Deed of Settlement of Trust
Point Nepean Community Trust

Commonwealth of Australia
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Parties

Commonwealth of Australia (Settlor) through the Department of Defence, Infrastructure Division, Property Disposals, BP-2-A034, Canberra, ACT 2600

Simon McKeon of 6 Were Street, Brighton, Victoria (Trustee)

Background

A The Commonwealth is the sole legal and beneficial owner of the Land.

B The Land is a place of significant scenic, historic, cultural and natural value and, as such, is a special environment which should be preserved for the benefit of all Australians.

C The Commonwealth wishes to establish a trust to be known as the Point Nepean Community Trust (the Trust) for the benefit of all Australians to preserve, conserve and protect the Heritage Values and natural environment of the land, to encourage public access to and appropriate use of the Land and to encourage and foster understanding of the local culture and history of the Land.

D The Trustee has agreed to act as Trustee of the Trust Fund and to manage the Land on the terms of this Deed until such time as the Land is transferred by the Commonwealth to the State of Victoria to form part of an Integrated National Park.

Operative provisions

1 The Trust

Trust Fund

1.1 The Settlor hereby declares and agrees that the Trustee shall stand possessed of:

1.1.1 the sum of $5,000,000.00 to be the Trust Fund,

Upon Trust for the Objects set out in clause 2, on the terms and subject always to the powers, reservations and conditions contained in this Deed.

2 Objects of the Trust

2.1 The Objects of the Trust are to protect, conserve, present and manage the Land for the benefit of all Australians consistent with the Land becoming an Integrated National Park whilst providing public access consistent with the preservation, conservation and enjoyment of the Land, and:
2.1.1 to manage the Land for the benefit of the Australian public in accordance with the future vision and key aspects of the Draft Community Master Plan, namely:

- for the Land to become part of an Integrated National Park;
- the exclusion of private residential land use;
- the Land remaining in public ownership;
- the restoration of public access to the site by:
  - managed public access at key points of the coastal areas;
  - provision of public walking trail connections through the site utilising existing tracks and open areas;
  - provision of appropriately located bicycle access and control of motor vehicle and motorised access into and within the Land;
- the conservation of significant habitats by protecting the native vegetation portions of the property in recognition of its flora, fauna and associated regionally significant habitat values;
- the use of the cleared and degraded portions of the Land which is consistent with the future vision of the site and sensitive to the precinct and wider property values;
- the enhancement of vegetation opportunities, to restore the quality of habitat areas degraded through weed infestation;
- the management of the built form through protection of the built Heritage Values of the site, by encouraging the sensitive reuse of existing heritage buildings, removal of non-heritage buildings and sensitive re-use of removed building footprints;
- ensuring the development of any new buildings or structures is sensitive to the character and scale of existing heritage building forms and character of the surrounds; and
- the use of the Land within the context of the Mornington Peninsula Shire’s Sustainability Framework by ensuring future land uses are environmentally, socially and economically sustainable;

2.1.2 to ensure future uses of the Land are environmentally, socially and economically sustainable;

2.1.3 to develop, administer, manage and operate a respite centre on the Land to be made available to the families of children with disabilities, or any other
categories of persons as may be determined by the Trustee from time to time;

2.1.4 to preserve, conserve and maintain the cultural, historical and natural environmental heritage of the Land;

2.1.5 to preserve, conserve and maintain the Heritage Values of the Land;

2.1.6 to preserve, conserve and maintain the environmental features of the Land;

2.1.7 to promote, encourage and support marine and coastal education and research;

2.1.8 to provide access to the Land by the Australian public consistent with the preservation and conservation of the Land to foster and encourage the appreciation and understanding of the cultural and environmental heritage of the Land; and

2.1.9 to foster, promote, encourage and develop the knowledge, understanding, appreciation and enjoyment of and participation in the Indigenous and European culture and history of the Land by the Australian public.

And to these ends:

2.1.10 to identify opportunities for and facilitate appropriate adaptive reuse of the existing heritage buildings, structures and historical sites on the Land by charitable and community groups;

2.1.11 to liaise with community groups, the Mornington Peninsula Shire Council, State and Commonwealth Government representatives, Parks Victoria, the Australian Heritage Council and others to ensure active participation by the community in the Land;

2.1.12 to integrate the use of the Land with the neighbouring Point Nepean National Park, Mornington Peninsula Shire Council park on the Police Point Land and adjacent waters to encourage appropriate community access and use of the Land;

2.1.13 to foster and encourage passive community use of the Land by holding or conducting events and festivals consistent with the preservation of, and respect for, the special qualities of the Land;

