

# NORTHERN TERRITORY OF AUSTRALIA

## NITMILUK (KATHERINE GORGE) NATIONAL PARK ACT

As in force at 1 December 2000

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 December 2000

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## NITMILUK (KATHERINE GORGE) NATIONAL PARK ACT

**An Act to acknowledge and secure the right of Aboriginals who are the traditional Aboriginal owners of certain land in the Northern Territory of Australia, and certain other Aboriginals, to occupy and use that land, to establish a National park comprising that land to be known as the Nitmiluk (Katherine Gorge) National Park, to provide for the management and control of that Park and certain other land, and for related purposes**

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Nitmiluk (Katherine Gorge) National Park Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

**Aboriginal** means a person who is a member of the Aboriginal race of Australia.

**Aboriginal tradition** has the same meaning as in the Land Rights Act.

**aircraft** has the same meaning as in the Territory Parks Act.

**animal** has the same meaning as in the Territory Parks Act.

**Board** means the Nitmiluk (Katherine Gorge) National Park Board established by section 9.

**Commission** means the Commission within the meaning of the *Parks and Wildlife Commission Act*.

**Corporation** means the Conservation Land Corporation within the meaning of the *Parks and Wildlife Commission Act*.

**Jawoyn Association** means the Jawoyn Association Aboriginal Corporation.

**Land Council** means the Land Council for the area in which the Park is situated established under the Land Rights Act.

**Land Rights Act** means the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

**Land Trust** means the Jawoyn Aboriginal Land Trust established under the Land Rights Act.

**Park** means:

- (a) the area the subject of the lease; and
- (b) the additional areas, if any, added under section 7 to the Park.

**plan of management** means the plan of management for the Park prepared under section 20 by or on behalf of the Board.

**plant** has the same meaning as in the Territory Parks Act.

**the lease** means the lease referred to in section 5 and, if the lease is amended in accordance with its provisions, includes the lease as so amended from time to time.

**Territory Parks Act** means the Territory Parks and Wildlife Conservation Act.

**traditional Aboriginal owners**, in relation to the Park, has the same meaning as in the Land Rights Act.

**traffic sign** has the same meaning as in the Territory Parks Act.

**vehicle** has the same meaning as in the Territory Parks Act.

**vessel** has the same meaning as in the Territory Parks Act.

- (2) Where in this Act provision is made for an act or thing that may be done or a function that may be performed by the Jawoyn Association, that act or thing may be done, or that function may be performed, with the consent in writing of the Jawoyn Association, by the Land Council.

**4 Act binds Crown**

This Act binds the Crown not only in right of the Territory but, so far as the legislative power of the Legislative Assembly permits, the Crown in all its capacities.

**5 Lease**

- (1) As soon as practicable after the area of land specified in Schedule 1 is granted under the Land Rights Act to the Land Trust, the Corporation shall accept a lease of the land from the Land Trust in the terms specified in the Memorandum of Lease in Schedule 1.
- (2) The lease, on its execution, is approved.
- (3) The implementation of the lease is authorized and ministers, departments, statutory corporations and authorities (including the Commission and the Corporation) shall do all things necessary or expedient to carry out their respective obligations under or in relation to, and give full effect to, the lease.
- (4) Where a provision of another law of the Territory is inconsistent with this Act, this Act shall prevail and the provision of the other law, to the extent of the inconsistency has no effect.
- (5) Notwithstanding subsection (4), the lease and any addition to the park under section 7, is not a subdivision or consolidation for the purposes of the *Planning Act*.

**6 Establishment of national park**

- (1) On the commencement of the lease the Park is, by force of this section, established as a national park for the benefit and enjoyment of all people.
- (2) The Park shall be used in such manner and on such conditions as are provided by or under the lease, this Act and, when a plan of management is in force, the plan of management.

**7 Additions to Park**

- (1) Where the Land Council and the Commission agree that land vested in the Land Trust not included in the lease should be added to the Park, the Land Trust shall grant, and the Corporation shall accept, a lease of the additional area on the same terms and conditions as apply under the lease to the land the subject of the original lease, or on such other terms and conditions as are agreed.

- (2) The Land Council and the Commission may, with the consent of all persons having an estate or interest registered under the *Land Title Act* in land not vested in the Land Trust, agree that the land should be added to the Park.
- (3) On:
- (a) the registration under the *Land Title Act* of:
    - (i) a lease of an additional area granted and accepted in pursuance of subsection (1); or
    - (ii) a lease granted in pursuance of an agreement and consent under subsection (2); or
  - (b) where no lease is to be granted in pursuance of an agreement and consent under subsection (2), on the lodging with the Registrar-General under subsection (4) of a copy of the agreement and consent under subsection (2),

the additional area, or the land the subject of the agreement, forms part of the Park and this Act, the By-laws and the plan of management applies to and in relation to it as part of the Park accordingly.

- (4) The Commission shall, as soon as practicable after an agreement and consent under subsection (2) is made and given, where the agreement does not provide for the granting of a lease of the land to which it relates, lodge with the Registrar-General a copy of the agreement and consent, and the Registrar-General shall make an appropriate entry in the record of administrative interests and information kept under section 38 of the *Land Title Act*.

## **8 Entitlement to use and occupation**

Subject to this Act and to the plan of management, the Aboriginals who are, from time to time, Aboriginal traditional owners of the Park or Aboriginals entitled by Aboriginal tradition to the use or occupation of the Park are, at all times, entitled to use and occupy the Park.

## **Part II Establishment, composition and procedures of Board**

### **9 Establishment of Board**

- (1) There is hereby established a Board to be known as the Nitmiluk (Katherine Gorge) National Park Board.

- (2) The Board:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) subject to this Act, is capable, in its corporate name, of holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall assume that it was duly affixed.

## **10 Composition of Board**

- (1) The Board shall consist of 13 members appointed by the Minister, of whom:
  - (a) 8 shall be traditional Aboriginal owners of the Park appointed on the nomination of the Jawoyn Association;
  - (b) at least one is to be a member of the permanent staff of the Commission appointed on the nomination of the Director of the Commission;
  - (ba) 2 are to each hold an appointment (whether as an employee or a Chief Executive Officer) under the *Public Sector Employment and Management Act* and are to be appointed on the nomination of the Director of Parks and Wildlife;
  - (bb) one is to be the presiding member of the Kakadu National Park Board established under the *National Parks and Wildlife Conservation Act 1975* of the Commonwealth or another Aboriginal member of the Kakadu National Park Board; and
  - (c) one shall be a resident of the Katherine area appointed on the nomination of the Mayor of the municipality of Katherine.
- (2) A person who is a member of the Legislative Assembly or of either house of the Parliament of the Commonwealth is not eligible to be appointed or to hold office as a member of the Board.
- (3) As soon as practicable after an appointment under subsection (1) has been made, the Minister shall cause notice of that appointment to be published in the *Gazette*.
- (4) Subject to sections 11 and 12, a member of the Board holds office for a period of 3 years but is eligible for reappointment.

- (5) Where a member of the Board appointed under subsection (1)(a) is or is about to become unable, whether on account of illness or otherwise, to perform the duties of the member's office, the Jawoyn Association may appoint a traditional Aboriginal owner of the Park to act in the place of that member during the period during which that member is unable to perform those duties, unless the first-mentioned member has, under section 14(4), given to another member a general authority to vote for him or her at meetings of the Board during the first-mentioned member's inability to perform the duties of that office.
- (6) A person appointed to act in the place of a member of the Board has all the functions and powers of that member.
- (7) The performance of a function or the exercise of a power of the Board is not affected by reason only of there being a vacancy in the office of a member of the Board.

## **11 Resignation of member**

A member of the Board may resign office by writing signed by or with the authority of the member, delivered to the Minister.

