempt from all government rates and charges.

- That NSW ALR Act be amended so that lands of high conservation value granted under this act have inalienable community-freehold title.

Policy on ownership issues related to Aboriginal-owned National Parks

As indicated above NPA supports the spirit of Aboriginal ownership and management of appropriate (defined in terms of Schedule 14 of the Aboriginal Ownership provisions of the NP&W Act owing to their cultural significance) national parks, marine parks, wilderness areas and other conservation reserves throughout NSW. NPA supports the spirit of the Aboriginal Ownership provisions of the NP&W Act but considers the provisions require amendment to ensure the security and conservation of lands of this category dedicated under the NP&W Act.

NPA believes that long-term protection of Aboriginal owned National Parks can not be assured under the current provisions. In particular, NPA is concerned that if renewal negotiations between the relevant Aboriginal group and the NPWS fail at the end of a lease period and legal action ensues, the status of National Park could be removed.

Due to the uncertainty of security of tenure, NPA believes that the Aboriginal Ownership provisions of the NP&W Act should be amended so that the lease back is in perpetuity, but that lease conditions are reviewed on a regular basis (e.g. every five years, as in the Mutawintji model).

[NPA has legal advice that permanent tenure as National Park is uncertain under the current provisions.]

NPA believes that the Aboriginal Ownership provisions of the NP&W Act should be amended so that any new areas nominated for Aboriginal ownership, should meet a minimum set of agreed criteria for cultural significance, and that the NPA should be involved in the establishment of these criteria.

[*At present, if a new area becomes an Aboriginal-owned park, it is automatically included on Schedule 14 and becomes a benchmark park. This includes National Parks created as a result of negotiations under the ALR Act, where no traditional links are required. In keeping with original spirit of Aboriginal Ownership proposals, Schedule 14 should be limited to National Park estate lands where traditional links make Aboriginal ownership and management relevant and meaningful.]*

NPA believes that a notification process should be put in place so that NPA and other conservation groups are made aware of any parks proposed for Aboriginal ownership.

NPA believes that the provision that allows altering the status of a National Park or nature reserve to a State Recreation Area or a less secure tenure be deleted from the Aboriginal Ownership provisions of NP&W Act.

NPA considers that the Resource and Conservation Assessment Council (RACAC) process is an inappropriate one for establishing Aboriginal ownership of National Parks. As the Aboriginal Ownership provisions of the NP&W Act were specifically designed to address this issue, NPA supports only this mechanism for determining Aboriginal ownership claims.

Policy on funding Aboriginal-owned National Parks

NPA considers that the mechanism for funding for Aboriginal owned National Parks could be improved. Currently, the rental for these parks is determined from adjacent land values. This is likely to be a sub-optimal and inequitable means of funding parks (i.e. parks throughout NSW are situated among lands of vastly different real estate value).

NPA therefore believes that management funding for each park should be based on a formula that takes into account the size, and management issues of each park. Further, any additional funding for community development projects, should be clearly identifiable and not come from the NPWS budget (but from a reconciliation budget), as this could adversely affect funding other parks and activities of the NPWS.

Policy on Membership of Boards of Management of Aboriginal Owned National Parks

NPA believes that a statutory position should be provided for a jointly agreed NPA/NCC member for

each Board of Management.

Policy on Hunting and Gathering by Aboriginal people in National Parks

As indicated in the above general policy statement, NPA supports the right of Aboriginal owners to pursue traditional hunting, fishing and gathering activities, subject always to the overriding responsibility to ensure public safety and enjoyment and conserve and maintain the full range and abundance of species, biodiversity and diverse natural habitats.

NPA also has a strong commitment to gun and other weapon control, and believes that the carrying and use of weapons in public places by members of the public should be restricted as far as possible.

