

**THIS DEED** made on the

day of

2025

**PARTIES:**

**LITHGOW CITY COUNCIL** ABN 59 986 092 492 of Council Chambers, 180 Mort Street, Lithgow NSW 2790 (“Council”) of the one part; and

**LAKE LYELL RECREATION PARK PTY. LTD.** ACN 162 566 547 having its registered office at 'Area 6', Level 1, 188 Macquarie Street Dubbo NSW 2830 (“Caretaker”)

**RECITALS:**

- A. Council owns and/or leases the land known as Lake Lyell Recreation Area.
- B. The parties have agreed to enter into this Deed for the provision of Caretaker Services by the Caretaker to Council in respect of Lake Lyell Recreation Area upon and subject to the terms and conditions hereinafter appearing.

**OPERATIVE PROVISIONS**

1. **Definitions and Interpretation**

1.1 **Definitions**

The following words and expressions are for the purpose of this Deed defined as follows:-

- “Act” – Local Government Act 1993.
- “Amenities Buildings” – Those buildings provided by Council within the Lake Lyell Recreation Area for use by the public as toilets, showers and other amenities.
- “Award” – The appropriate industrial awards or industrial agreements which may, from time to time, apply or be made or entered into in respect of the Caretaker’s employees or any applicable enterprise

agreement approved by the Industrial Relations Commission of NSW or the Fair Work Commission.

- “Caretaker Services” – Caretaker’s duties referred to in Clauses 6 and 7 together with any other works or duties at any time hereafter agreed in writing between the parties.
- “Consumer Price Index” – Means the Consumer Price Index Weighted Average of six (6) capital cities as published from time to time by the Australian Bureau of Statistics, and if the same has been abolished or cannot be properly identified, then such replacement index or measure as shall be nominated by the Australian Statistician, who shall act as an expert and not as an arbitrator, and whose nomination shall be conclusive and binding on the parties, who shall bear equally the cost of the Australian Statistician so acting.
- “Deed” – The agreement constituted by this Deed.
- "Default Notice" – A notice served under Clause 9.2
- “Event of Default” – An event described in Clause 9.2(c) hereof.
- “Facilities” – Means all improvements and recreational infrastructure provided by Council and situated within the Lake Lyell Recreation Area, but excludes roads.
- “Kiosk” – The kiosk provided by Council upon Lake Lyell Recreation Area.
- “Lake Lyell Recreation Area” – Those areas of land situated on Magpie Hollow Road, South Bowenfels approximately five kilometres from Lithgow township as shown edged green on the plan annexed hereto marked “A” and described thereon as “Lake Lyell Leases”, together with carpark and Caretaker’s Cottage and curtilage thereof shown on the said plan.
- “Manager” – The General Manager, from time to time, of Lithgow City Council, or such other servant of Council as he may from time to time nominate to act in his place.

- “Plant” – Motor Vehicles and all other items of plant and equipment as shall, from time to time, be used (or be acquired for use) by the Caretaker for the performance of its obligations hereunder.
- “Residence” – The residential dwelling provided by Council upon Lake Lyell Recreation Area for occupation by the Caretaker and any other garage, structure or building used in conjunction with the residential dwelling.
- “Security Bond” – The security bond in the sum of \$2,000.00 referred to in Clauses 2.5 to 2.7.
- “Site” – Lake Lyell Recreation Area as hereinbefore defined.
- “Week” – Seven (7) consecutive days, including Sundays.

## **1.2 Interpretation**

Reference to any Statute, Regulation, Ordinance or other Law, or applicable industry standards shall extend to and include all amendments, re-enactments or replacements thereof, and Regulations and Ordinances made pursuant to them; and references to any statutory body, shall extend to and include any body, from time to time, carrying on the functions of that body.

## **1.3 Gender**

In this Deed, so far as the contents admit or require the singular, includes the plural and the plural includes the singular, the masculine gender includes the feminine gender and words importing persons include bodies corporate.

## **1.4 Headings**

All headings in this Deed have been inserted for the purpose of ease of reference only, and shall not define, limit or affect the meaning or interpretation of this Deed.

## **2. Observation of Statutes, Term, Performance, Security and Assignment**

### **2.1 Statutory Compliance**

- (a) In carrying out the Caretaker Services, the Caretaker will observe and comply with all applicable Laws and obtain all approvals, consents,

authorisations or permits required by any Authority, subject to clause 2.1(b) below. For the purpose of this clause:

- (i) “Laws” means any statute, regulation, regulatory instrument, ordinance or proclamation that applies in New South Wales including in particular, but not limited to the Work Health and Safety Act 2011 and Protection of the Environment Operations Act 1997 and any law that replaces them.
- (ii) “Authority” means any government or government department, public or statutory authority or other person who is charged with the administration of a Law.

(b) The parties acknowledge that Council is in the process of arranging an application for a primitive camping ground (within the meaning of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021). Once the application is complete and ready to be lodged, Council will do all things reasonably necessary to:

- i. procure the amendment of its plan of management to authorise camping at Lake Lyell Recreation Park; and
- ii. vary the restriction on title to Lake Lyell Recreation Area to allow the operation of a primitive camping ground for profit.