2.1.14 to conduct, arrange or promote research into the environment of the Point Nepean region and to make available to the Point Nepean community in particular and the Australian public generally the results of any research;

2.1.15 to preserve, conserve and maintain the heritage buildings, existing structures and historical sites on the Land;

2.1.16 to promote, encourage, foster and develop recognition and awareness of the historical place of the Land in the development of the State of Victoria;
2.1.17 to promote, encourage, foster and develop recognition and awareness of the place of indigenous Australians and their culture in the history of the Land;

2.1.18 to promote, encourage and support the dissemination of information and knowledge about the natural heritage and environment, and the cultural and historical significance of the Land;

2.1.19 to establish and conduct research activities, training programs, courses, conferences, seminars and other educational activities relating to the Land and the surrounding marine environment;

2.1.20 to maintain appropriate parts of the Land as a wildlife refuge to better promote an appreciation and understanding by the Australian public of the Heritage Values and environment of the Land; and

2.1.21 to encourage, promote and foster the use of the Land in any way to further advance the above Objects.

3 Management and Possession of Land

3.1 The Commonwealth grants the Trustee exclusive possession of the Land from the date of commencement of the Trust Deed for the term of the Trust set out in clause 4 to enable the Trustee to manage and control the Land for the Objects of the Trust on the terms and subject always to the reservations and conditions contained in this Deed and in particular those set out in clauses 3.3, 3.5, 3.6, 3.7, 3.8 and 7.

3.2 The interest conferred in clause 3.1 includes the right to:

3.2.1 grant short-term sub-leases, licences or lesser occupancy or access rights over any part or parts of the Land or any improvements on the Land to any person or persons on such terms and subject to such conditions as the Trustee in its discretion sees fit; and

3.2.2 grant sub-leases, licences or lesser occupancy or access rights which are not short term over any part or parts of the Land or any improvements on the Land to any person or persons on such terms and subject to such conditions as the Trustee in its discretion sees fit only with the approval of the Minister, or his delegate under clause 3.18.

3.3 The interests granted in accordance with clause 3.2 must be accompanied by binding obligations on the grantee of the interest to:

(a) hold appropriate insurance;

(b) to indemnify the Trustee and the Commonwealth for any loss damage or claim arising from or connected with the use of the Land, or relevant part of the Land, by the grantee, unless the Minister gives prior approval in writing that such obligations are not required either in a particular case or specified circumstances;
(c) to comply with all laws; and

(d) comply with obligations in the same or similar terms as subclauses 3.18.5, 3.18.6, 3.18.7, 3.18.8 and 3.18.11 and in accordance with the Objects of the Trust as are applicable.

3.4 Nothing in this Deed confers authority on the Trustee to contract for or on behalf of the Commonwealth or to bind, or purport to bind, the Commonwealth in any way whatsoever.  

3.5 The interest conferred on the Trustee by clause 3.1 is only for the purpose of the Trustee furthering the Objects of the Trust stated in clause 2 and the Land must not be used for any other purpose.

3.6 For the purpose of clause 3.2, a sub-lease, licence or lesser occupancy or access right is only taken to be short-term if:

(a) it is for a term (including any provision for extension, continuation or overholding) not exceeding 3 months;

(b) the term of the sub-lease, licence or lesser occupancy or access right granted in combination with the term of any other sub-lease, licence or lesser occupancy or access right, whether of the same or of a different kind, which are or have been held by the grantee of the right, does not exceed 3 months;

(c) it does not permit the carrying out of any works other than those of a minor or inconsequential nature that do not impact the structure or appearance of any building or other improvements on the Land; and

(d) it does not require the Commonwealth to undertake works, pay any moneys or do any other thing.

3.7 If the Land, or part of the Land, is included on the Commonwealth Heritage List under the EPBC Act, the Trustee must no later than 18 months after the Land’s inclusion on the List:

(a) prepare a management plan for the Land addressing the matters prescribed by the Environmental Protection and Biodiversity Conservation Regulations 2000 as amended from time to time;

(b) provide the management plan to the Secretary;

(c) amend the management plan in accordance with any directions of the Secretary;

(d) comply with the management plan as endorsed by the Minister, being the Minister administering the EPBC Act (the Environment Minister) under the EPBC Act;
3.8 If there is any inconsistency between the management plan endorsed by the Environment Minister under the EPBC Act and the Draft Community Master Plan, the management plan prevails to the extent of the inconsistency.

3.9 If the Land, or part of the Land, is included on the National Heritage List under the EPBC Act, the Trustee must as soon as practicable after the Land’s inclusion on the List prepare a management plan as referred to in the EPBC Act. Paragraphs 3.7(a) to 3.7(d) apply in respect of the National Heritage management plan.