NPA therefore believes:

- That where hunting and gathering *by traditional Aboriginal owners* occurs in National Parks, the take should not be bigger than what could be obtained using traditional (pre-European contact) means.
- Any vehicular use for hunting and gathering purposes within National Parks must be outside of wilderness areas and confined to public roads and management trails.
- Hunting and gathering only be allowed where there is no conflict with other park users.
- That hunting and gathering provisions*, including monitoring,* be clearly delineated within National Park Plans of Management, and where possible facilitate other park management goals, ie control of pest and over-abundant species

Given the above, NPA believes that hunting would be an appropriate activity in only a minority of the National Parks within NSW and these should be identified through the Plan of Management for each park.

Policy on vehicle use within wilderness areas

NPA believes that management trails within wilderness areas should be closed and revegetated. There should be no provision for Aboriginal or non-Aboriginal people to use vehicles within wilderness areas.

Accommodation

NPA believes that permanent accommodation within National Parks by Aboriginal and non-Aboriginal people should be restricted to park managers (i.e. housing for NPWS staff). In isolated parks in the Western Division, accommodation could also be provided for traditional owners for visits to the park. Accommodation should not be provided in wilderness areas.

Community Development

The Aboriginal Ownership provisions of the NP&W Act currently state that all rent payable to the Aboriginal owners of a National Park leased back to the Crown must be spent on management of the park. However, community development projects permissible under this framework are poorly defined, and it is possible they could conflict with nature conservation objectives. This condition (that rent paid by the Crown to the Aboriginal owners must be spent on park management) also seems overly restrictive in terms of Aboriginal economic and community development aspirations.

NPA believes that the community development element of the Aboriginal Ownership provisions of the NP&W Act should be altered to allow for community development outside National Parks (and any high conservation lands that are potential Park additions including those formally proposed by NPA), instead of within them. As indicated above, funding for community development projects should be clearly identifiable and come from a reconciliation budget and not from the NPWS budget.

Policy on Native Title.

NPA recognises Native Title rights. The extent that they remain or have been extinguished within NSW,

however, remains unresolved at this stage. It is likely that the issues will only be crystallised via court case determinations.

Policy on collaborative projects with Aboriginal groups.

NPA strongly supports proposals to work with Aboriginal people with regard to conservation projects. In particular, NPA should actively support projects to generate additional funds to acquire lands of nature conservation and heritage value in NSW to complement the core reserve system of National parks and nature reserves. Liaison with the NSW Aboriginal Lands Council, the Indigenous Land Corporation and other conservation groups should be undertaken in relation to such projects.

Policy on improving dialogue and collaboration with relevant Aboriginal groups.

In the past NPA has had only intermittent communication with Aboriginal people and groups. Further, this has often occurred only in times of political urgency and pressure. To enhance understanding and collaboration a much greater level of communication is required.

To address this, NPA should seek regular meetings with Aboriginal groups. This should happen at all levels, i.e. both State Council and branches with respect to NPA, and local and State land councils as well as traditional owners with respect to Aboriginal groups.

[Adopted May 2000]

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ATTACHMENT B

List of recommendations to amend the NP&W Act agreed between NSW Environment Groups (NPA, TEC, NCC, Colong Foundation) and NSW Aboriginal Land Council 2000

Technical amendments

1. Processes for Boards of Management

Proposed amendments to the Act

It is submitted that the Act should be **amended** to provide Boards established under the Aboriginal ownership provisions of Part 4A of the Act with governance rules similar to those that had formerly been given to Trustees of State Recreation Areas.

2. Separate Accounts for each Part 4A Park

Proposed amendments to the Act

It is submitted that the Act should be **amended** to
ensure that a separate account is established within the National Parks and Wildlife Fund for each area subject to such to hand back arrangements under Part 4A.

It is submitted that the Act should also be **amended** to ensure that appropriate accounting procedures are established.

3. Local Council rates

Proposed amendment to the Act

It is submitted that the Act should be **amended** to provide that a Local Aboriginal Land Council will not be liable for local government rates on any land where the title is held by the Land Council purely pursuant to the provisions of Part 4A.

4. Dividing fences

Proposed amendment to the Act

It is submitted that the Act should be **amended** to ensure that the general exemption for national park estate areas pursuant to the Dividing Fences Act applies to all Part 4A reserves.