## **12 Appointment of new member**

- (1) The Minister shall, as soon as practicable after:
  - (a) receiving the resignation of a member of the Board;
  - (b) being advised in writing by the Jawoyn Association that, in its opinion, a member appointed on the nomination of the Jawoyn Association has failed properly to perform the duties of the member's office; or
  - (c) becoming aware of a member's inability to continue as a member because of illness or for any other reason,terminate the appointment of the person as a member of the Board.
- (2) The Minister shall, as soon as practicable after:
  - (a) becoming aware of the death of a member of the Board; or
  - (b) under subsection (1) terminating the appointment of a person as a member,appoint another person, with the same qualification for membership as the person in whose stead the person is appointed, to be a member of the Board.



**13 Chairman and Deputy Chairman**

- (1) The Minister shall, as soon as practicable after the establishment of the Board or at any time when the office of Chairman of the Board is vacant, convene a meeting of the Board for the purpose of electing a member of the Board as the Chairman of the Board.
- (2) The Minister shall appoint one of the members appointed under section 10(1)(a) to preside at a meeting referred to in subsection (1).
- (3) The Chairman of the Board shall be elected by the Board from among the members appointed under section 10(1)(a).
- (4) Where a member is elected as Chairman at a meeting referred to in subsection (1), the member shall preside at that meeting in place of the member appointed under subsection (2) by the Minister.
- (5) The Board shall, as soon as practicable after its establishment, elect one of its members appointed under section 10(1)(a) to be the Deputy Chairman of the Board and shall thereafter, whenever the position of Deputy Chairman is vacant, elect a member, with the same qualification for membership, to be the Deputy Chairman.
- (6) Subject to subsection (7), a member elected under this section as the Chairman or the Deputy Chairman, while the person remains a member of the Board, holds office for 3 years and is eligible for re-election.
- (7) The Board may at any time, by resolution, elect a new Chairman or Deputy Chairman having the qualification referred to in subsections (3) and (5) and, on the passing of such a resolution, the person who held that office immediately before that resolution was passed ceases to hold that office.

**14 Calling of meetings, procedure, &c.**

- (1) The Chairman or Deputy Chairman of the Board shall call such meetings of the Board as are necessary for the performance of its functions and the exercise of its powers.
- (2) The Minister may, at any time, direct the Chairman or the Deputy Chairman to call a meeting of the Board and the Chairman or Deputy Chairman shall call a meeting accordingly.

- (3) At a meeting of the Board:
- (a) the Chairman, if present, or, if the Chairman is not present, the Deputy Chairman, shall preside or, if neither the Chairman nor Deputy Chairman is present, the members of the Board present shall elect one of their number to preside;
  - (b) subject to subsection (4), 7 members, of whom 4 shall be members appointed under section 10(1)(a), constitute a quorum;
  - (c) questions arising shall be determined by a majority of the votes of the members present and, in the event of an equality of votes, the person presiding shall have a casting vote as well as a deliberative vote; and
  - (d) subject to this Act, the Board shall determine the procedures to be followed at or in connection with the meeting.
- (4) A member of the Board may, in writing under the member's hand or with the member's authority, give to another member a general authority to vote for the first-mentioned member at a meeting of the Board and the member given that authority may vote for the first-mentioned member at that meeting and shall, for the purposes of subsection (3)(b), be counted towards a quorum as though he or she were also the first-mentioned member.
- (5) The Board shall cause records of its meetings to be kept and, as soon as practicable after each meeting, shall cause a copy of the minutes of the meeting to be given to each member of the Board, to the Jawoyn Association, to the Minister and to the Land Council.
- (6) A member of the Board may require the Board to admit to a meeting of the Board such persons as the member considers necessary to advise the member on matters being considered at the meeting and may require the Board to allow such persons, or any of them, to address the meeting on the member's behalf, and the Board shall admit those persons and allow them to address the meeting accordingly.
- (7) A person admitted to a meeting of the Board pursuant to subsection (6) shall not vote on any matter at that meeting.

**15 Committees**

- (1) The Board may appoint a planning committee consisting of such of its members and other persons as it thinks fit, to assist it in the preparation of plans of management.
- (2) The Board may appoint a committee or committees of its members to assist it in relation to the performance of such other of its functions as it thinks fit.
- (3) The Board may give such directions as it thinks fit about the procedure to be followed at, and in relation to, meetings of a planning committee appointed under subsection (1) or a committee appointed under subsection (2) and the committee shall comply with those directions.

**Part III Functions and powers of Board and Commission****16 Functions of Board**

The functions of the Board are:

- (a) to prepare plans of management for the control and management of the Park;
- (b) to make decisions, not inconsistent with this Act and the plan of management, in respect of the Park;
- (c) to protect and enforce the right of Aboriginals entitled by Aboriginal tradition to use and occupy the Park to use and occupy it;
- (d) to ensure adequate protection of sites of spiritual or other importance in accordance with Aboriginal tradition in the Park;
- (da) to enter into agreements with the traditional Aboriginal owners of the Park in relation to the control and management by the Board of land outside the Park in respect of which those owners are also the traditional Aboriginal owners; and
- (e) the other functions in relation to the Park or other land imposed on the Board by or under this Act, the lease, the plan of management or an agreement under paragraph (da).

**17 Functions of Commission**

The functions of the Commission in relation to the Park include, on behalf of and subject to the directions of the Board:

- (a) to facilitate the preparation of plans of management; and
- (b) to control and manage the Park in accordance with this Act and the plan of management.

**18 Powers**

- (1) Subject to this Act, the lease and the plan of management, the Board and the Commission have, in relation to the Park, the power to do all things that are necessary or convenient to be done for or in connection with, or incidental to the performance of, their respective functions and the exercise of their respective powers.
- (2) Without limiting the generality of subsection (1), the Board may:
  - (a) employ staff;
  - (b) obtain the advice and assistance of persons who are expert in any matter with which the Board is concerned; and
  - (c) receive moneys due and payable to it and give a valid discharge for those moneys.

**19 Directions by Chief Minister**

- (1) The Board shall perform its functions and exercise its powers in accordance with such general directions as are given to it in writing by the Chief Minister.
- (2) Subsection (1) does not empower the Chief Minister to give directions relating to:
  - (a) subject to section 20(7)(j), a function specified in section 16(a);
  - (b) a function specified in section 16(c) or (d) or a decision referred to in section 16(b), so far as that decision relates to the protection and enforcement of rights referred to in section 16(c) or the protection of sites referred to in section 16(d); or
  - (c) the contents of any advice, information or recommendation that may be given by the Board to a minister, Department or authority of the Territory, or to the Commonwealth or an authority of the Commonwealth, except for the purpose of

protecting the confidentiality of information given to the Board by the Territory or an authority of the Territory.

- (3) Subject to subsection (4), the Chief Minister shall cause a copy of any direction given under subsection (1) to be laid before the Assembly within 6 sitting days of the Assembly after that direction was given.
- (4) A copy of a direction laid before the Assembly in accordance with subsection (3) shall not disclose a matter known to the Chief Minister to be required by Aboriginal tradition to be held sacred or kept secret.

## **Part IV                      Plan of management and control of Park**

### **20                      Plan of management**

- (1) As soon as practicable after the commencement of this Act or when a new plan of management is required under subsection (5) to be prepared, the Board shall cause to be prepared a draft plan of management for the Park.
- (2) When a draft plan of management has been prepared, the Board shall, by notice in the *Gazette*:
  - (a) state that it has been prepared;
  - (b) invite interested persons to make representations in connection with the draft plan of management by such date, being not earlier than one month after the date of publication of the notice in the *Gazette*, as is specified in the notice;
  - (c) specify an address or addresses at which copies of the draft plan of management may be inspected or purchased; and
  - (d) specify an address to which such representations may be forwarded.
- (3) A person may, not later than the date specified in the notice under subsection (2), make representations to the Board in connection with the draft plan of management and the Board shall give due consideration to all representations so made and, if it thinks fit, alter the draft plan of management as a result.
- (4) The plan of management shall specify a date, being not later than 10 years after the date on which the Park is established, as being the date on which the plan is to cease to have effect and it shall cease to have effect on the date so specified, unless it is sooner revoked.