3.10 Pending the endorsement by the Environment Minister of any management plan prepared for the purposes of the EPBC Act, the Trustee must comply with the Commonwealth Heritage management principles or the National Heritage management principles, as the case may be;

3.11 The Commonwealth retains the right to enter on the Land from time to time during the term of the Trust to inspect the Land, to confirm that the Trustee is fulfilling its obligations under this Deed and to exercise any rights, powers or discretions it has under this Deed or otherwise.

3.12 The Department of Defence will have responsibility for the Land as a land owner until such time as that responsibility is transferred to the Department of the Environment and Heritage, such transfer requiring the agreement of the Minister for the Environment and Heritage.

3.13 If the responsibility for the Land is transferred from one Department to another, the Secretary whose Department is taking responsibility for the Land will inform the Trustee as soon as practicable.

3.14 The Trustee will at all times comply with all laws.

3.15 The Trustee, during the term of the Trust, will maintain the improvements on the Land in at least their state and condition as at the commencement of the Trust.

3.16 The Trustee, during the term of the Trust, will pay any and all taxes, duties, expenses and outgoings payable in respect of the Land.

3.17 The Trustee must not do or cause to be done anything that voids the Commonwealth’s insurance over the Land.

Approval of Minister

3.18 In making any application to the Minister, or his delegate, for approval to grant any property right in the Land, other than the short-term interests outlined in clause 3.6, the Trustee must satisfy the Minister, or his delegate as applicable, that each of the following criteria are or will be met, and the Minister must not otherwise approve the property right:

3.18.1 that the property right will not impede or will encourage genuine public access to, and community use of, the Land;

3.18.2 that the property right is for the Objects of the Trust;
3.18.3 that the tenant or licensee is appropriate having regard to the Objects of the Trust;

3.18.4 that the permitted use or purpose of the property right is for a respite centre, or is otherwise in accordance with the future vision and key aspects of the Draft Community Master Plan, namely:

- for the Land to become part of an Integrated National Park;
- the exclusion of private residential land use;
- the Land remaining in public ownership;
- the restoration of public access to the site by:
  - managed public access at key points of the coastal areas;
  - provision of public walking trail connections through the site utilising existing tracks and open areas;
  - provision of appropriately located bicycle access and control of motor vehicle and motorised access into and within the Land;
- the conservation of significant habitats by protecting the native vegetation portions of the property in recognition of its flora, fauna and associated regionally significant habitat values;
- the use of the cleared and degraded portions of the Land which is consistent with the future vision of the site and sensitive to the precinct and wider property values;
- the enhancement of vegetation opportunities, to restore the quality of habitat areas degraded through weed infestation;
- the management of the built form through protection of the built Heritage Values of the site, by encouraging the sensitive reuse of existing heritage buildings, removal of non-heritage buildings and sensitive re-use of removed building footprints;
- ensuring the development of any new buildings or structures is sensitive to the character and scale of existing heritage building forms and character of the surrounds; and
- the use of the Land within the context of the Mornington Peninsula Shire’s Sustainability Framework by ensuring future land uses are environmentally, socially and economically sustainable;
3.18.5 that the Trust or tenant or licensee has adequate funding for any necessary capital and ongoing maintenance works required to enable the property right to be enjoyed;

3.18.6 that the property right is in accordance with best practice management in the preservation and protection of the heritage buildings and the natural environment;

3.18.7 that all necessary Commonwealth approvals under relevant laws, including without limitation the EPBC Act and Land Acquisitions Act 1989, are obtained;

3.18.8 that State planning approval through the usual planning process is obtained;

3.18.9 that the State of Victoria, the Commonwealth and the local community are consulted with respect to all aspects of the property right;

3.18.10 that the property right does not exceed 21 years;

3.18.11 that the use proposed is consistent with and not detrimental to the neighbouring Point Nepean National Park and the Police Point Land; and

3.18.12 that the use will not be inconsistent with the Land becoming an Integrated National Park within 5 years.

4 Term of the Trust

4.1 The Trust will commence upon the signing of this Deed and will continue until the earlier of:

4.1.1 five years from the date of this Deed; or

4.1.2 the date the legal ownership in the Land is transferred from the Commonwealth to the State of Victoria as contemplated by clause 10.

5 Existing licence

5.1 The Trustee agrees to take the lease of the Land subject to the existing licence between the Commonwealth and the Nepean Historical Society for the purposes specified in the licence, and to perform the obligations of the Commonwealth under that licence, subject to this clause.

