Process Agreement

Commonwealth of Australia represented by the Department of Finance and Deregulation
ABN 61 970 632 495

The Minister administering the National Parks and Wildlife Act 1974 (NSW)

The Director General of the NSW Department of Environment, Climate Change and Water

Blake Dawson
Level 11
12 Moore Street
Canberra ACT 2601
Australia
T 61 2 6234 4000
F 61 2 6234 4111

Reference
02-2003 7309
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A PLAN OF ADDITIONAL AREA

B DEED RESERVING RESTRICTION ON USE
Process Agreement

DATE

PARTIES

The Minister Administering The National Parks And Wildlife Act 1974 (NSW) ("the Minister"); and

The Director General of The NSW Department of Environment, Climate Change and Water ("Director General")

Commonwealth of Australia Represented by The Department of Finance ("Commonwealth")

BACKGROUND

A. The Commonwealth, represented by Finance, owns the Property.

B. Pursuant to a Deed of Transfer dated on or about 27 February 2011 the Commonwealth has transferred by way of gift to the Minister a portion of land at Malabar (Lot 4) to be reserved as a National Park under Part 4 of the National Parks and Wildlife Act 1974 (NSW).

C. The Deed of Transfer describes a remediation strategy to be implemented, the principles for determining the location of boundary fencing, and obligation to protect the heritage values of Lot 4.

D. The Commonwealth has offered to undertake a similar process of preparation for transfer of Lot 2 at Malabar.

E. The purpose of this agreement is to record the agreement between the parties as to preparation for transfer and to confirm the expectation of the Minister and the Commonwealth that the processes under this agreement will lead to transfer of Lot 2 to the Minister for reservation of the Land as a National Park under Part 4 of the National Parks and Wildlife Act 1974 (NSW).

OPERATIVE PROVISIONS

1. GENERAL

1.1 Definitions

Approval means any approval, authorisation, permit, licence, consent, clearance, exemption or the like which is required to be issued by or obtained from an Authority or any other person in connection with the Draft Plan of Management.

Authority includes all Commonwealth, State, Territory and local government bodies, instrumentalities, boards, other public authorities and any person who is charged with administration of a Law.

Draft Deposited Plan means the draft deposited plan for the Property, a copy of which is included in Annexure A to the Deed of Transfer for Lot 4.

Draft Plan of Management means the draft Plan of Management to be prepared for the Commonwealth in accordance with the requirements of the EPBC Act while the Property is
in Commonwealth ownership and which will be appropriate to achieve and satisfy the objectives and content of a Plan of Management as required under Section 72AA of the NPW Act.

Environment means all components of the earth, including:

(a) land, air and water;
(b) any layer of the atmosphere;
(c) flora and fauna;
(d) any organic or inorganic matter;
(e) any living organism (including humans);
(f) any human made or modified structure or area;
(g) the aesthetic characteristics of the components of the earth, including appearance, sound, odour, taste and texture; and
(h) natural ecosystems that include any of these components.

EPBC Act means the Environment Protection and Biodiversity Conservation Act 1999 (Cth).

Estate or Interest means the estate or interest described in Item 2 of the Schedule.

Fencing Works means the erection of a fence in accordance with clause 2.

Finance means the Commonwealth of Australia acting through the Department of Finance and Deregulation;

Heritage Assessment means the Final Heritage Assessment dated December 2009 prepared by Environmental Resources Management Australia a copy of which is included in the Disclosure Documents Exhibit to the Deed of Transfer for Lot 4.

Intended Land Use means the reservation of the land as a National Park under the NPW Act.

Lot 2 means Lot 2 in Deposited Plan 809094.

Lot 4 means Lot 4 in Deposited Plan 809094 as consolidated with part of Lot 1 in Deposited Plan 809094, which is shown as Lot 102 on the Draft Deposited Plan.

National Park has the meaning given to that term under the National Parks and Wildlife Act 1974 (NSW).

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

Permitted Use means a purpose for which a National Park may be used, with the primary use being conservation, consistent with the objects and management principles of the NPW Act.

Property means Lot 2 subject to clause 2.2(a).

Remediation Strategy means the Remediation Strategy to be prepared as described in clause 2.2.

Remediation Works means the works to be carried out by Finance in accordance with the Remediation Strategy to remediate the Property.
SEWPac means the Commonwealth of Australia acting through the Department of Sustainability, Environment, Water, Population and Communities.

Site Remediation Verification means a report by the Site Auditor verifying that the Remediation Works have been completed on the Property.

Site Auditor means:

Paul Steinwede  
AECOM  
Level 8, 17 York Street  
Sydney NSW 2000,  
PH: 02 8023 9368  
FAX: (02) 8023 9399

Email: paul.steinwede@aecom.com

Transfer means a gift of the Property from the Commonwealth to the Transferee pursuant to section 148 of the NPW Act and the associated transfer of control and management of and responsibility for the Property.

TSC Act means the Threatened Species Conservation Act 1995 (NSW).

1.2 Interpretation

In this Deed, unless the context indicates a contrary intention:

(a) a reference to:

(i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document or Deed, or a provision of a document or Deed, is to that document, Deed or provision as amended, supplemented, replaced or novated;

(iii) a party to this document or to any other document or Deed includes a permitted substitute or a permitted assign of that party;

(iv) a person includes any type of entity, body of persons or government department or agency, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(v) anything (including a right, obligation or concept) includes each part of it;

(b) a singular word includes the plural, and vice versa;

(c) a word which suggests one gender includes the other genders;

(d) if a word is defined, another part of speech has a corresponding meaning; and

(e) any amount payable under this Deed must be paid in Australian dollars.
2. WORKS

2.1 Fencing Works

(a) It is intended that a condition of Transfer would be that the Commonwealth carry out fencing works to separate the Property from Lot 1 and would complete those fencing works before completion of the transfer.