- (5) The Board shall ensure, so far as is practicable, that on the date on which the plan of management ceases to have effect under subsection (4) or is revoked, or as soon as practicable thereafter, a new plan of management comes into operation and this section applies as if the proposed new plan of management were the first plan of management to be prepared after the commencement of this Act.
- (6) The plan of management prepared in pursuance of subsection (1) shall set out a detailed description of the manner in which it is proposed that the Park shall be managed and shall include a general description of all existing or proposed buildings, structures, facilities or other developments on the Park.
- (7) In the preparation of the plan of management, regard shall be had to:
  - (a) the protection of areas and things of significance to Aboriginals;
  - (b) the limitations, if any, imposed by Aboriginal tradition on the use of any part of the Park;
  - (c) the encouragement and regulation of the appropriate use, appreciation and enjoyment of the Park;
  - (d) the preservation of the Park in its natural condition and the protection of its special features, including objects and sites of spiritual, biological, historical, palaeontological, archaeological, geological and geographical interest;
  - (e) the protection, conservation and management of native flora and fauna within the Park and the natural environment generally;
  - (f) the protection of the Park against damage;
  - (g) the employment and training of Aboriginals;
  - (h) the functions of the Commission under other laws of the Territory;
  - (j) such other matters as the Chief Minister directs; and
  - (k) such other matters as the Board thinks fit.
- (8) Before forwarding the plan of management to the Minister, the Board shall satisfy itself that the objectives and proposed actions set out in the plan are consistent with subsection (7) and in accordance with priorities determined by the Board.

- (9) When the plan of management has been prepared, the Board shall, with the consent in writing of the Jawoyn Association given by authority of a resolution of the Association, forward the plan to the Minister for tabling in the Legislative Assembly.
- (10) The Minister shall, as soon as practicable after receiving the plan of management forwarded under subsection (9), cause it to be tabled in the Legislative Assembly.

## **21 Consideration of plan of management by Assembly**

- (1) For the purposes of this section and section 22, ***plan of management*** includes part of the plan of management, and where under this section a part only of the plan of management is disallowed, the plan of management with that part omitted shall come into operation as provided by subsection (3) and the part disallowed shall be dealt with in accordance with this section as a separate amending plan of management.
- (2) Subject to subsection (3), the Legislative Assembly may, in pursuance of a motion, notice of which is given within 5 sitting days of the Assembly after the plan of management has been tabled in the Assembly, pass a resolution disallowing the plan of management.
- (3) Subject to subsection (4), if no notice of a motion to disallow a plan of management is given within the time referred to in subsection (2) or the Legislative Assembly does not pass a resolution in accordance with that subsection disallowing the plan of management, the plan of management comes into operation on the day immediately following the fifth sitting day referred to or on the day immediately following the last day on which such a resolution could have been passed, as the case may be.
- (4) If, before the expiration of 5 sitting days after a plan of management has been tabled in the Legislative Assembly:
  - (a) the Assembly expires or is prorogued; and
  - (b) notice of motion for the disallowance of the plan of management has not been given,

the plan of management shall, for the purposes of this section, be deemed to have been laid before the Legislative Assembly on the first sitting day of the Assembly after the expiration or prorogation.

- (5) If the Legislative Assembly passes a resolution, in accordance with subsection (2), disallowing a plan of management, the Minister shall direct the Board to prepare a fresh plan of management and the Board shall thereupon reconsider the matter and prepare a fresh

plan of management or again forward to the Minister the same plan of management, and in relation to the preparation of or dealing with the fresh plan of management, or with the same plan of management again forwarded to the Minister, as the case may be, subsections (2), (3) and (4) and section 20 (other than subsections (2) and (3) of that section) apply as though the plan of management were the first plan of management prepared for the Park.

- (6) Where a plan of management disallowed by the Legislative Assembly is again forwarded under subsection (5) to the Minister and is again disallowed by the Legislative Assembly, the Minister shall forward it, at the Minister's option, to either an Aboriginal Land Commissioner appointed under the Land Rights Act or a panel of 3 persons appointed under subsection (7) who shall consider it and make recommendations to the Minister and the Board on possible ways of resolving the differences between the Legislative Assembly and the Board in relation to the plan of management and, if thought necessary, suggest amendments to the plan of management.
- (7) For the purposes of subsection (6), the Minister may appoint a panel of 3 persons, each of whom, in the opinion of the person or persons nominating the person, is suitably qualified and in a position to deal with the matter impartially, of whom:
  - (a) one shall be appointed on the nomination of the Board;
  - (b) one shall be appointed on the Minister's own nomination; and
  - (c) one shall be appointed on the nomination of the persons appointed under paragraphs (a) and (b).
- (8) The Aboriginal Land Commissioner or members of the panel, in carrying out the function referred to in subsection (6), may obtain information, in whatever manner he, she or they thinks fit, about any fact he or she considers, or they consider, relevant to the consideration of the plan of management.
- (9) The Minister shall, at the request of the Board, table in the Legislative Assembly the recommendations made under subsection (6) and the tabling of those recommendations shall be deemed to be the tabling under section 20 of the plan of management to which the recommendations relate, amended in accordance with those recommendations, and this section applies as though it were the first plan of management prepared for the Park.
- (10) As soon as practicable after a plan of management has come into operation, the Minister shall publish a notice in the *Gazette*, and in



such newspapers as the Minister thinks fit, stating that the plan of management has come into operation and giving an address where copies of the plan of management may be inspected or purchased.

## **22 Amendment, &c., of plan of management**

- (1) Subject to subsection (2), the Board may at any time amend a plan of management, and sections 20(2) to (10) (inclusive) and 21 apply in relation to such an amendment in the same manner as they apply in relation to the plan of management.
- (2) A plan of management shall not be amended so as to extend the period of operation of the plan to a date later than the date specified under section 20(4).
- (3) A plan of management may not be revoked except by a new plan of management, but the revocation shall not take effect until the new plan of management comes into operation.

## **23 Access to Park**

- (1) Except as prohibited, restricted or regulated by or under this Act, the plan of management or any other law in force in the Territory, any person may enter and remain in the Park.
- (2) The *Aboriginal Land Act* does not apply to or in relation to the Park.

## **24 Actions not to be taken except in accordance with Act, lease or plan of management**

- (1) Where no plan of management is in force, the Board and the Commission may perform their respective functions in and in relation to the Park for the purposes of preserving, protecting and managing it.
- (2) While a plan of management is in force, the Board, the Commission and the Corporation shall perform their functions and exercise their powers in and in relation to the Park in accordance with the plan of management.
- (3) A person having a right to carry on business or do work in the Park by arrangement, agreement or contract with the Board or the Commission shall carry on that business or do that work in such manner as not to contravene the plan of management.