5.2 The Trustee must not terminate the licence unless the Commonwealth has given its prior written consent.

5.3 The termination of the Trust will not affect the validity of any property interest granted in accordance with clause 3 prior to the termination of the Trust.
6 Powers of the Trustee

6.1 Solely for the purpose of carrying out or attaining one or more of the Objects of the Trust, the Trustee shall have the following powers, which are given in addition to, and not in derogation of, all the powers, authorities and discretions vested in trustees by law or equity:

General Powers

6.2 The Trustee shall have all the powers of a natural person including, without limiting the generality of such powers, the power to do any of the following:

6.2.1 to enter into any arrangements or contracts with any governments, corporations, public bodies, associations or persons;

6.2.2 to apply for, obtain and hold licences, rights, permissions or authorities of all kinds;

6.2.3 to apply for and obtain exemptions from any taxes or duties, including applying for and obtaining approval for gifts to the Trust to qualify for deduction against assessable income;

6.2.4 to employ such persons as may be necessary or convenient for the purpose of carrying out or attaining one or more of the Objects of the Trust, including consultants, contractors, managers, solicitors, accountants, clerks, workmen or any other employee, agent or servant to transact all or any business of any nature, and to pay remuneration to such persons;

6.2.5 to buy, sell and deal in goods and provide services of all kinds;

6.2.6 to establish, form, promote, concur or assist in establishing, forming or acquiring any entity, to conduct and carry on such entity, and to liquidate or wind-up any such entity;

6.2.7 to take steps by personal or written appeals, public meetings or otherwise, for the purpose of procuring contributions to the Trust Fund, in the shape of donations, bequests, annual subscriptions, sponsorship, or otherwise, and to raise moneys by appropriate means;

6.2.8 to arrange for, organise, co-operate with and assist persons to obtain contributions of and generally to raise money, funds and all kinds of property;

6.2.9 to print and publish, or commission the printing or publication of any newspapers, periodicals, books, leaflets, articles or other promotional publications or media releases;

6.2.10 to take any such action necessary or desirable for, or incidental to, the adequate protection of the Land or the Trust Funds;

6.2.11 to borrow money but only on the basis of the lender having no security interest over, or recourse against, the Land;
6.2.12 to procure and accept contributions to the Trust Fund, in the shape of donations, bequests, gifts, subscriptions or sponsorship, and generally to raise money, funds and all other kinds of property for any one or more of the Objects;

6.2.13 to delegate the exercise of any or all of the powers conferred by this Deed on the Trustee and to execute any powers of attorney or other instruments necessary to effectuate such delegation;

6.2.14 to appoint as its legal representative any person or other legal entity to exercise any power exercisable by the Trustee on its behalf, and to confer upon such person or entity the authority to execute any document on its behalf that is necessary or expedient to exercise such powers.

Powers relating to the Trust Funds

6.3 The Trustee shall have the power to maintain the Trust Fund for the purpose of providing the income of the Trust to be applied in furtherance of the Objects including the power to do any of the following:

6.3.1 to apply the Trust Funds to the carrying out or attainment of any or all of the Objects;

6.3.2 to pay out of the Trust Fund all costs charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority, obligation or discretion contained in this Deed or in carrying out or performing the management and administration of the Trust;

6.3.3 to pay any and all taxes, duties, expenses and outgoings payable in respect of the Land or the Trust Fund;

6.3.4 to make any payment out of the Trust Fund to any person;

6.3.5 to cause all or any part of the Trust Fund or the property or assets thereof to be held by or registered in the name or names of any other persons or corporations whatsoever and wheresoever resident or situate as nominee and custodian trustee for and on behalf of the Trustee;

6.3.6 to exercise all general powers of investment of the Trust Fund upon such terms and conditions as the Trustee thinks fit including, without limiting the generality of such investment powers, the power to do any of the following:

(a) to pay calls on any shares or to permit any such shares to be forfeited and sold;

(b) to purchase any further shares stock or debentures and to take up any shares stock or debentures of a new issue of any such company;

(c) to hold any shares stock or debentures acquired by the Trustee pursuant to the powers conferred by the Trustee Act 1925 or by this clause for as long as the Trustee thinks fit;
(d) to sell any shares, stock or debentures held by the Trustee at such price as the Trustee thinks fit (whether or not such price is less than the sum that appears from the accounts of the Company to be the value of such shares stock or debentures) and upon such terms with or without security as the Trustee thinks fit;

6.3.7 to open any account or accounts with any bank or banks and to operate by and in all usual ways any such account or accounts; and

6.3.8 to draw, hold, accept, discount or negotiate any bill of exchange, promissory note, documentary credit or other negotiable instrument.