(c) To the extent permitted by law, Council will indemnify the Caretaker against any claim made by a third party directly arising from the non-existence of approvals for a primitive camping ground at Lake Lyell Recreation Park provided the Caretaker is operating in accordance with the terms of the Deed.

## **2.2 Local Government Act**

This Deed shall be subject, in all respects, to the requirements of the Act as now in force, and to any subsequent amendments or re-enactment thereof, and to any regulation or Ordinance made thereunder now in force or hereafter proclaimed.

### **2.3 Term of Deed**

The term of this Deed shall be for a period of five (5) years, commencing on 28<sup>th</sup> February, 2023 and concluding on 27<sup>th</sup> February, 2028.

### **2.4 Performance of Works**

The Caretaker shall provide the Caretaker Services as mentioned herein in a timely, diligent, competent, and proper manner and in accordance with the conditions hereof and will promptly comply with all proper directions as shall, from time to time, be given by Council or the Manager in respect thereof.

### **2.5 Security Bond**

Prior to the signing of this Deed, the Caretaker shall lodge with the Council as security for the due and faithful performance of this Deed a Security Bond in the sum of \$2,000.00. Council acknowledges that the Security Bond has been paid by the Caretaker.

### **2.6 Form of Security Bond**

The Security Bond shall be in the form of cash, interest bearing deposit, bank guarantee or other suitable form approved in writing by Council. When the Security Bond is in cash, it shall be placed by Council in an interest bearing deposit with the Commonwealth Bank of Australia, Lithgow Branch, in the name of Council and any interest derived from such investment shall (unless the Caretaker is in default hereunder) be paid by Council to the Caretaker as soon as practicable after same is paid by the Bank to Council. When the Security Bond is by bank guarantee it shall be so worded that only Council may exercise and invoke it.

### **2.7 Application of Security Bond**

In the event of the Caretaker failing to perform or observe any of the terms of this Deed, then Council may treat such failure as a breach of this Deed, and the whole or any lesser part required of the amount of such Security Bond may be applied by Council in or towards payment of damages sustained by Council by reason of such breach, provided that Council's rights to sue for and recover damages caused by reason of such breach shall not be limited to the amount of the Security Bond.

## **2.8 Release of Security**

The Security Bond shall be released after satisfactory completion of this Deed, subject to any right of Council to claim against such Security Bond in respect of any breach of this Deed.

## **2.9 Assignment**

The Caretaker shall not at any time during the term of this Deed assign, transfer, charge or sublet any of its rights or obligations created by this Deed or any part of its rights or obligations created by this Deed or by any act or deed procure its rights or obligations created by this Deed or any part thereof to be assigned, transferred, charged or sublet to, or put into the possession of any other person without the prior written consent of Council, which consent may in Council's absolute discretion be withheld, and Council shall not be bound to give any reason why it would not consent.

Notwithstanding the foregoing, and without prejudice to Council's absolute discretion, in determining whether or not to grant such consent, Council in exercising its discretion will have regard, inter alia, to:

- (a) Whether the proposed assignee is a reputable, responsible and solvent person, firm or company possessed of sufficient financial resources to meet the obligations of the Caretaker (the onus of providing such facts to the satisfaction of Council shall be upon the Caretaker).
- (b) Whether all money then due or payable shall have been paid and whether there shall then be any existing unremedied breach of the covenants, conditions or agreements contained in this Deed, provided that breaches which have been waived by Council shall not be deemed to be unremedied breaches for the purposes of this paragraph.

## **2.10 Formalities and Costs of Assignment**

In the event that Council in the exercise of its absolute discretion consents to the assignment by the Caretaker of its rights and obligations created by this Deed or any part thereof:

- (a) The instrument effecting such assignment shall be prepared by Council's solicitor at the cost and expense in all respects of the Caretaker.

- (b) The Caretaker shall pay to Council all proper and reasonable costs, charges and expenses incurred by Council incidental to any enquiries which may be made by or on behalf of Council as to the reputation, responsibility, respectability, solvency, fitness and suitability of any proposed assignee.

### **2.11 Release of Caretaker by Council**

- (a) If for any reason the Caretaker requests to be released from this Deed, Council in its absolute discretion may grant release and if Council in its absolute discretion agrees to so release the Caretaker, then and subject to any penalties applicable against the Caretaker in respect of such release, fresh tenders will be called by Council for the performance of this Deed and the Caretaker will remain bound by this Deed until such time as Council enters into a new contract or deed on such terms as it in its absolute discretion deems satisfactory, in substitution for this Deed.

## **3. Supervision of Deed, Instructions, Complaints, Reporting**

### **3.1 Supervisor**

Subject to Clause 3.2 hereof, the Caretaker (or if the Caretaker is a company, then a Director thereof or some person with express authority, nominated in writing from time to time by the Caretaker to Council) shall personally supervise the carrying out of the Caretaker Services, and shall not hand over nor delegate their or its responsibilities in this regard to any other person.