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## **Part V                    By-laws**

### **25                    By-laws**

- (1) The Board may make by-laws for the Park, not inconsistent with this Act, any other law of the Territory, the lease or the plan of management, prescribing all matters:
  - (a) required or permitted by this Act or the plan of management to be prescribed by by-laws; or
  - (b) necessary or convenient to be so prescribed for carrying out or giving effect to the functions and powers of the Board and the Commission.
- (2) Without limiting the generality of subsection (1), but subject to subsection (3), by-laws may be made:
  - (a) providing for the regulation or the prohibition of fishing;
  - (b) providing for the regulation or prohibition of the use of firearms;
  - (c) providing for the regulation or prohibition of the setting of traps;
  - (d) providing for the requiring of persons, on entering the Park, to declare all items of fishing equipment, firearms, ammunition and traps in their possession;
  - (e) providing for the regulation or prohibition of the carrying of fishing equipment, firearms, ammunition and traps;
  - (f) providing for the seizure of fishing equipment, firearms, ammunition and traps reasonably suspected of being carried or used in contravention of a by-law or the plan of management;
  - (g) regulating or prohibiting the pollution of water;
  - (h) providing for the protection and preservation of the Park and property and things in the Park;
  - (j) providing opening times and closing times for access to the Park by persons who are not Aboriginal traditional owners or Aboriginals entitled by Aboriginal tradition to the use or occupation of the Park;
  - (k) regulating or prohibiting access to the Park by persons or classes of persons;

- (m) providing for the removal from the Park of persons who are believed, on reasonable grounds, to be trespassers or to have contravened or failed to comply with a provision of this Act, a by-law or the plan of management;
- (n) regulating or prohibiting camping;
- (p) providing for the safety of persons;
- (q) regulating or prohibiting the use of fire;
- (r) regulating the conduct of persons;
- (s) providing for the prevention or control of nuisances;
- (t) regulating or prohibiting the carrying on of trade or commerce;
- (u) providing for fees and charges to be imposed on persons, (who are not Aboriginal traditional owners or Aboriginals entitled by Aboriginal tradition to the use or occupation of the Park) entering, camping on or using the Park or using services or facilities provided by or on behalf of the Board;
- (w) regulating or prohibiting the use of vehicles and providing for signs and road markings for those purposes;
- (y) regulating or prohibiting, and providing for the imposition and collection of charges for:
  - (i) the parking or stopping of vehicles;
  - (ii) the mooring of vessels;
  - (iii) the use of vehicles and vessels; and
  - (iv) the landing of aircraft;
- (z) providing for the removal of vehicles, vessels or aircraft from places where they have been left in contravention of the By-laws or have been abandoned and for the impounding of such vehicles, vessels or aircraft;
- (za) making provision to the effect that, where a contravention of a provision of the By-laws relating to the parking or stopping of vehicles occurs in respect of a motor vehicle, the person who is to be regarded as the owner of the motor vehicle for the purposes of the By-laws (who may, in accordance with the By-laws, be or include a person in whose name the motor vehicle is registered under a law of the Territory) is to be deemed to have committed an offence against the provision

so contravened, whether or not that person in fact contravened that provision;

(zb) enabling a person who is alleged to have contravened a provision of the By-laws relating to:

- (i) littering;
- (ii) the use of vehicles or vessels;
- (iii) the parking or stopping of vehicles;
- (iv) the mooring or landing of vessels; or
- (v) the landing, use or flying of aircraft,

to pay to the Board, as an alternative to prosecution, a specified sum in lieu of the penalty by which a contravention of that provision is otherwise punishable;

(zc) regulating or prohibiting the use of vessels on, and the passage of vessels through, the Park and the landing and use of aircraft in, and the flying of aircraft over, the Park;

(zd) regulating or prohibiting the taking of animals or plants into or out of the Park and providing for the control of animals in the Park;

(ze) providing for the impounding, removal, destruction or disposal of animals found straying in the Park;

(zf) regulating or prohibiting the laying of baits and the use of explosives and poisons in the Park;

(zg) providing for the collection of specimens and the pursuit of research for scientific purposes in the Park;

(zh) regulating the consumption of alcoholic liquor in the Park; and

(zj) providing for any matter incidental to or connected with any of the foregoing.

(3) Subject to subsection (4), a by-law shall not prohibit or regulate the use by a traditional Aboriginal owner of the Park or an Aboriginal entitled by Aboriginal tradition to the use or occupation of the Park, or prohibit that person from having in the person's possession or using, any trap, net or fishing equipment used or intended to be used by the person (unless used or intended to be used for the taking of animals or fish for the purposes of sale) in connection with the exercise of the person's right to use and occupy the Park or a

part of the Park.

- (4) Where the Board is satisfied that a protected animal or plant is in danger of extinction, it may, for the purpose of protecting that animal or plant or its habitat, by by-law, regulate or prohibit the hunting or taking of that animal or plant and the use of the habitat of that animal or plant, by a traditional Aboriginal owner or an Aboriginal entitled by Aboriginal tradition to the use or occupation of the Park.
- (5) A provision of the By-laws regulating or prohibiting the flying of aircraft over the Park does not have any force or effect to the extent to which it is inconsistent with a law of the Commonwealth or the Territory, but such a provision shall not be taken for the purposes of this subsection to be inconsistent with such a law if it can be complied with without contravention of that law.
- (6) The power to make By-laws conferred by this Act may be exercised:
  - (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
  - (b) so as to make, in respect of cases in relation to which it is exercised, the same provision for all those cases or different provisions for different cases or classes of cases.
- (7) The power to make By-laws conferred by this Act shall not be taken, by implication, to exclude the power to make provision for or in relation to a matter by reason only of the fact that:
  - (a) a provision is made by or under this Act in relation to that matter or another matter; or
  - (b) power is expressly conferred by or under this Act to make provision by by-laws for or in relation to another matter.
- (8) The By-laws may provide, in respect of an offence against or under this Act or the By-laws, for the imposition of a fine:
  - (a) not exceeding \$5,000; or
  - (b) not exceeding \$1,000 for each day during which the offence continues.

- (9) In proceedings for an offence against a by-law, an averment of the prosecutor, contained in the information or complaint that, at a specified time a person was in the Park or a particular part of the Park to which the by-law relates, is prima facie evidence of that fact.
- (10) A prosecution for an offence against a by-law shall not be commenced except with the written authority of the Board or its Chairman, or the Director of the Commission.

## **Part VI                      Financial arrangements**

### **26                      Audit, &c., provisions**

- (1) The Board shall, within the period of 6 months immediately following the end of the financial year or such other period as the Minister determines, prepare a report on its operations during the financial year and forward it to the Minister.
- (2) The Minister shall table the report under subsection (1), together with the financial statement and report of the Auditor-General on the financial statement required pursuant to subsection (3), in the Legislative Assembly within 6 sitting days of the Assembly after the delivery of the later of the reports to the Minister.
- (3) Subject to subsection (2), section 10 of the *Financial Management Act* applies to and in relation to the Board as if its activities were a Government Business Division within the meaning of that Act.
- (4) For the purposes of the application of section 10 of the *Financial Management Act* as referred to in subsection (3), the Board shall nominate an employee of the Commission to be its Accountable Officer.

### **27                      Park income**

Money received by the Board or the Corporation in respect of:

- (a) the use or occupation of the Park;
- (b) the carrying out of an activity in the Park; or
- (c) the carrying on of any business or works in the Park,

shall be paid to the Commission and, together with moneys otherwise paid to the Commission in respect of any of those purposes, shall be held by the Commission on behalf of the Board.

**28 Park expenditure**

- (1) Money payable by the Board or the Corporation in relation to the Park or the administration of the Board shall be advanced by the Commission.
- (2) The Board shall not expend money to meet its administrative costs otherwise than in accordance with estimates of expenditure approved by the Minister.

**Part VII Miscellaneous**

**29 Territory Parks Act provisions to apply**

- (1) Parts IV and VIII and sections 113, 115, 118, 119, 120 and 121 of the Territory Parks Act apply to and in relation to the Park as though it were a park within the meaning of that Act.
- (2) Regulations and By-laws made under the Territory Parks Act apply to and in relation to the Park as though it were a park within the meaning of that Act, to the extent that they are not inconsistent with the plan of management or a by-law made under this Act.

**30 Reservations revoked**

- (1) All reservations under the *Crown Lands Act* relating to the Park or a part of the Park and in force immediately before the commencement of this Act are, on the commencement of the lease, revoked.
- (2) Where a reservation referred to in subsection (1) was for historic interest or historic purposes, all buildings, structures, foundations, walls, excavations, objects or things on the land the subject of the reservation shall be protected and preserved as though the land continued to be subject to a reservation for historic interest or historic purposes, and the plan of management shall, accordingly, provide for such protection and preservation.

**31 Existing arrangements**

- (1) All arrangements, agreements and contracts referred to in Schedule 2, whether or not the rights, liabilities or obligations under them could be assigned, shall have effect as if the Board were a party to or affected by them instead of the Commission and shall continue in force and apply according to their tenor, except to the extent that they are inconsistent with this Act.
- (2) Any renewal of an arrangement, agreement or contract referred to in subsection (1), or any arrangement, agreement or contract

pursuant to which concessions are given or businesses or activities may be carried on in or concerning any part of the Park, shall, subject to section 32, be made with the Board.