Powers relating to the Land

6.4 Subject to the relevant provisions of the Lands Acquisition Act, the EPBC Act, to all applicable planning and heritage controls and to the terms of this Deed, the Trustee shall have the power to do all things necessary or conducive to protecting, conserving, maintaining, regenerating, and using the Land including, without limiting the generality of such powers, the power to do any of the following:

6.4.1 to improve, repair, enlarge, demolish and reconstruct buildings and other structures existing on the Land at the time of the creation of the Trust;

6.4.2 to create, erect, construct and develop new buildings, fences, walkways, infrastructure and other improvements on the Land;

6.4.3 to occupy, manage, administer and operate within any building on the Land whether existing at the time the Trust is created or coming into existence after the creation of the Trust;

6.4.4 to charge fees for the granting of sub-leases, licences or lesser occupancy or access rights

6.4.5 to manage the collection and application of income received from sub-leases, licences and lesser occupancy rights granted over the Land;

6.4.6 to hold, conduct or permit to be held or conducted events, festivals, concerts, theatrical entertainments and performances of all types, public meetings, exhibitions, function entertainments, and other amusements of all kinds (Group Community Activities) and to charge and collect fees to attend or participate in such Group Community Activities;

6.4.7 to charge fees for entry onto the Land or into any building existing on the Land, and to impose charges in respect of all or any services provided by or on behalf of the Trustee on or in relation to the Land.

6.5 The Settlor intends that the fees and charges referred to in clauses 6.4.4 and 6.4.7 are to be received by the Trustee in as lessee as an augmentation of the Trust Fund. For the avoidance of doubt, those amounts are not received on behalf of the Commonwealth and are not public money for the purposes of the Financial Management and Accountability Act 1997.
7 Restrictions on Powers of Trustees

No sale of Land or grant of security interests

7.1 The Trustee must not directly or indirectly:

7.1.1 sell or otherwise dispose of any part or parts of the Land;

7.1.2 enter into any sub-lease, licence or other access right, except as expressly permitted in this Deed;

7.1.3 assign or transfer, in whole or in part possession of the Land or other rights granted under this Deed to any other person, except as expressly permitted in this Deed, without the prior written permission of the Commonwealth; or

7.1.4 grant any security interest of any type or nature over the Land or the rights granted under this Deed.

No commercial development of the Land

7.2 Subject to clause 7.3, the Trustee must not permit the commercial development of the Land or any part of the Land.

7.3 The prohibition in clause 7.2 will not prevent:

7.3.1 the use of the existing buildings or structures on the Land with or without refurbishment or modification for commercial purposes consistent with the Draft Community Master Plan or ancillary to other uses; or

7.3.2 the construction of new buildings or structures upon the Land by community, charitable or not for profit groups consistent with the Objects; or

7.3.3 use of the land or part of it for commercial purposes consistent with the Objects or ancillary to other permitted uses, for example a restaurant, café or kiosk.

8 Appointment of Trustee

Initial Trustee

8.1 Simon McKeon is appointed as the initial Trustee of the Trust and shall be the sole Trustee of the Trust until such time as the Minister appoints the further Trustees as set out below.

Further Trustees

8.2 The Minister shall, as soon as reasonably practicable after the creation of the Trust, appoint further Trustees in accordance with clause 8.5, who shall, from the time of their appointment, together be the Trustee of the Trust.

8.3 For the avoidance of doubt, the Minister is not required to appoint all the persons referred to in clause 8.5 at the same time.
8.4 All references in this Deed to the Trustee shall mean the Trustees from time to time appointed acting together in accordance with the terms of this Deed.

Appointment of Trustees

8.5 The Trustee shall consist of up to 10 individuals to be appointed by the Minister as follows:

8.5.1 the initial Trustee named in this Deed;

8.5.2 one person nominated by the Federal Department of the Environment and Heritage;

8.5.3 one person nominated by the Australian Heritage Council;

8.5.4 up to two persons nominated by the Community Reference Group;

8.5.5 one person nominated by the Australian Maritime College;

8.5.6 one person nominated by the Victorian Boonerwung Elders Land Council Aboriginal Corporation;

8.5.7 the Chief Executive of Parks Victoria or his or her nominee; and

8.5.8 up to two persons chosen by the Minister at the Minister’s discretion.

8.6 If a person chosen by the Minister under subclause 8.5.8 is a representative of the Department of Defence, that person's appointment ceases on the transfer of the responsibility of the Land from the Department of Defence to the Department of the Environment and Heritage.

8.7 The Minister may decline to appoint any person nominated as a potential Trustee if the Minister is of the opinion that:

8.7.1 the person is not a fit and proper person to be a Trustee;

8.7.2 the person has a conflict of interest that may prevent them from effectively carrying out their obligations as Trustee; or

8.7.3 the person is otherwise inappropriate to act as a Trustee.