### **3.2 Temporary Supervisor**

The Caretaker may make written application to Council for permission for a person or persons nominated by the Caretaker to temporarily carry out the supervisory work mentioned in Clause 3.1 for such period as may be necessary, having regard to the reason for the making of the application, provided:

- (a) the said period shall not exceed four (4) weeks, except in the case of illness of the Caretaker or the nominated person;
- (b) if an extension of any period is required, a further application shall be made;

- (c) in the event of such application being made due to ill health of the Caretaker or the nominated person, same shall be supported by an appropriate medical certificate;
- (d) the granting of such permission shall not be unreasonably withheld.

### **3.3 Caretaker or Authorised Representative to Reside on Site**

The Caretaker or its authorised representative nominated in writing to Council shall reside in the Residence and such person shall be responsible for the receipt of instructions and messages as hereinafter provided, and in the event the Caretaker or such representative is absent at any time for a period in excess of 24 hours, the Caretaker shall nominate a suitable person to be available during such period to take such instructions and messages in lieu of itself and shall advise Council or the Manager of the name, address and telephone number of such person.

### **3.4 Reporting**

The Caretaker shall report to Council or the Manager at least once each three months on the performance of the Deed, and such report shall be in such form and refer to such matters as may from time to time be specified by Council or the Manager.

### **3.5 Telephone**

The Caretaker, or the Caretaker's authorised representative, shall, throughout the term of this Deed and at the Caretaker's expense, install and keep connected a telephone at the residence and kiosk in order that complaints or instructions may be conveyed to it at any reasonable hour.

### **3.6 Orders and Instructions**

All lawful orders and instructions under this Deed, whether oral or in writing given by Council or the Manager, shall be attended to by the Caretaker immediately upon receipt of such instructions.



#### 4. **Employees and Plant**

##### 4.1 **Employer**

The Caretaker shall, during the continuance of this Deed, provide, engage, employ and maintain at its own expense and to the satisfaction of Council and/or the Manager, such staff as may be necessary for the proper and efficient performance of this Deed.

##### 4.2 **Observance of Awards**

The Caretaker shall, during the continuance of this Deed, observe the Award and comply with all laws relating to the employment of persons by the Caretaker and if required by Council or the Manager shall, prior to any payment or payments being made by Council under this Deed, sign and deliver to Council or the Manager a certified statement that no wages are due and owing by it to any employee or servant in respect to any work performed in pursuance of this Deed. Should Council at any time become liable for or elect to pay any sum by reason of the Caretaker having failed to observe this provision, Council may deduct the sum so paid from any moneys due by Council to the Caretaker hereunder.

##### 4.3 **Conduct of Caretaker**

The Caretaker and its employees, agents and assigns shall, in the course of the performance of the Caretaker Services conduct themselves towards members of the public in a civil, obliging and courteous manner.

##### 4.4 **Caretaker to Provide Labour, Materials and Plant**

The Caretaker shall provide at its own costs and expense the Plant, together with all labour and materials necessary for the proper and complete performance of this Deed, and shall at its own cost and expense repair and maintain the Plant in clean condition and good working order and shall store and garage the Plant on the Site in a suitable building provided by Council, at Council's cost, such building to be designed, sited and built with materials as approved by Council, and to be maintained by the Caretaker at its own cost, in good repair and in a clean and tidy condition at all times.

#### **4.5 Garbage and Recycling**

- (a) During garbage collection operations no more of the garbage shall be exposed in a vehicle than is absolutely necessary for loading purposes.
- (b) The Caretaker shall implement a system of collection of recyclables and such recyclables shall be collected by or delivered to a reputable firm for recycling and shall not be disposed of at a landfill.

### **5. Insurances**

#### **5.1 Property Damage and Public Risk**

The Caretaker shall indemnify and keep Council indemnified against all loss of or damage to property and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against Council in respect of personal injury to, or the death of any person whomsoever or loss or damage to any property whatsoever arising out of or as a consequence of the performance of this Deed by the Caretaker or its employees, agents or sub-contractors and also against any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.

#### **5.2 Public Liability Insurance**

Upon the signing of this Deed and before commencing any work hereunder, the Caretaker shall take out a public liability policy of insurance in the joint names of Council and the Caretaker, to cover their respective and joint liabilities to third parties. Such policy shall name Council as principal and the Caretaker as Caretaker.

#### **5.3 Cross Liability**

The public liability policy of insurance shall include a cross-liability clause, in which the insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any persons comprising the insured, and for the purpose of which the insurer accepts the term “insured” as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

#### **5.4 Cover**

The public liability policy of insurance shall be for an amount not less than \$20,000,000 or such greater amount as may be determined upon annual review by Council's insurers and shall be effected with an insurer or insurers and in terms approved in writing by Council. The Policy shall be maintained during the term of this Deed and for a period of at least three (3) months after the date of termination thereof. The Caretaker shall upon request produce to Council evidence of the currency of such policy.

**5.5 Plant and Equipment**

Upon the signing of this Deed and before commencing any work hereunder, the Caretaker shall take out an insurance policy over the Plant for its full insurable value, and such policy shall be in the name of the Caretaker. The Caretaker shall upon request produce to Council evidence of the currency of such policy.