- (3) An arrangement, agreement or contract referred to in subsection (1) shall not be renewed, whether pursuant to an option contained in such arrangement, agreement or contract or otherwise, otherwise than pursuant to powers given by or under this Act.

### **32 Future concessions and leases**

Where the plan of management so provides, the Board, subject to the Land Rights Act, may instruct the Commission or the Corporation to grant an estate or interest or issue a licence in respect of activities on land in the Park in accordance with the plan of management and, subject to that Act, the Commission or the Corporation, as the case may be, shall grant that estate or interest or issue that licence accordingly.

### **33 Area to be surrendered from lease for Aboriginal cultural centre**

- (1) Notwithstanding any other provision of this Act, the Corporation, on receiving a notice in writing from the Land Council requiring it to do so, shall surrender such area of land within the Park as is specified in the notice and is reasonably necessary for the purposes of the erection or development of an Aboriginal cultural centre.
- (2) An Aboriginal cultural centre to be erected or developed on the area referred to in subsection (1) shall be provided for in, and developed and managed in accordance with, the plan of management.



**Schedule 1 Nitmiluk (Katherine Gorge) National Park Lease**

section 5(1)

**THE NORTHERN TERRITORY OF AUSTRALIA**

**MEMORANDUM OF LEASE**

**TABLE OF PROVISIONS**

Clause

**RECITALS**

**Part I Reservations**

1. Reservation of Right of Entry and Inspection
2. Reservation of Traditional Rights to Use and Occupy
3. Reservation of Requirement to Surrender Area for Cultural Centre

**Part II Provisions**

4. Commencement
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## **THE NORTHERN TERRITORY OF AUSTRALIA**

### **MEMORANDUM OF LEASE**

JAWOYN ABORIGINAL LAND TRUST being A Land Trust established pursuant to subsection 4(1) of the Land Rights Act (***the Lessor***)

BEING the proprietor of an estate in fee simple in ALL THAT piece or parcel of land in the Northern Territory of Australia containing an area of A square kilometres more or less being Portion B more particularly shown on Compiled Plan C and being all that land described in the Deed of Grant in the Register Book Volume D, Folio E (***the Land***)

AND having received written directions from the Land Council pursuant to the provisions of the Land Rights Act, those written directions having been given by the Land Council on its being satisfied that:

- A. the traditional Aboriginal owners of the Land understand the nature and purpose of this lease, and as a group, consent to it;
- B. the Aboriginal communities and groups which may be affected by this lease have been consulted and have had adequate opportunity to express their views to the Northern Land Council; and
- C. the terms and conditions of this lease are reasonable.

HEREBY GRANTS to the CONSERVATION LAND CORPORATION (*the Lessee*) care of Conservation Commission, Baywood Building, Mansfield Place, Palmerston, in the Northern Territory of Australia, a lease of that part of the land being the land described in the annexure to this lease and shown and delineated on the plan forming part of that annexure (*the park*),

TO BE HELD by the Lessee for the purpose of the Act and subject to and in accordance with the following encumbrances, reservations, provisions, covenants and conditions:

## Part I Reservations

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

1. The Lessor reserves a right in favour of the Chairman of the Lessor or any person authorized in writing by the Land Council, at all reasonable times and in any reasonable manner, to enter upon the park or any part of it and to inspect the park and any improvements on the park, subject to such reasonable constraints as may be contained in the plan of management for reasons of safety, security, privacy, or protection of the park.

### **Reservation of Traditional Rights to Use and Occupy**

2. (1) An Aboriginal or group of Aboriginals is entitled to enter upon the park to the extent that that entry, occupation or use is in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to that land, whether or not those rights are qualified as to place, time, circumstance, purpose, permission or any other factor.
  - (2) Without limiting the generality of clause 2(1) the Lessor reserves in favour of relevant Aboriginals and groups of relevant Aboriginals the following rights, which shall operate subject to the directions or decisions of the Board with respect to health, safety or privacy,
    - (a) the right to use any area of the park for hunting or food gathering (otherwise than for purposes of sale);
    - (b) the right to use any area of the park for ceremonial and religious purposes; and
    - (c) the right to reside within the park at such locations as may be specified in the plan of management, together with rights of access and residence for their families, employees, staff, invitees and agents.

### **Reservation of Requirement to Surrender Area for Cultural Centre**

3. The Lessor reserves the right subject to clause 11(b) to require the Lessee, upon notice in writing given by the Land Council to the Lessee, to surrender such area of land within the park as is specified in the notice and is reasonably necessary for the purpose of development of an Aboriginal cultural centre.

## **Part II Provisions**

### **Commencement**

4. The lease shall commence on the date on which it is executed.

### **Term**

5. The lease shall be for a term of ninety nine (99) years.

### **Financial Arrangements**

6. (1) The Commission, on behalf of the Lessee, shall pay to the Land Council on behalf of the Lessor:
  - (a) an annual rent of \$100,000.00 which amount shall be payable in advance; and
  - (b) 50% of park revenue which amount shall be payable quarterly calculated by reference to the revenue obtained in respect of the previous 3 months.
- (2) In this clause ***park revenue*** includes:
  - (a) receipts from any fees or charges, for entering, camping on or using the park, or using the services or facilities provided by or on behalf of the Board, imposed pursuant to subsection 21(2)(u) of the Act; and
  - (b) monies received by the Board, the Lessee or by the Commission or by the Northern Territory, pursuant to the grant of any estate or interest in the park dependent on the Lessee's interest or pursuant to any licence, concession, permit or other authority granted by the Board, the Lessee or the Commission within the park.

## Rent Review

7. (1) The annual rent to be paid under clause 6(a) shall be renegotiated in accordance with this clause on the third anniversary of the commencement date and thereafter at three yearly intervals during the term of this lease (**the review dates**).
- (2) Negotiations for each review referred to in subclause (1) shall be commenced within 3 months before the relevant review date.
- (3) If the Lessor and the Lessee fail to agree upon the annual rent to be paid on and from a review date (**the new rent**) the disagreement will be referred to arbitration in accordance with the *Commercial Arbitration Act* of the Northern Territory by a person appointed jointly by the parties, being a person suitably qualified and in a position to deal with the matter impartially.
- (4) Subject to subclause (5), the arbitrator shall determine a new rent that is fair and reasonable and that in the arbitrator's opinion should have been negotiated between the parties in commercial arms length negotiations conducted in good faith and shall take into account all relevant factors including but not limited to:
- (a) movements in the Consumer Price Index for Darwin (all groups) published by the Australian Bureau of Statistics;
  - (b) visitation rates and other indicators of park usage; and
  - (c) park revenue,
- but not including capital improvements within the Park or directly associated with the park.
- (5) Notwithstanding anything in this clause:
- (a) a new rent shall be not less than:
    - (i) an amount calculated by multiplying the annual rate payable at the commencement of this lease (the **base rental**) by the fraction  $N1/B1$  where,  
  
N1 refers to the Consumer Price Index for Darwin (all groups) published by the Australian Bureau of Statistics (**the Bureau**) in respect of the quarter immediately preceding the particular review date; and  
  
B1 is the Consumer Price Index for Darwin (all groups) published by the Bureau in respect of the quarter immediately preceding the commencement of the lease; or

- (ii) where there is a change in the basis of assessment of the Consumer Price Index for Darwin (all groups) or if its calculation has been suspended or discontinued, an amount calculated to provide as nearly as practicable the same adjustments as if the Consumer Price Index referred to in subclause (1) has been continued without variation (**Consumer Price Index equivalent**) and the determination shall be final and binding upon the parties; and
  - (b) the Lessee shall not be entitled to any reduction in rent in the event of a decrease in the Consumer Price Index or Consumer Price Index equivalent since the previous review date.
- (6) In the event that a new rent has not been agreed or determined in accordance with this clause prior to the date for payment of the new rent, the Lessee shall, in the interim, pay on account of rent an amount equal to the rent paid for the previous year and upon agreement or determination of the new rent the Lessee shall forthwith pay any adjustment required in relation to the new rent.