5. Contaminated Land Management Act 1997

Proposed amendments to the Act

It is submitted that the Act should be **amended** to ensure that the Local Aboriginal Land Council is not liable for the costs of investigation of or remediation of any contamination on the land which existed at the time the land was brought under Part 4A.

The Act should also be **amended** to ensure that the Local Aboriginal Land Council will not be liable for the costs of investigation of or remediation of any contamination on the land which occurs after the land was brought under Part 4A unless such contamination was caused by the Land Council or persons acting on behalf of it.

In all cases where the contamination is not caused by the Local Aboriginal Land Council or persons acting on its behalf and the person actually causing the contamination is not able to be discovered or the cost of investigation or remediation cannot be recovered from the contaminator, the Act should be **amended** to provide that liability for the costs of dealing with the contamination should lie with the Crown.

6. Other taxes

Proposed amendments to the Act

It is submitted that the Act should be **amended** to ensure that the Local Aboriginal Land Council will not be liable for the payment of any taxes relating to the land where such taxes arise solely because of the change of status of the land to become a reserve under Part 4A.

7. Alteration or variation to the lease of a Part 4A park

- **Role of Aboriginal Board members**

Proposed amendments to the Act

It is submitted that the Act should be **amended** to ensure that s71AK is made consistent with s71AH. This will ensure that the consent of Aboriginal owner Board members is required for any alteration or variation (other than one made by an Act of Parliament).

- **Certainty of intention with respect to the Act or other legislation**

Proposed amendment to the Act

It is submitted that the Act should be **amended** to ensure that such variations pursuant to s71AH(4) can only be for purposes which are:

- Otherwise lawful; and
- Consistent with the Act.

8. Aboriginal "relics" on Part 4A reserves

Proposed amendments to the Act

It is submitted that the Act should be **amended** to reflect the approach taken in the Mutawintji lease.

Such **amendments** would ensure that the legal ownership of any Aboriginal relics on Part 4A reserves are transferred to the body which holds title to the Part 4A reserve on behalf of its Aboriginal owners. The **amendments** would also ensure that the Board for the Part 4A reserve would have care, control and management of all such Aboriginal relics.

Issues raising matters of policy

9. Tenure holding body

Proposed amendment to the Act

On balance, it is submitted that:

a. The Act should be **amended** to permit a wider variety of tenure holding bodies for Part 4A lands.

However, this proposition is subject to conditions which it is considered should not be able to be diluted and must be incorporated in any amendment.

These conditions are that the State Government must have legislative competence to ensure:

(i) adequate financial accountability by (and other probity supervision of) any such alternative tenure holding body;
(ii) any such alternative tenure holding body is established for and confined to representing the interests of the Aboriginal owners of the Part 4A lands; and
(iii) certainty of that the existing conservation status is preserved and Aboriginal ownership and joint management is retained .

b. If this approach were to be adopted, it would be appropriate that the Local Aboriginal Land Council within whose area a Part 4A reserve is located should be entitled to retain the right to have a representative on the Board for that Part 4A reserve to give a broader Aboriginal perspective to the Board's deliberations.

10. Community development on Part 4A lands and management by the Board of lands not part of the Part 4A lands

Proposed amendments to the Act

1. It is submitted that s72(2AA) of the Act should be **amended** to make it expressly clear that any definition of or proposal for community development on any Part 4A lands must conform with the same development restrictions which apply to any other proposal for development on conservation lands of the same reservation status under the Act.

2. It is submitted that the Act should be **amended** to permit Boards to expend rent monies for community development or other management purposes on Aboriginal lands adjacent to or in the vicinity of the Part 4A lands provided such expenditure benefits the conservation management of the Part 4A lands.

3. It is submitted that the Act should be **amended** to permit Boards to expend rent or management monies on management of any other lands adjacent to or in the vicinity of the Part 4A lands provided such expenditure benefits the conservation management of the Part 4A lands.