**5.6 Accident or Injury to Employees**

- (a) The Caretaker shall to the full extent permitted by law, release Council from all liability and indemnify and keep Council indemnified against liability for all loss or damage resulting from personal injury to or the death of any director, employee, agent or invitee of the Caretaker or from loss of or damage to property of the Caretaker or any employee, agent or invitee of the Caretaker occurring during the term of this Deed and arising out of or in connection with the carrying out of the works to be performed by the Caretaker hereunder and against all claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto whether at Common Law or under any Statute.
- (b) The Caretaker shall comply with all relevant provisions of Council's Workplace Health and Safety and Risk Management System.

**5.7 Insurance of Employees**

Upon the signing of this Deed and before commencing work hereunder, the Caretaker shall ensure that a suitable insurance policy is taken out giving cover against any liability, loss, damage, claim, demand, action, suit or proceedings, costs and expenses whatsoever arising at Common Law or under any Statute

or other legislative provision relating to workers' compensation as a result of personal injury to or death of any person employed by the Caretaker in or about the performance of the Deed.

**5.8 Cover**

Insurance effected by the Caretaker pursuant to Clause 5.7 shall be extended to cover all liabilities of Council, if any, at Common Law and under any applicable Statute or other legislative provision.

**5.9 Legislative Compliance**

The Policy of workers' compensation insurance cover in respect of the liabilities of the Caretaker shall be in accordance with the relevant Statute or other legislative provision applying to the State of New South Wales and in addition shall provide unlimited Common Law cover.

**5.10 Insurers to be Approved**

All policies of insurance required by this Deed shall (subject to the terms hereof) be maintained at all times during the term of this Deed and shall be effected with insurers approved in writing by Council, provided that such approval shall not be unreasonably withheld.

**5.11 Inspection and Provision of Insurance Policies**

The Caretaker shall, prior to the commencement of the works under this Deed and whenever required by Council, make available for inspection by Council, the policies of insurance effected by the Caretaker for the purpose of complying with their obligations under this Deed and receipts for payment of the current premiums in respect thereto, and if so required by Council, Certificates of Currency issued by the Insurer in respect of any such policies.

**5.12 No Limitation on Caretaker**

The effecting of insurance as required by this Deed shall not in any way limit the other responsibilities and obligations of the Caretaker hereunder.

**5.13 Council May Insure**

If the Caretaker fails to effect or to keep in force any of the insurances which it is required by this Deed to effect, Council may effect and keep in force any

such insurance and pay such premiums as may be necessary for that purpose and may either offset the premiums paid against money payable to the Caretaker, pursuant to this Deed, or recover it as a debt due from the Caretaker.

## **6. Council Responsibilities and Caretaker Services**

### **6.1 Responsibilities for the Management of the Lake Lyell Recreation Area**

- (a) (i) Council hereby grants a non-exclusive licence with no licence fee, to the Caretaker to occupy Lake Lyell Recreation Area for the purpose of providing the Caretaker Services pursuant to this Deed.
  - (ii) Council shall pay the sum of \$20,000 plus GST per annum to the Caretaker for the maintenance of the Facilities. Tax Invoices are to be submitted to Council for payments of \$5,000.00 plus GST quarterly, the first payment being due three (3) months after the commencement of the Deed and subsequent payments being due at regular quarterly intervals thereafter. All other maintenance and costs thereof are the responsibility of the Caretaker as set out below.
  - (iii) The Caretaker shall maintain all internal roads to a standard approved by Council and Council shall pay to the Caretaker for such work at rates approved by Council and consistent with prevailing commercial practice from time to time.
  - (iv) Subject to clause 9.2, Council must not engage any other person to carry out any of the Caretaker Services at Lake Lyell Recreation Area during the term of this Deed.
- (b) The Caretaker acknowledges that this Deed comprises a contract for Caretaker Services and a licence to occupy the Lake Lyell Recreation Area for that purpose. The Caretaker acknowledges that it is not authorised to operate a business in the Lake Lyell Recreation Area as to do so would require the Caretaker to hold approvals, including an approval under Section 68 of the Local Government Act 1993 (Part D and Part F), and for Council to comply with the provisions of Division 2, Part 2 of Chapter 6 of the Local Government Act 1993.
- (c) The Caretaker shall carry out the following tasks:

- (i) Collect and retain entry fees in respect of visitors entering the Lake Lyell Recreation Area.
  - (ii) Collect rubbish and store in a “skip” bin or equivalent, such bin to be provided by Council, which shall remove same from the Lake Lyell Recreation Area as often as necessary.
  - (iii) Operate the Kiosk.
  - (iv) Mow the Lake Lyell Recreation Area as required and maintain the Lake Lyell Recreation Area in a clean and tidy condition including (but not limited to) maintenance of trees, fencing, garbage bins, structures and lighting.
  - (v) Generally oversee and supervise the conduct of visitors to the Lake Lyell Recreation Area, and maintain good order throughout the Lake Lyell Recreation Area.
  - (vi) Provide firewood for sale for use by entrants to the Lake Lyell Recreation Area.
  - (vii) Maintain the Amenities Buildings in a clean and tidy condition.
  - (viii) Ensure potable water is available for use from fill points and buildings in storage tanks that are supplied and maintained by Council.
- (d) The Caretaker, or in the case of a corporation a Director or representative of the Caretaker approved by Council shall:
- i) Reside in the Lake Lyell Recreation Area Residence.
  - ii) Carry out reasonable maintenance and repairs to the Residence as required.
  - iii) Keep, maintain and produce for inspection by Council when requested records of entry fees collected, repairs and maintenance effected to the Lake Lyell Recreation Area, numbers and dates of visitors to the Lake Lyell Recreation Area, messages and directions from Council or the Manager, complaints received, incidents of theft, damage, or injury to person or property at the Lake Lyell Recreation Area, employment records, reports to Council pursuant to Clause 3.4 hereof, notices given by or to Council or the Manger, insurance documentation, vehicle registration documentation, notices received from any Government