### **Part III Covenants and conditions**

#### **Lease Conditional upon Act**

- 8. This Lease is conditional upon the commencement of the Act.

#### **Amendment of Act Constitutes Breach**

- 9. (1) The Lessor and Lessee agree that the enactment of any amendment to the Act, or the enactment of any Act or the making of any regulations inconsistent with this lease, where such Act is or such regulations are applicable to the park and substantially detrimental to the interests of the lessor or relevant Aboriginals as regards the administration, management or control of the park shall be deemed to be a breach of this lease for which the lease, on one hundred and eighty (180) days notice in writing given by the Lessor to the Lessee, may be terminated.
- (2) Where a notice is given as provided in clause 9(1) the Lessor and representatives of the Land Council, and the Lessee and representatives of the Commission shall within the period of notice, enter into bona fide negotiations with a view to the grant of a new lease.

- (3) Where, within twenty eight (28) days after the enactment of any Act or the making of any regulations as referred to in clause 9(1), a notice is not given as provided in that subclause, then the Lessor, representatives of the Land Council and the Lessee shall meet to discuss whether to vary any provisions of this lease including the rent.

### **Park to be Managed in Accordance with the Act**

10. (1) The park shall be subject to administration, management and control in accordance with the Act and with the plan of management that is and by laws that are from time to time in force in relation to the park pursuant to the Act.
- (2) The Lessee and the Commission, to the extent of their respective powers and functions shall use their best endeavours to ensure that the flora, fauna, cultural heritage and natural environment of the park shall be preserved, managed and maintained according to the best comparable management practices established for national parks anywhere in the world.

### **Lessee's Covenants**

11. The Lessee and the Commission, to the extent of their respective powers and functions, covenant:
- (a) to take all practicable steps to ensure compliance by all persons with the Act, regulations under the Act, this lease and the plan of management;
  - (b) not to transfer, assign, sublet or part with the possession of the park, or any part of the park without the consent in writing of the Lessor and except in accordance with the plan of management;
  - (c) to pay the Land Council's and the Land Trust's reasonable costs of and incidental to the preparation, execution, registration and stamping of this lease agreed and assessed at \$30,000.00, and in addition, to pay all registration fees and stamp duty payable in connection with this lease;
  - (d) to pay all rates and taxes which may at any time become due in respect of the park;
  - (e) to carry all of the risk as self-insurer in respect of the timely reinstatement to full value of any of the improvements in the park which may be damaged or destroyed without the consent of the Lessor, being improvements existing at the date of the commencement of this lease and such other improvements as may be made, except such improvements in respect of which

there exists a contract of insurance insuring the risk to the extent of liability imposed upon the Lessee under paragraph (c);

- (f) to carry all of the risk as self-insurer as occupier of the park as regards any liability to any third person;
- (g) as far as is practicable, to make good any damage to the park (other than improvements) being damage caused by the Lessee or by the Commission or by their respective servants, agents or invitees except where the damage to the park was occasioned with the consent of the Lessor or of the Board;
- (h) to comply with all Acts, regulations and other laws otherwise applicable to the park;
- (i) to have regard in the performance of their respective functions in relation to the park, to such priorities in allocating financial and other resources as are provided in the plan of management or determined from time to time by the Board;
- (j) to promote and protect the interests of relevant Aboriginals as a group;
- (k) to promote the protection of sacred sites and other areas and things of significance to relevant Aboriginals;
- (l) to encourage the maintenance of the Aboriginal tradition of relevant Aboriginals;
- (m) to take all practicable steps to promote Aboriginal involvement in the administration, management and control of the park;
- (n) subject to the plan of management, to engage as many relevant Aboriginals as is practicable to provide services in and in relation to the park;
- (o) to utilize without limiting the generality of the foregoing the traditional skills of Aboriginal individuals and groups in the management of the park;
- (p) subject to the plan of management, to encourage Aboriginal business and commercial initiatives and enterprises within the park;
- (q) to regularly consult and liaise with the Jawoyn Association or with such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association, in connection with the control and management of the park;



- (r) to consult with and have regard to the views of the Jawoyn Association or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association in respect of the formulation of any educational and interpretive policy in relation to the park;
- (s) as far as practicable and subject to the plan of management, to provide such capital equipment and machinery as is reasonably required for the adequate maintenance of roads and all other facilities and improvements constructed by or on behalf of the Board or the Commission;
- (t) after consultation with and having regard to the views of the Jawoyn Association and such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association, and subject to the plan of management, to implement a licencing and induction scheme for tour operators and other persons carrying on commercial activities in the park;
- (u) subject to the plan of management and the Act, to use their best endeavours to collect fees or charges, if and when imposed for entering and camping on the park, or using the services or facilities provided by or on behalf of the Board and to ensure such fees and charges are properly accounted for on an audited basis;
- (v) subject to the plan of management, to permit an officer or officers of the Land Council to enter and move freely in the park for the purpose of performing on behalf of the Land Council the statutory powers or functions of the Land Council; and
- (w) to use their best endeavours to promote among visitors to the park and residents of Katherine a knowledge and understanding of and respect for the traditional languages, culture, customs and skills of relevant Aboriginals and to arrange for appropriate instruction in connection with such matters to be given, to the extent that it is reasonably practicable, by Aboriginals engaged for the purpose.

### **Quiet Enjoyment**

12. The Lessee paying the rent hereby reserved and observing and performing the covenants on its part and the conditions contained in this lease, subject to this lease, shall during the whole of the term quietly enjoy the park without any interruption or disturbance by the Lessor or any person claiming by, from, under or in trust for the Lessor.

### **Lessee's Indemnity**

13. The Lessee and the Commission shall indemnify the Lessor, its servants, agents or invitees (to the extent that the Lessor, its servants, agents or invitees is not or are not negligent) against all actions and claims whatsoever that may be brought, made or prosecuted against the Lessor, its servants, agents or invitees in respect of any action or claim arising out of any action or omission (whether negligent or otherwise) of the Lessee, its servants, agents or invitees in or in relation to the park.

### **Termination**

14. The lease may be terminated:
- (a) in writing at any time with the agreement of both the Lessor and the Lessee; or
  - (b) pursuant to clause 9,
- but not otherwise.

### **Variation**

15. (1) The Lessor and the Lessee may from time to time by agreement in writing add to, substitute for, cancel or vary any of the provisions of this lease.
- (2) The Lessee shall at least once every five (5) years meet with the representatives of the Lessor and the Land Council to review the provisions of the lease excepting the term, and if the Lessor and the Lessee agree upon any variation of the lease, the Land Council shall direct the Lessor to execute any or all documents necessary or desirable to give full effect to the variation.

### **Parties to Negotiate 5 years Before Expiry**

16. The Lessor and the Lessee agree that they will negotiate for the renewal or extension of the term of this lease not later than five (5) years before it expires.

### **Training and Employment**

17. The Lessee and the Commission agree subject to decisions of the Board:
- (a) to implement an Aboriginal training programme the broad objectives of which are agreed with the Jawoyn Association or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn

Association, comprising training in skills relevant to the administration, planning, management and control of the park;

- (b) to employ persons in the park in appropriate positions having regard to qualifications acquired in participation in the Aboriginal training programme;
- (c) to employ training officers in the park wherever necessary, and to give due consideration in the employment of such officers to suitably qualified Aboriginal persons having regard to the objective of the parties to maximize Aboriginal employment in the park;
- (d) to provide appropriate and reasonable resources (including staff, training facilities and accommodation) for Aboriginal trainees;
- (e) in the Aboriginal training programme and in the management of the park to emphasise Jawoyn social and cultural values and land management practices;
- (f) to take all practicable steps to make provision for traditional obligations in determining working hours and conditions;
- (g) to give preference to Aboriginal people, companies and organizations when issuing leases, licences, contracts, or making available casual or temporary employment subject to any law in force in the Northern Territory;
- (h) notwithstanding any other paragraph of this clause but subject to the Board being satisfied that it is attainable, the Commission shall within five (5) years of the commencement of this lease employ Aboriginal people in at least 25% of positions in the park; and
- (i) to actively seek to achieve that at the earliest practicable opportunity during the term of this lease the majority of permanent employment positions in the park are held by suitably qualified Aboriginals.