8.8 The Minister may require that persons nominated as potential Trustees provide relevant information in a specified form in order to be satisfied as to the matters in clause 8.7.1 prior to the appointment.

8.9 If the Minister declines to appoint a person under clause 8.7 then the Minister may request the affected Department or group nominate an alternative person as Trustee, and if they fail to do so may decline to appoint any person from that category of Trustees.

Appointment of Chairperson

8.10 The initial Trustee named in this Deed shall be the initial Chairperson of the Trustee.
8.11 If the Chairperson retires or resigns as Chairperson, or otherwise ceases to be the Chairperson, the Minister may appoint a replacement Chairperson to the Trustee.

8.12 Successor Chairpersons shall be appointed by the Minister, having regard at least to the following criteria:

8.12.1 experience in board governance; and

8.12.2 experience in high-level dealings with government departments and ministers.

8.13 If the Chairperson is not present at a duly convened meeting of the Trustees then the Trustees there present may elect one of the Trustees present to chair that meeting.

Rules of governance

8.14 The operations of the Trustee will be governed by the Rules of Governance set out in clauses 8.37 to 8.46 inclusive and otherwise as the Trustee resolves from time to time.

Term of appointment

8.15 The term of appointment for Trustees shall be for the term of the Trust unless otherwise specified in the instrument of appointment.

Disqualification of membership

8.16 A Trustee ceases to hold office immediately if any of the following happens:

8.16.1 the person becomes bankrupt;

8.16.2 the person becomes mentally unfit to hold office, or the person or his or her affairs are made subject to any law relating to mental health or incompetence;

8.16.3 the person is convicted of an indictable offence;

8.16.4 the person resigns by giving the Minister written notice;

8.16.5 without the consent of the other Trustees, the person is absent from 3 consecutive meetings of the Trustee.

Minister’s power to remove Trustees and Chairperson

8.17 The Minister may remove any individual Trustee who, in the opinion of the Minister:

8.17.1 wilfully refuses or neglects to comply with the provisions of the Deed; or

8.17.2 is guilty of conduct which is unbecoming of a Trustee or prejudicial to the interests of the Trust.

8.18 The Minister may remove a Chairperson from that position if:

8.18.1 the Chairperson is absent from 3 consecutive meetings of the Trustee without the approval of the other Trustees; or
8.18.2 the Minister is satisfied that the Chairperson is not managing the Trust or the Land in accordance with the provisions of this Deed and with due regard to the obligations of the Commonwealth as owner of the Land, including without limitation in relation to the Minister’s or Department’s obligations under the EPBC Act and Lands Acquisition Act.

Appointment of replacement Trustees

8.19 Subject to clause 8.20, the Minister may appoint a person to replace any Trustee who is removed or otherwise ceases to hold office (‘Retiring Trustee’) at the Minister’s discretion.

8.20 Where the Retiring Trustee is a person who had been nominated by:

8.20.1 the Community Reference Group;
8.20.2 the Australian Maritime College;
8.20.3 the Victorian Boonerwung Elders Land Council Aboriginal Corporation;
8.20.4 Federal Department of the Environment and Heritage;
8.20.5 the Australian Heritage Council; or
8.20.6 the Chief Executive of Parks Victoria,

then that Retiring Trustee should be replaced with another person nominated by the body who nominated the Retiring Trustee.

Trustee not bound to act personally

8.21 The Trustee shall not be bound in any case to act personally but it shall be at full liberty to act as manager, or to employ any consultants, contractors, managers, solicitors, accountants, clerks, workmen, employees or other servants and agents to transact all or any business of whatever nature relating to the management or administration of the Trust and the exercise of Trust Powers.

8.22 The Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such delegation. This delegation may include the rights under clause 3.

Indemnity for exercise of Powers

8.23 Subject to clause 8.24, the Commonwealth indemnifies the Trustee against:

8.23.1 all loss or damage caused by or arising from or in connection with it acting as a Trustee of this Trust and the exercise of any of the Powers (or the failure to exercise any Power); and
8.23.2 all claims, demands, losses, damages, costs and expenses arising from:
(a) anyone or anything entering, leaving or affecting the Land (including any building or other structure situated on the Land); and

(b) anything done by anyone while on the Land (including any building or other structure situated on the Land).