4. It is submitted that the Act should be **amended** so that any activities proposed under (2) or (3) would be required to be set out in the Plan of Management for the Part 4A lands and the Act would need to be **amended** to permit the Plan to cover lands not reserved or dedicated where such activities or expenditure is proposed and to require inclusion of an assessment of the nature conservation and Aboriginal cultural values and whether all or any part of the lands should be considered for acquisition or addition to the Part 4A lands.

5. Further it is submitted that the Act should be **amended** to ensure that any such expenditure would be required to be pursuant to a formal agreement and subject to the safeguards set out below:

    - No such assumption by a Part 4A Board of care control and management of lands not reserved or dedicated under the Act could take place without the consent of the Minister administering the Act;

    - No money credited to the account in the National Parks and Wildlife Fund for the relevant Part 4A lands could be expended on lands not reserved or dedicated under the Act without the consent of the Minister administering the Act;

    - No staff employed for the management of the relevant Part 4A lands could be engaged in the management of lands not reserved or dedicated under the Act without the consent of the Minister administering the Act and there should be a standard Ministerial direction to this effect to all Part 4A Boards;

    - The State would assume no liabilities for any activities of the Board with respect to lands not reserved or dedicated under the Act without the consent of the Minister administering the Act. Even if such activities were approved by the Minister, liability should be statutorily limited to the normal ones which would arise for servants of the State or for statutory bodies acting intra vires and in good faith; and

    - Members of the Board should be given a personal statutory indemnity in such cases where they have acted intra vires and in good faith.

11. Exercise by the Director General of residual powers

General structure for the Director General's residual powers and functions

Proposed amendments to the Act

The principles that the Act should be **amended** to reflect the following propositions:

- **Aboriginal cultural objects, sites or issues**

  The Director General would not exercise such powers on Part 4A lands concerning Aboriginal cultural objects, sites or issues without the consent of the relevant Board, which consent should not be unreasonably withheld.

- **Carrying out of mandatory functions**

  The Director General would not carry out any mandatory function on any Part 4A lands (under any Act) without consulting with and having regard to the advice the Board for those lands.

Exercise by the Director General of powers in specific areas

- **Functions under Part 2 of the Wilderness Act 1987**

Proposed amendments to the Act

It is submitted that the Act should be **amended** so that, if the Director General proposed exercising any function or carrying out any activity under either s5 or s6 of the Wilderness Act directed at or on any Part 4A lands, the Director General would inform the Board of such intention.

The Director General should be required to give the Board reasonable notice and to have regard to the views of the Board in the exercising of the function or the carrying out of the activity.

- **Aboriginal employment and training programs**

Proposed amendment to the Act

It is submitted that the Act should be **amended** to require:

a) the Director General generally to implement of aboriginal employment or training programs proposed by the Board except where the Director General considered that such programs contravened other legislative requirements, government policy guidelines or budget limits for Part 4A lands.

b) the Director General to advise the Board of the reasons for any refusal to implement a recommended program.

- **Statutory reporting**

Proposed amendment to the Act

It is submitted that the Act should be **amended** to require the Director General, when reporting, pursuant to a statutory duty, to the Minister or the Parliament on matters involving Part 4A lands also to note the views of the Board in such report.

- **Species protection**

Proposed amendment to the Act

It is submitted that the Act be **amended** to implement the operational regime under the Threatened Species Conservation Act.

However, the parties to the mediation accept that amendment to the Threatened Species Conservation Act might be more appropriate but should come out of this package of Part 4A amendments notwithstanding that the review is one confined to the principles of the Act.

12. Nature of tenure of Part 4A lands

Proposed amendments to the Act

It is submitted that s71AL of the Act be **amended** by:

· substituting the words “shall hold” for the word “holds” in s71AL(2); and

· adding (4) [or to the following general effect]:

(4) During any holding over by the Minister pursuant to this section, the reservation or dedication status of the land being held over is not altered by virtue of the expiry of any lease under this Part.