## **Funding**

18. (1) Subject to the Act the Commission shall from moneys lawfully available to the Commission pay to the Board such moneys as are reasonably required for the administration of the Board and, for the payment of any expenses incurred by members of the Board in the performance of their duties (***the administrative costs of the Board***).

- (2) This clause does not have operation to the extent that the administrative costs of the Board are met from another source or sources, including an appropriation by the Northern Territory.

### **Staffing**

19. (1) The Lessee and the Commission will at all times use their best endeavours to maintain staff within the park at the level and designations of staff requirements provided for in the plan of management.
- (2) The Lessee and the Commission agree to consult with and have regard to the views of the Jawoyn Association, or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association, concerning the procedures for and the selection and appointment of any permanent staff where the duties and functions of such staff will involve substantial involvement with day to day administration, management or control of the park and in particular shall include a person nominated by the Jawoyn Association on any selection panel appointed in relation to such appointments.
- (3) Notwithstanding clause 19(2) employment of all persons having day to day responsibility in the administration and management of the park shall be subject to the approval of the Board.
- (4) The Commission agrees to ensure that from time to time (but no later than six (6) months after commencement of duties of any member of the park staff) each member of the park staff involved in administration, planning, management and control of the park attends a cross-cultural course the broad objectives of which are agreed with the Jawoyn Association or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association.

### **Research and Information**

20. (1) The Lessee and the Commission agree to permit and direct persons from time to time chosen by the Commission, after consultation with the Jawoyn Association or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association, being persons employed by the Commission or under its authority, to assist the Jawoyn Association or such agent or representative of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association in respect of any reasonable programme involving the identification and recording of Aboriginal sacred sites within the park.

- (2) The Commission shall provide reasonable equipment and facilities for persons who are in accordance with subclause (1) permitted and directed to assist in the identification and recording of Aboriginal sacred sites within the park.
- (3) The Lessee and the Commission agree to make available to the Chairman of the Jawoyn Association, or any person authorized in writing by the Jawoyn Association, access to all information relating to the park including research reports sponsored, procured or supported by the Lessee or the Commission that is in the possession of the Lessee or the Commission other than information that would be privileged from production in litigation and information the disclosure of which would, in the opinion of the Lessee, involve an unreasonable invasion of the privacy of an individual.

### **Disposal of Park Equipment**

21. (1) Subject to any lawful obligation imposed upon the Lessee by a Law of the Northern Territory, if at any time during the term hereof the Lessee is desirous of disposing of its interest in any property or equipment of the Lessee used in the operation of the park, the Lessee shall give to the Lessor for the benefit of the Lessor, the Land Council or its nominee, any relevant Aboriginal association and any other incorporated body the membership of which is limited to relevant Aboriginals or groups of relevant Aboriginals (in this clause referred to as the **permitted Aboriginal purchaser**) the right of the first refusal to purchase the said property or equipment or any part thereof subject to the following terms and conditions:
  - (a) the Lessee shall give notice in writing to the Land Council of the Lessee's intention to dispose of any such property or equipment. The notice shall constitute an offer by the Lessee to sell any such property or equipment to a permitted Aboriginal purchaser for the purchase of the Lessee's interest therein, which consideration shall not impose any more onerous obligation or duty upon the permitted Aboriginal purchaser or require the permitted Aboriginal purchaser to pay any greater pecuniary sum than the Lessee would impose upon or require from a purchaser other than a permitted Aboriginal purchaser;
  - (b) within twenty eight (28) days after giving of the notice a permitted Aboriginal purchaser may give notice in writing to the Lessee of acceptance or rejection of the Lessee's offer to sell;
  - (c) in the event of the giving of a notice of acceptance there shall be deemed to be a binding contract for sale by the Lessee and purchase by the permitted Aboriginal purchaser of the

Lessee's interest in the said property or equipment for the consideration stated in the Lessee's notice;

- (d) the purchase price shall be paid within twenty eight (28) days from the date on which the notice of acceptance is given to the Lessee or within such other period or upon such terms as may be agreed between the parties to the contract for sale; and
  - (e) in the event that a notice of acceptance is not given, the Lessee shall then be at liberty to sell the said property or equipment by private contract to any other person for a sum being not less than that specified in the notice in writing given pursuant to clause 21(1)(a) or by public auction.
- (2) In this clause **Lessee** means the Lessee or the Commission, as the case may be.

### **Developments in the Park**

22. (1) Subject to decisions of the Board the Lessor and the Lessee agree that the Commission and the Jawoyn Association or such agents or representatives of the Jawoyn traditional Aboriginal owners as may be nominated by the Jawoyn Association shall meet from time to time to formulate written policy in respect of environmental evaluation of proposed developments in the Park.
- (2) A proposed development shall not take place except in accordance with the policy formulated under this clause.

### **Service of Notices, &c.**

23. (1) Any notice, request, consent, approval or other communication (in this clause called a **communication**) to be given under this lease shall be in writing addressed as follows:

If to the Lessor:

Jawoyn Aboriginal Land Trust  
C/- Northern Land Council  
47 Stuart Highway  
STUART PARK NT 0820  
Telex: NLC AA85042  
Facsimile: (089) 816-899

If to the Lessee:

Conservation Land Corporation  
C/- Conservation Commission of the N.T.  
P.O. Box 496  
PALMERSTON NT 0831

Telex: AA81191  
Facsimile:

If to the Commission:

Conservation Commission of the N.T.  
Bayward Building  
Mansfield Place  
PALMERSTON NT 0831  
Telex:  
Facsimile:

If to the Northern Territory of Australia:

Minister for Conservation  
Chan Building  
Mitchell Street  
DARWIN NT 0800  
Telex: AA85253  
Facsimile:

If to the Northern Land Council:

Chairman  
Northern Land Council  
47 Stuart Highway  
STUART PARK NT 0820  
Telex: NLC AA85042  
Facsimile: (089) 816-899

If to the Board:

As notified in writing by the Board,

If to the Jawoyn Association:

As notified in writing by the Jawoyn Association, or to such other address as the relevant party or body may nominate by notice to each other party or body.

- (2) Each communication shall be delivered by hand, or mailed by pre-paid registered post, or sent by telex, telegram or facsimile transmission, to the address of the party or body to which it is being given and shall be deemed to have given:
- (a) if received before 4.00 pm on a business day – when it is received; and
  - (b) if received at any other time – on the business day next following the day of receipt.

## Governing Law

24. (1) This lease shall be governed by and construed in accordance with the laws in force in the Northern Territory of Australia.
- (2) The parties agree that, except as provided in clause 7, the *Commercial Arbitration Act* does not apply to this lease and that this lease (except for clause 7) is not an arbitration agreement for the purposes of that Act.

## Northern Territory of Australia, Conservation Commission and Land Council agree to be bound

25. The Northern Territory of Australia, the Commission and the Land Council agree to be bound by the terms of this lease.

## Definitions

- (1) In this lease and in the recitals:

**Aboriginal** means a person who is a member of the Aboriginal race of Australia.

**Aboriginal tradition** has the same meaning as in the Land Rights Act.

**the Act** means the *Nitmiluk (Katherine Gorge) National Park Act*.

**the Board** means the Nitmiluk National Park Board established by section 9 of the Act.

**Commission** means the Conservation Commission of the Northern Territory established by the *Conservation Commission Act*.