- or Statutory body or Authority in respect of the Lake Lyell Recreation Area or the Caretaker Services, and such other matters as may be requested from time to time by Council PROVIDED THAT nothing herein contained shall oblige the Caretaker to disclose to Council the Caretaker's profit and loss statement, balance sheet or tax returns in respect of the Caretaker's business.
- iv) Provide the Caretaker Services diligently and so as to promote the public image of the Lake Lyell Recreation Area and promote the use of the Lake Lyell Recreation Area by the public.
  - v) Prepare and present to Council within fifty-two (52) weeks from the date hereof, a detailed business plan for the operation of the Deed.
- (e) The Caretaker shall discharge its responsibilities under this Deed seven (7) days per week, twenty-four (24) hours per day during the currency of the Deed.

## **6.2 Restrictions on Camping, Access and Business**

- (a) The Caretaker shall ensure that all fee paying campers camp only within the areas edged green on the plan annexed hereto marked "A" and described thereon as "Lake Lyell Leases".
- (b) Subject to clause 7.3, the Caretaker must not operate any business activities, nor permit any third party to operate any business activities within the Lake Lyell Recreation Area.

## **7. Payment to the Caretaker**

### **7.1 Entry Fees**

- (a) The Caretaker shall be entitled to collect and retain entry fees in respect of entry of visitors to Lake Lyell Recreation Area and shall maintain and provide to Council records thereof. Entry fees shall be determined at the discretion of the Caretaker.
- (b) Should the Caretaker choose to sell "season tickets" to patrons, the Caretaker shall ensure that such tickets shall expire on 31<sup>st</sup> March of the calendar year in which they are issued.

## **7.2 House for the Caretaker's Occupation**

- (a) Council shall provide the Residence for occupation, rent free, by the Caretaker or in the case of a corporation a Director or a representative of the Caretaker approved by Council, pursuant to Clause 6.1(c) and the Caretaker acknowledges that the Residence is available for occupation only during the currency of the Deed. Upon the determination of the Deed, the Caretaker shall immediately and peaceably surrender up possession of the Residence to Council in good order and condition, reasonable wear and tear allowed, and having regard to the condition thereof at the date of first occupation thereof by the Caretaker.
- (b) The Caretaker shall maintain the Residence and its curtilage in a clean and tidy condition and shall repair all damage thereto caused by neglect or deliberate or careless act by the Caretaker or any person on the premises with its consent.
- (c) Council shall be allowed access to the Residence for the purpose of inspection of same, provided that the Council shall have firstly given reasonable notice to the Caretaker of its intention to inspect the Residence at a reasonable time during daylight hours. In carrying out the inspection, Council will respect the privacy rights of the Caretaker or the Caretaker's representative.
- (d) The Caretaker shall pay for all electricity and gas consumed within the Residence and shall pay all charges for telephone and all other charges relating to the Caretaker's use of the Residence.
- (e) The Caretaker agrees to take care of the Residence and to keep it in a clean condition, and in particular:
  - (i) to make no alterations or additions to the Residence, including the erection of any sign or antenna, without the consent of Council;
  - (ii) not to carry out any decorating which involves marking, defacing or painting any part of the Residence, without the consent of Council;



- (iii) to put nothing down the sink, toilet or drain likely to cause obstruction or damage;
- (iv) to keep no animals or birds at the Residence, without the consent of Council;
- (v) to ensure that rubbish is not accumulated in the Residence and to cause all trade refuse to be removed regularly in a manner acceptable to Council;
- (vi) to ensure that nothing is done which might prejudice any insurance which Council has effected in relation to the Residence or Site;
- (vii) to notify Council promptly of any infectious disease or the presence of rats, cockroaches or similar pests;
- (viii) to do nothing in the building or keep anything therein which would increase the insurance premium payable by Council on the Residence or the Site, without the written consent of Council; and
- (ix) to do nothing which would make any insurance policy void.

### 7.3 **Kiosk**

- (a) Council shall provide at Lake Lyell Recreation Area a Kiosk for the provision of refreshments and requisites for visitors to Lake Lyell Recreation Area. The Caretaker shall operate the Kiosk during hours considered appropriate by the Caretaker. The Caretaker shall bear all costs of operating the Kiosk and shall be entitled to retain all income received from operating the Kiosk.
- (b) The provisions of Clause 7.2 (b), (c), (d) and (e) shall be deemed to apply in respect of the Kiosk.