8.24 The indemnity in clause 8.23 shall not extend to any claims, demands, losses, damages, costs or expenses:

8.24.1 arising from or in connection with the exercise of any such Power (or failure to exercise any such Power) that is not in good faith nor for the sole purpose of carrying out or attaining one or more of the Objects;

8.24.2 arising from or in connection with any malicious, fraudulent or illegal act, gross negligence or wilful or reckless disregard of the terms of this Trust by the Trustee;

8.24.3 made against, caused or incurred by the Trustee in a capacity other than as Trustee of this Trust;

8.24.4 which are of an indirect or consequential nature or represent loss of income or profit, unless they are a third party’s losses and are an element of damages payable by the Trustee to that third party;

8.24.5 which have been compromised or settled in breach of clause 8.25; or

8.24.6 which are made against the Trustee, incurred by it or which arise after the sixth anniversary of the expiration or termination of this Deed and unless the Trustee gives the Commonwealth notice in writing of the claim, demand, loss, damage, cost or expense before the end of the sixth calendar month after it is made against the Trustee, incurred by it or to its knowledge arises.

8.25 The Trustee may not settle or compromise any claim made against them which is covered by the indemnity in clause 8.23 without the Commonwealth’s prior consent in writing.

8.26 If requested by the Commonwealth, the Trustee will permit the Commonwealth to defend in the names of the Trustee any action made against them which might be covered by the indemnity in clause 8.23. The Trustee will take all steps necessary to give full effect to any such request made by the Commonwealth.

**Accounts**

8.27 The Trustee shall cause true, complete, and proper accounts of the Trust Fund to be kept and cause such accounts to be audited annually by a qualified accountant from time to time appointed by the Trustee and shall furnish to such accountant such records, vouchers, consent and information as he may require.

**Salary and expenses of Trustees**

8.28 Trustees are not entitled to receive any remuneration for the services provided in their capacity as Trustees.
8.29 Trustees shall be entitled to be reimbursed out of the Trust Fund for all reasonable costs, charges and expenses of or incidental to the administration of the Trust.

Exercise of Powers

8.30 The Trustee may do anything, including the making of decisions and the execution of documents, required or expedient in carrying out or attaining the Objects.

8.31 Subject to those powers the exercise of which requires the approval of the Minister, any power conferred on the Trustee by this Deed or by law or equity may be exercised by a resolution duly passed at a meeting of the Trustee held in accordance with clause 8.37 or assented to by a majority of Trustees signing a minute of the resolution in accordance with clause 8.38.

8.32 The Trustee may appoint any person or other legal entity to act on its behalf as its appointed representative to exercise any Power and confer upon such person or entity the authority to execute any document on behalf of the Trustee necessary or expedient to give effect to such Powers.

Additional obligations of Trustee

8.33 The Trustee acknowledges that the Commonwealth, as owner of the Land, has statutory, common law and accountability obligations in relation to the Land.

8.34 To assist the Minister in ensuring the Commonwealth meets its obligations, the Trustee must provide to the Minister no later than 12 months after the commencement of the Trust, and every 12 months thereafter, reports on the following matters:

8.34.1 the financial status of the Trust Funds, including details as to spending and revenue, both actual and projected, supported by actuarial certification;

8.34.2 how the Trustee is meeting, and proposes to continue to meet, the requirements for preservation of the Heritage Values of the Land.

8.35 If the Minister notifies the Trustee that a report provided under this clause is not sufficiently detailed, in the Minister’s opinion, for the Minister to properly carry out his or her duties and responsibilities, the Trustee must provide a supplementary report as directed by the Minister.

8.36 The Trustee must give the Minister any additional information reasonably requested by the Minister.

Meetings of Trustee

8.37 The Trustees may hold a meeting in person, or by phone, video conference or any other means of communication, provided everyone at the meeting can hear and be heard by one another throughout the meeting. If a meeting is not held in person, each of the following conditions must be met:

8.37.1 Each of Trustees must have received two days notice of the fact that the meeting was to be held, unless resolved otherwise.
8.37.2 Each Trustee who is present must announce, at the beginning of the meeting, that he or she is present.

8.37.3 A Trustee who ceases to be present at the meeting without obtaining the permission of the Chair before the meeting began will be regarded as being present for the whole of the meeting.

8.37.4 The Trustees must agree on a place where the meeting will be said to have been held, and at least one of the Trustees must be at that place throughout the meeting.

If this Rule is not complied with, the Meeting of Trustees is invalid.

Written resolutions

8.38 The Trustees may pass a resolution in writing without holding a meeting if the following conditions are met.

8.38.1 The resolution is set out in a document or documents indicating that a majority of Trustees are in favour of it, even if some Trustees are against it.

8.38.2 All Trustees who are entitled to vote on the resolution sign the document or documents or identical copies of it or them, provided that if a Trustee declines to sign upon being given a reasonable opportunity to do so, of not less than 48 hours, then they will be taken to have signed the document as against the resolution.