(b) The Commonwealth and the Director General will consult regularly to determine the location of the proposed fencing works following the principle that the fence will to the extent that is feasible and prudent follow the boundary of the Property. However, the fencing works may deviate from the boundary of the Property where to do so will protect the environmental and heritage values of the Property, in particular the eastern suburbs banksia scrub.

2.2 Remediation Works

The following definitions apply in this document.

(a) The Commonwealth will procure a site contamination assessment and a Remediation Strategy and appoint a Site Auditor to confirm that the Remediation Strategy will be appropriate for the use of the Property as a National Park. There will be excluded from the Property any land that has been used at any time as a tip site, the commitment of the Commonwealth being to remediate only casual contamination occurring as a by-product of past site use.

(b) The intention of the parties is that the completion of the remediation works in accordance with the Remediation Strategy and verified by the Site Auditor will be accepted by the Minister on a transfer of the Property as satisfying the obligation of the Commonwealth to remediate the contamination that is identified in a site contamination assessment.

(c) The Commonwealth will remediate the Property in accordance with the Remediation Strategy before the Transfer of ownership of the Property.

3. HERITAGE

3.1 Heritage Assessment

(a) The Heritage Assessment identifies and validates the Commonwealth Heritage values of Lot 2 for incorporation into a plan of management.

(b) The Commonwealth will commission the preparation of a Draft Plan of Management which will be appropriate to comply with the requirements of the EPBC Act while the Property is in Commonwealth ownership and will be appropriate to achieve and satisfy the objectives and content of a Plan of Management as required under Section 72AA of the NPW Act.

(c) The Commonwealth will consult with the Director General in relation to the draft Plan of Management and take into account the comments of the Director General.

(d) Finance will in accordance with the EPBC Act seek the advice of SEWPaC in relation to the ongoing protection of the Commonwealth Heritage values of the Property.
4. ECOLOGY

4.1 Further Listings

Threatened listed species and communities have been identified under both the EPBC Act and the TSC Act through assessment of the Property. Finance and the Minister will consult to agree on any further listings under the TSC Act that are appropriate to minimise the potential impact of the Transfer on threat listed species and communities.

5. DISCLOSURE

5.1 Disclosure

The Commonwealth discloses, and the Transferee acknowledges the Commonwealth's disclosure, that:

(a) while ever the Commonwealth owns the Property, the Property will be "Commonwealth land" for the purposes of the EPBC Act; and.

(b) the EPBC Act provides, amongst other things, a legal framework for the protection and management of the environment of "Commonwealth land" and, without limiting any other obligation the Transferee may have under the EPBC Act or any other Law (either before or after Completion), the Transferee may need to obtain approval under the EPBC Act for actions or activities it may wish to undertake on the Property while the Property is "Commonwealth Land".

6. REPORTS

6.1 Provision of reports

Finance will promptly provide to the Director General all reports commissioned by Finance in and since 2002 relating to the Property.

7. TRANSFER OF PROPERTY

7.1 Conditions for Transfer

The expectation of the parties is that ownership of the Property will be transferred to the Minister after the completion of the following steps:

(a) preparation of the draft Plan of Management;

(b) preparation of the Remediation Strategy, remediation in accordance with the Remediation Strategy and issue of the Site Remediation Verification by the Site Auditor;

(c) completion of the Fencing Works; and

(d) any approvals necessary to the transfer required under the EPBC Act have been given, or determinations under Division 2 of Part 7 of that Act made, that otherwise controlling sections of the EPBC Act are not controlling provisions.
7.2 **Deed of Transfer**

When the draft Plan of Management, Remediation Strategy, and draft plan of subdivision have been prepared Finance will prepare a draft Deed of Transfer and Deed Reserving Restriction on Use for the transfer of the Property, which is intended to be on similar terms to the Deed of Transfer and Deed Reserving Restriction on Use of Lot 4. The Director General and Finance will consult and attempt to agree the terms of the Deed of Transfer and Deed Reserving Restriction on Use, and, if the Minister and the Commonwealth decide at that time that the transfer will be effected, enter into the Deed of Transfer and Deed Reserving Restriction on Use.
EXECUTED as Deed:

Signed Sealed and Delivered for and on behalf of the Director General of the State of New South Wales Department of Environment, Climate Change and Water in the presence of:

Lisa Corbyn, Director General

Witness (sign)

Witness (name printed)

Lisa Corbyn
(Print Name)

Director General
(Position)

Signed Sealed and Delivered for and on behalf of the Minister administering the National Parks and Wildlife Act, 1974 in the presence of:

Frank Sartor, Minister Administering the National Parks and Wildlife Act, 1974

Witness (sign)

Witness (name printed)

SALLY BARNES
(Name printed)

Signed Sealed and Delivered for and on behalf of THE COMMONWEALTH OF AUSTRALIA REPRESENTED BY THE DEPARTMENT OF FINANCE AND DEREGULATION in the presence of:

Andrew Smith
(Name printed)

Name (Printed): Special Minister of State

ASST SECRETARY

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<table>
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<th>Item 1</th>
<th>Part 251-271 Franklin Street, Malabar, NSW, being Lot 2 in Deposited Plan 809094.</th>
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<td>Lot 2</td>
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<tr>
<td>Instruments of Title (eg certificate of title/ground lease)</td>
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