### 7.4 **Amenities Buildings**

Council shall provide Amenities Buildings at Lake Lyell Recreation Area for use by visitors to Lake Lyell Recreation Area. The Caretaker shall clean the Amenities Buildings daily and shall carry out minor maintenance to the Amenities Buildings and related structures as required.

7.5 **Access by Council**

Subject to clause 7.2(c), the Caretaker acknowledges and agrees that Council, together with Council's contractors and authorised personnel, shall have unfettered access to the Lake Lyell Recreation Area.

8. **Capital Improvements**

The Caretaker shall provide Council with an outline of the capital works the Caretaker wishes to carry out for the upcoming financial year for concurrence by Council prior to payment, and an annual report on expenditure of this allocation and details of how this enhances the Facilities. Should the Caretaker wish to alter the program of capital works during the year, then this may only occur with the written authorisation of Council.

9. **Disputes and Default**

9.1 **Disputes**

If any dispute, difference or question shall at any time hereafter arise between the parties hereto in respect to the construction of this Deed or concerning anything herein contained or arising out of this Deed or as to the obligations, rights, liabilities or duties of the parties hereunder, then the other party may, by notice in writing ("Dispute Notice") served upon the other give particulars of the nature of the dispute. The parties shall then meet in good faith to seek to resolve the dispute. If the dispute is not resolved within 21 days after the service of the Dispute Notice, then either party may, by written notice served upon the other, require the dispute to be referred for arbitration by a person to be agreed upon by the parties, or failing agreement (within 21 days of service of the Dispute Notice) for arbitration in accordance with the Commercial Arbitration Act 2010 AND IT IS AGREED that the provision of Caretaker Services by the Caretaker hereunder shall continue pending the outcome of the arbitration, and that no payments due by the Council to the Caretaker hereunder (which may not otherwise be withheld) shall be withheld on account of the arbitration of any matter giving rise thereto, unless so agreed as between Council and the Caretaker or approved by the arbitrator, or arbitrators, as the case may be.

## 9.2 **Default**

- (a) If an Event of Default occurs, Council may serve upon the Caretaker a Default Notice.
- (b) A Default Notice shall specify the Event of Default upon which it is based.
- (c) An Event of Default occurs if the Caretaker:
  - (i) defaults in the performance or observance of any obligations on its part under the Deed or refuses or neglects to comply with any direction being one which either Council or the Manager or any other servant of Council is empowered to give; or
  - (ii) being a person, commits an act of bankruptcy or presents against himself or has presented against himself a petition in bankruptcy, or a sequestration order is made against him or he enters into any scheme or arrangement of any composition with his creditors, executes as a debtor a debt agreement proposal, personal insolvency agreement (as defined in the Bankruptcy Act 1966); or
  - (iii) being a company, takes or has taken or instituted against it any action or proceeding whether voluntary or compulsory, which has as its object, or may result in the winding up of the company (other than a voluntary winding up by a member for the purpose of reconstruction or amalgamation) or is placed under official management or enters into a compromise or other arrangement with its creditors or a Receiver or Receiver/Manager is appointed to carry on its business for the benefit of its creditors; or
  - (iv) assigns this Deed or any of the benefits thereof by way of mortgage or otherwise without the consent of Council.
- (d) If the Caretaker:
  - (i) within fourteen (14) days of service of the Default Notice fails to remedy the Event of Default specified in the Default Notice or in the Manager's opinion offers no reasonable assurance that

the Event of Default will be remedied within a reasonable time;  
or

- (ii) notifies Council in writing that it is unable or unwilling to remedy the Event of Default, THEN Council may (without prejudice to any other rights it may have against the Caretaker hereunder and without itself incurring any liability to the Caretaker for damages, compensation, costs or otherwise) by notice in writing terminate this Deed.
- (e) In the event of any further or subsequent Event of Default of a similar or like nature to that of which a Default Notice under this Clause 9 has previously been served on the Caretaker by Council (and which has previously been remedied or rectified in compliance with such notice) then Council's aforementioned right of termination of this Deed shall arise by virtue of such further Event of Default without the necessity of Council giving to the Caretaker a further Default Notice.
- (f)
  - (i) Notwithstanding anything else herein contained, should the Caretaker at any time neglect for a continuous period of 24 hours after being served with a Default Notice to remedy an Event of Default, or if Council terminates this Deed as herein provided, then Council may immediately engage and employ all labour and plant considered necessary in its opinion to remedy the Event of Default until such time as the Caretaker remedies or rectifies the Event of Default, or where this Deed has been terminated, until another Deed is (or Deeds are) entered into by Council for the provision of Caretaker Services and for that purpose take possession of and use (and permit other persons to use) any of the Plant (the Caretaker's consent to which is hereby expressly and irrevocably given) or obtain by hire, lease or other arrangement, suitable plant from elsewhere that may be considered necessary PROVIDED THAT all damages, costs, charges and expenses, including all consequential damages, costs, charges and expenses incurred by Council in carrying out any part of such work may be deducted from any moneys which may then be or thereafter become payable

to the Caretaker by Council (including any sums held by Council by way of the Security Bond), and if any deficiency exists thereafter it may be recovered by Council as a debt due to Council by the Caretaker.