13. Membership of the Board for Part 4A lands

Proposed amendment to the Act

It is submitted that the Act be **amended** so that s71AN(3)(e) be replaced to the effect that “*one is to be a person to represent conservation interests nominated jointly by the Nature Conservation Council of NSW and the National Parks Association of NSW*”

14. Change of classification at time of initial lease

Proposed amendments to the Act

It is proposed that the Act be **amended** to provided that**:**

1. Changes from State Conservation Park or Aboriginal Site to National Park or Nature Reserve or from State Conservation Park or National Park to Nature Reserve should be permitted (that is, ones which are “ higher up the conservation hierarchy” – all

others required to be through Plan of Management process; and

2. When areas with more than one reservation status are involved in the part 4A negotiations, such areas can be amalgamated under the "highest" reservation status – otherwise any change of classification is to be required to be through the Plan of Management process.

15. Comparative assessment of the Aboriginal cultural significance of lands nominated for addition to Schedule 14

Proposed amendment to the Act

It is submitted that s71AV(2) of the Act be **amended** by adding the words in **bold** and underlined below:

(2) *The Minister is not to make a recommendation that the lands be listed in Schedule 14 unless the Minister is satisfied that the cultural significance of the lands to Aboriginals is at least equivalent to that* ***of the broad cultural significance*** *of* ***all*** *the lands already listed in the Schedule.*

Proposed amendment to the Act

It is submitted that s71AU of the Act should be **amended** to the effect:

The Director General shall

- *provide to the parties notified pursuant to s71AS(2) a list of such additional matters upon which the Director General proposes to report pursuant to (4); and*
- *invite the parties notified pursuant to s71AS(2) to make submissions on such additional issues.*

It is also submitted that s71AU of the Act should be **amended** to add as S71AU(2A) to the effect:

The Director-General's report is to provide information, for the purposes of S71AV(2), on the cultural significance of the lands to Aboriginals compared to the broad cultural significance of all the lands listed in Schedule 14 at the time of the report.

16. Process for adding complete reserve areas as lands to be listed in Sch 14

Proposed amendments to the Act

It is submitted that the Act should be **amended** to add an obligation to notify appropriate conservation group(s) to the list of bodies specified, in s71AS(2), to be notified.

It is also submitted that the Act should be **amended** to add to s71AV a requirement that the Minister must, prior to making a recommendation to the Governor:

- cause to be advertised the fact that there is a proposal to add lands to Schedule 14 and setting out the lands proposed to be so added;
- permit a 28 day period for public comment;
- the Director General to report to the Minister on the public comments; and
- the Minister must consider the Director General's report on the public comments prior to deciding whether or not to make a recommendation to the Governor.

17. Additions of further land to lands already leased under Part 4A or lands already listed on Schedule 14

Proposed amendments to the Act

It is submitted that the Act should be **amended** to provide that, prior to proposing to the Governor that any lands should be added to lands subject to a Part 4A lease pursuant to the provisions of s71BC(1), the Minister shall refer such a possible addition to the Advisory Council for comment. It is proposed that the Act be **amended** to provide that the Advisory Council shall report to the Minister on the views of each of the members of the Advisory Council as to whether or not the proposed addition should be dealt with pursuant to Division 7 of Part 4A.

The Act would also be **amended** so that the Minister would then determine, having regard to the views of each of the members of the Advisory Council, whether it was appropriate that such proposed addition be dealt with pursuant to Division 7 of Part 4A.

The Act should be **amended** to provide that:

- If the Minister determined that the proposal did not require to be so dealt with, then the present provisions of s71BC would be followed; and
- If, however, the Minister determined that the proposal required to be dealt with pursuant to Division 7 of Part 4A then these provisions would be followed and an assessment and consultation process undertaken.

- **Adding land to lands already subject to a Part 4A lease**

Proposed amendment to the Act

It is submitted that the Act should be **amended** to provide that such proposals should be treated as for “Adding portions of unreserved or undedicated land to lands already on Schedule 14” described above.