**Jawoyn Association** means the Jawoyn Association Aboriginal Corporation.

**Land Council** means the Northern Land Council, or if the boundaries of the Northern Land Council are varied so as to exclude the park from its area, then the Land Council for the area of the park established under the Land Rights Act.

**Land Rights Act** means the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

**Land Trust** means an Aboriginal Land Trust constituted under section 4 of the Land Rights Act.

**person** includes a body corporate and any other entity recognized by law.



**plan of management** means the plan of management for the park prepared in accordance with the Act as in force from time to time.

**relevant Aboriginals** means all the traditional Aboriginal owners of the park and the Aboriginals entitled to enter upon or use or occupy the park in accordance with Aboriginal tradition governing the rights of that Aboriginal or group of Aboriginals with respect to the park whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor and the Aboriginals permitted by them to reside in the park.

**relevant Aboriginal Association** means the Jawoyn Association and any other incorporated Aboriginal Association or group whose members are relevant Aboriginals.

**sacred sites** has the same meaning as in the Land Rights Act. and

**traditional Aboriginal owner** has the same meaning as in the Land Rights Act.

- (2) Unless the contrary intention appears this lease shall be interpreted in accordance with the provisions of the *Interpretation Act* of the Northern Territory where applicable, as if this lease were an Act.

**MEMORANDUM OF ENCUMBRANCES**

Nil.

IN WITNESS the parties have executed this lease on this                      day of                      1989.

The CONSERVATION LAND CORPORATION accepts this lease subject to the reservations, provisions, covenants and conditions set out above.

The Common Seal of the )  
CONSERVATION LAND CORPORATION )  
was affixed by authority of a )  
resolution of the Corporation in )  
the presence of: )

.....  
.....

The Common Seal of the JAWOYN )  
ABORIGINAL LAND TRUST was )  
affixed to this lease by the )  
authority of the Chairman and )  
2 members of the JAWOYN )  
ABORIGINAL LAND TRUST in the )

presence of: )

.....  
Chairman

.....  
Member

.....  
Member

.....

The Common Seal of the )  
NORTHERN LAND COUNCIL was )  
affixed to this lease by the )  
authority of a resolution of )  
the Land Council in the )  
presence of: )

.....  
Chairman

.....  
Member

.....  
Member

The Common Seal of the )  
CONSERVATION COMMISSION was )  
affixed to this lease by )  
authority of a resolution of )  
the Commission in the )  
presence of: )

.....

SIGNED, SEALED AND DELIVERED this                    day of                    1989  
by the Minister for Conservation, in witness of the agreement of the Northern  
Territory of Australia to be bound by this lease.

.....  
Minister for Conservation

The Common Seal of )  
the JAWOYN ASSOCIATION )  
ABORIGINAL CORPORATION was )  
affixed to this lease by )  
authority of a resolution )

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of the Association in the )  
presence of: )

.....

.....

Annexure

ALL THOSE parcels of land around Katherine Gorge National Park in the Northern Territory of Australia

FIRSTLY commencing at the southwestern corner of Northern Territory Portion 3470; thence easterly by the southern boundary of that Portion to the western boundary of Pastoral Lease 705 (Eva Valley); thence southerly, westerly, generally southerly and easterly by western, northern, western and southerly boundaries of that Pastoral Lease to its intersection with the meridian of East Longitude 132 degrees 46 minutes 50 seconds; thence south to the parallel of South Latitude 14 degrees 22 minutes 40 seconds; thence southwesterly to the intersection of the meridian of East Longitude 132 degrees 45 minutes 45 seconds with the parallel of South Latitude 14 degrees 24 minutes 20 seconds; thence west to meridian of East Longitude 132 degrees 34 minutes 15 seconds; thence south to the parallel of South Latitude 14 degrees 25 minutes; thence west to the meridian of East Longitude 132 degrees 30 minutes; thence north to the parallel of South Latitude 14 degrees 24 minutes; thence northwesterly to the intersection of the parallel of South Latitude 14 degrees 23 minutes 30 seconds with the meridian of East Longitude 132 degrees 29 minutes 30 seconds; thence north to a southern boundary of Northern Territory Portion 781 (Katherine Gorge National Park); thence westerly and northwesterly by southern and southwestern boundaries of that Portion to its intersection with the right bank of the Katherine River; thence generally southerly and westerly by that right bank to its intersection with the meridian of East Longitude 132 degrees 23 minutes; thence north to the parallel of South Latitude 14 degrees 15 minutes; thence westerly to the intersection of the meridian of East Longitude 132 degrees 15 minutes with the parallel of South Latitude 14 degrees 13 minutes 40 seconds; thence west to an eastern boundary of Northern Territory Portion 3469; thence northerly and northeasterly by eastern and southeastern boundaries of that Portion to the point of commencement.

*(See hard copy for plan of annexure)*

## Schedule 2

### Section 31

Arrangements with the Commission in force immediately before the commencement of the lease

1. Nature of Concession: Helicopter joy flights  
Date entered into: 23 March 1989  
Date of expiry: 31 December 1989  
Concessionaire: Lynakirst Pty. Ltd.
2. Nature of Concession: Canoe hire  
Date entered into: 30 March 1989  
Date of expiry: 31 December 1989  
Concessionaire: Kookaburra Canoe Hire Pty. Ltd.
3. Nature of Concession: Launch tour  
Date entered into: 14 March 1989  
Date of expiry: 31 December 1989  
Concessionaire: March Motors Tours Pty. Ltd.
4. Nature of Concession: Launch tour  
Date entered into: 14 March 1989  
Date of expiry: 31 December 1989  
Concessionaire: Gorge Caravan Park Pty. Ltd.
5. Nature of Concession: Takeaway food operation  
Date entered into: 1 April 1989  
Date of expiry: 31 December 1989  
Concessionaire: R and H Gillespie

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**ENDNOTES**
**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 It = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Nitmiluk (Katherine Gorge) National Park Act 1989 (Act No. 33, 1989)***

Assent date 4 July 1989  
 Commenced 1 August 1989 (Gaz S38, 1 August 1989)

***Nitmiluk (Katherine Gorge) National Park Amendment Act 1993 (Act No. 87, 1993)***

Assent date 31 December 1993  
 Commenced 31 December 1993

***Planning (Consequential Amendments) Act 1993 (Act No. 86, 1993)***

Assent date 31 December 1993  
 Commenced 18 April 1994 (s 2, s 2 *Planning Act 1993* (Act No. 85, 1993)  
 And Gaz S28, 18 April 1994)

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date 21 March 1995  
 Commenced 1 April 1995 (s 2, s 2 *Financial Management Act 1992* (Act No. 4, 1995) and Gaz S13, 31 March 1995)

***Parks and Wildlife Commission (Consequential Amendments) Act 1995 (Act No. 46, 1995)***

Assent date 15 November 1995  
 Commenced 29 November 1995 (s 2, s 2 *Conservation Commission Amendment Act 1995* (Act No. 43, 1995) and Gaz S42, 29 November 1995)

***Nitmiluk (Katherine Gorge) National Park Amendment Act 1999 (Act No. 64, 1999)***

Assent date 14 December 1999  
 Commenced 7 June 2000 (Gaz G22, 7 June 2000, p 2)

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date 12 September 2000  
 Commenced 1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and Gaz G38, 27 September 2000, p 2)

**3**

**SAVINGS AND TRANSITIONAL PROVISIONS**

s 7 *Nitmiluk (Katherine Gorge) National Park Amendment Act 1999* (Act No. 64, 1999)

**4**

**LIST OF AMENDMENTS**

It	amd No. 64, 1999, s 4
s 3	amd No. 46, 1995, s 3
s 5	amd No. 86, 1993, s 3
s 7	sub No. 87, 1993, s 2
	amd No. 45, 2000, s 11
s 10	amd No. 64, 1999, s 5
s 16	amd No. 64, 1999, s 6
s 26	sub No. 5, 1995, s 19