- (ii) The Caretaker shall not be entitled to any compensation or allowance for any action taken by Council pursuant to this Clause, other than a right to require Council to maintain in good working order any of the Caretaker's plant or equipment which may be used by Council as aforesaid.
- (iii) On completion of any work undertaken by Council in pursuance of this Clause, all the aforesaid items of plant and equipment will be handed over to the Caretaker without any payment or allowance to the Caretaker.
- (g) In the event that the Caretaker fails to rectify or remedy any Event of Default specified in a Default Notice and which is capable of remedy, by 5.00 p.m. on the day following service of such notice, then notwithstanding anything else herein contained, and without prejudice to any other remedies available to Council in respect of such Event of Default, the Caretaker shall be liable for payment to Council of liquidated damages in the sum of \$70 per day for each day during which such Event of Default remains unrectified or unremedied. The parties agree that such liquidated damages represent Council's genuine estimate of Council's costs in the event of failure of the Caretaker to rectify an Event of Default and shall be recoverable by Council against the Caretaker as a liquidated debt. Council may, at Council's absolute discretion, set off any liquidated damages payable under this clause against any moneys payable by Council to the Caretaker or Council may apply any part of the Security Bond towards payment of any liquidated damages.

## 10. **General**

### 10.1 **Notices**

Any notice given to the Caretaker hereunder shall be deemed to have been duly given and served if it is delivered to it personally or is sent by post addressed to it at the address for service of notice as specified hereunder and any notice hereunder to be given to Council shall be deemed to have been duly given and served if handed to the Manager as defined in Clause 1.1 hereof, in person or sent by post addressed to The General Manager at Council's Administration Centre, 180 Mort Street, Lithgow. Any notice sent by post shall be deemed to have been given and served on the next business day after the posting thereof, notwithstanding that same may not have been received by the addressee on that day.

The Caretaker's address for service of notices:

Caretaker's Residence  
Lake Lyell Recreation Area  
578 Magpie Hollow Road  
Rydal  
NSW 2790

### 10.2 **Proper Law and Jurisdiction**

This Deed shall be governed by and interpreted in accordance with the laws of the State of New South Wales and the parties hereto submit to the jurisdiction of the Courts of New South Wales to which Courts of appropriate jurisdiction there shall be submitted for determination any dispute, claim or demand arising out of this Agreement or anything done in pursuance or purported pursuance hereof.

### 10.3 **Entire Agreement**

This Deed constitutes the entire agreement between the parties in respect of all matters set forth and no covenant, condition, agreement, arrangement, understanding, warranty, promise or inducement of or for or on behalf of any party to any other or others of them not expressed therein shall affect, change, restrict or modify the operation of such agreement or bind any of the parties hereto, it being the intention and covenant of all parties hereto that this

agreement supersedes all previous discussions, correspondence and writings between them or any of them between their respective legal and other advisors.

**10.4 Costs**

Each party shall pay and bear their own costs in relation to this Deed PROVIDED THAT any stamp duty or other taxes, imposts, or charges payable on or arising from this Deed shall be paid by the Caretaker.

**10.5 Further Assurance**

Each of the parties shall do such acts and things and execute all documents required or reasonably required to give full force and effect to this Deed.

**10.6 Relationship**

Nothing herein contained shall be construed as creating the relationship of employer and employee between the parties hereto.

**10.7 Lake Lyell**

- (a) Council shall provide and maintain in safe and usable condition at all times a boat ramp and pontoon in Lake Lyell Recreation Area as depicted on Annexure "A", to water level at 771 metres AHD.
- (b) The Caretaker is aware that Delta Electricity or its successor may close Lake Lyell Recreation Area for recreational purposes due to water levels being unsafe for recreational use or due to the presence of algal outbreaks. In the event this shall occur, Council shall waive any non-compliance by the Caretaker with the terms and conditions hereof resulting from such occurrence and the Caretaker agrees to make no claim against Council due to resultant loss of income.

**10.8 Amendment**

This Deed may be amended only by written instrument executed by both parties.

**EXECUTED AS A DEED**

Executed on behalf of **Lithgow City Council** (ABN 59 986 092 492) by its authorised officer:

.....  
Signature of authorised person

Name of authorised person: .....  
Office Held: General Manager  
Authority of Officer: S.377 Local Government Act 1993  
Signing on behalf of: Lithgow City Council  
ABN 59 986 092 492

I certify that I am an eligible witness and that the authorised officer of Lithgow City Council signed this Deed in my presence.

Signature of witness: .....

Name of witness: .....

Address of witness: .....

Executed on behalf of **Lake Lyell Recreation Park Pty Ltd** (ACN 162 566 547) by its duly authorised officers whose signatures appear below pursuant to s.127 of the Corporations Act 2001:

.....  
Signature of Authorised Officer

**Stacey Lee Phillips**

.....  
Name of Authorised Officer  
Position held: Director

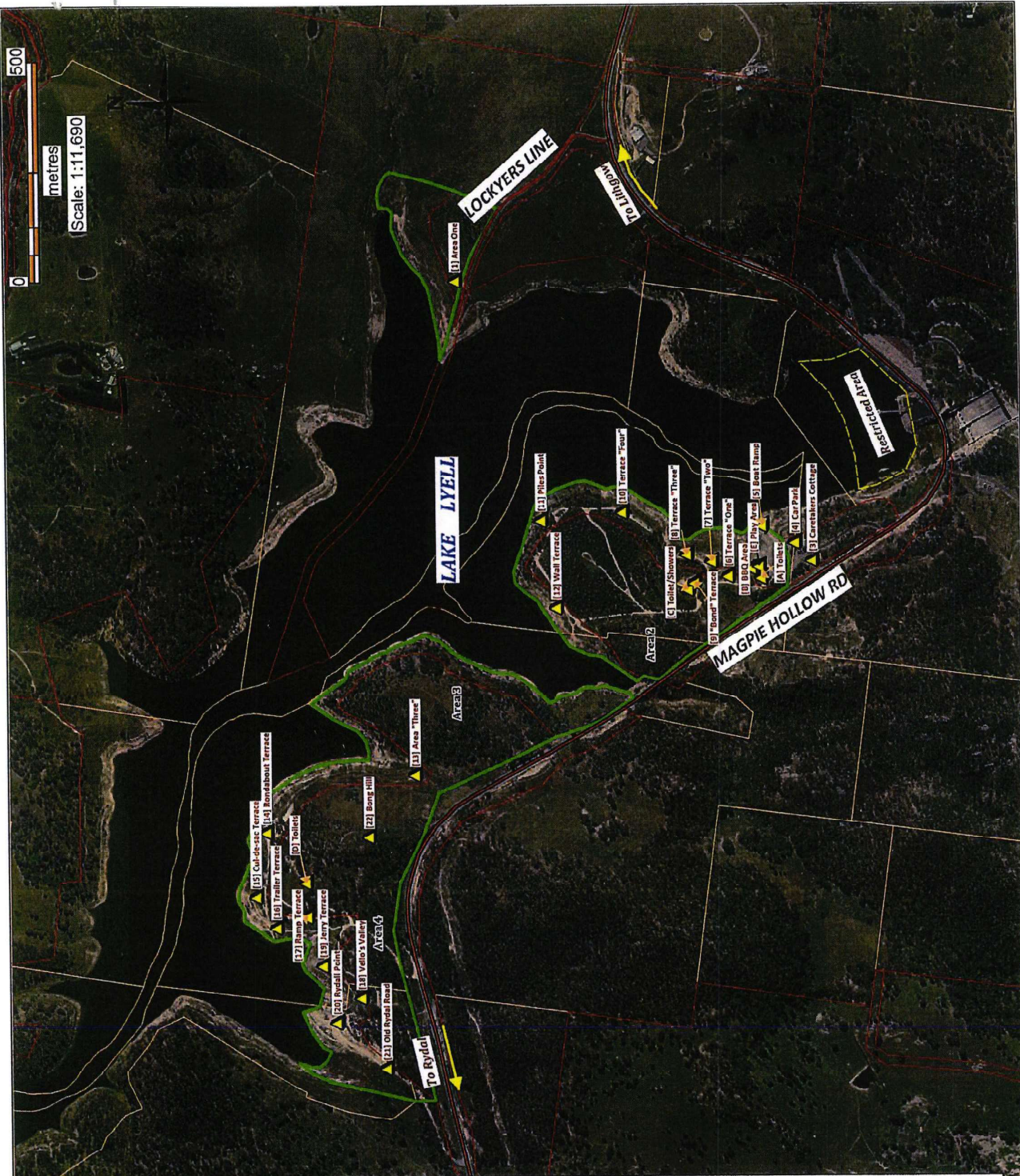
.....  
Signature of Authorised Officer

**Peter William Phillips**

.....  
Name of Authorised Officer  
Position held: Director



"A"



**LEGEND**

- ▲ 1 => Area One
- ▲ 2 => Avenue of Honour - Deleted
- ▲ 3 => Caretakers Cottage
- ▲ 4 => Car Park
- ▲ 5 => Boat Ramp
- ▲ 6 => Terrace "One"
- ▲ 7 => Terrace "Two"
- ▲ 8 => Terrace "Three"
- ▲ 9 => "Bond" Terrace
- ▲ 10 => Terrace "Four"
- ▲ 11 => Piles Point
- ▲ 12 => Wall Terrace
- ▲ 13 => Area "Three"
- ▲ 14 => Rondabout Terrace
- ▲ 15 => Cul-de-sac Terrace
- ▲ 16 => Trailer Terrace
- ▲ 17 => Ramp Terrace
- ▲ 18 => Vello's Valley
- ▲ 19 => Jerry Terrace
- ▲ 20 => Rydal Point
- ▲ 21 => Old Rydal Road
- ▲ 22 => Bong Hill
- ▲ A => Toilets
- ▲ B => BBQ Area
- ▲ C => Toilet/Showers
- ▲ D => Toilets
- ▲ E => Play Area

**Legal Boundaries**

- Property
- Cadastre
- Lake Lyell Leases