The resolution will be treated as having been passed at a committee meeting held on the day and at the time that the last Trustee signs or is taken to have signed under clause 8.38.

Meetings

8.39 Trustee Meetings must be held at least once every two months.

8.40 In addition, either the Chairman or a majority of Trustees may call a meeting at any time.

Notification of meetings

8.41 All Trustees are entitled to receive notice of Meetings of Trustees, except in the case of a Trustee being outside Australia.

Quorum

8.42 Five Trustees must be present before business can be transacted at a Meeting of Trustees.

Voting

8.43 Unless provided otherwise, a question which arises at a Meeting of Trustees may be decided by a majority vote. A decision reached by majority vote is treated as the decision of all Trustees.
Tied votes

8.44 If the votes are evenly divided, the Chair of the meeting does not have a second vote. If a vote is tied, the motion is not passed.

Minutes of Meetings of Trustees

8.45 The Trustees must ensure that the minutes of each meeting record each of the following:

8.45.1 the names of all Trustees who are present;
8.45.2 the Chair of the meeting;
8.45.3 details of the proceedings at the meeting; and
8.45.4 details of any appointment or removal of a Trustee.

Chair must sign minutes

8.46 The minutes of a Meeting of Trustees must be signed by the Chair, either at that meeting or at the following meeting.

9 Transitional provisions

9.1 The Commonwealth has agreed with Mr Chris O'Brien that he may continue to live in and enjoy the use of Building PMQ1037 on the adjoining Police Point Land until 30 June 2004 (transitional period).

9.2 During the transitional period the Commonwealth has agreed to request that Mr O'Brien continue his existing role as caretaker of the Police Point Land and the Land for the benefit of the Council and the Point Nepean Community Trust at no cost to the Council or the Trust.

9.3 The parties acknowledge that during the transitional period and for some time after that the Land may not be open to the public as it may be necessary to carry out works to ensure access by the public is safe and secure and the improvements on the Land are secure and adequately protected from damage.

10 Handover of Land

Transfer of Land to Victoria for Integrated National Park

10.1 It is the intention of the Commonwealth and the Trustee that the Land be transferred to the State of Victoria at no cost not less than three years, but not more than five years, after the date of this deed, provided:

10.1.1 the State of Victoria agrees to accept the Land;
10.1.2 the State of Victoria agrees that the Land will as soon as reasonably practicable after transfer be incorporated into a single Integrated National Park for the whole of the Point Nepean area owned by the State; and
10.1.3 the State of Victoria has a demonstrated capability to manage the heritage assets on the Land.

10.2 The Trustee will throughout the term of the Trust endeavour to liaise with the State of Victoria and its relevant agencies to endeavour to ensure the transfer of the Land to the State of Victoria.

10.3 Two years before the expiration of the Trust, but no later than six months before the expiration, the Trustee must meet to decide whether to recommend to the Minister that the Land be transferred to the State of Victoria.

10.4 For the purpose of clause 10.3, the Trustee may only recommend to the Minister that the Land be transferred to the State of Victoria if the Trustee resolves this at its meeting by Special Majority, having satisfied itself that the conditions in clause 10.1 have been or will be met on transfer.

10.5 In considering whether the State of Victoria has a demonstrated capability to manage the heritage assets on the Land the Trustees may take advice from governmental agencies, such as the Australian Heritage Council or the Heritage Council of Victoria and/or such independent experts as it considers appropriate.

10.6 Any recommendation to the Minister under clause 10.4 shall be accompanied by such information as is reasonably required to satisfy the Minister that the conditions in clause 10.1 have been or will be met on transfer.

**Minister to act on recommendation**

10.7 The Minister will consider any recommendation by the Trustee under clause 10.3 and if recommended by a Special Majority of Trustees and the Minister is satisfied that the conditions in clause 10.1 have been or will be met on transfer, the Minister will proceed with the transfer of the Land to the State of Victoria as soon as reasonably practical after the receipt of the recommendation.

10.8 Notwithstanding clause 4.1, once the Minister has received a recommendation to transfer the Land to the Trust under clause 10.3 by a Special Majority of Trustees and the Minister is satisfied that the conditions in clause 10.1 have been or will be met on transfer, the Trust will continue until the date that the legal ownership of the Land is actually transferred to the State of Victoria.

11 **If Trust wound up**

11.1 Upon the Trust being wound up, its assets shall be:

11.1.1 applied exclusively for the public charitable purposes of providing money, property or benefits for the Objects set out in clause 2; or

11.1.2 distributed to one or more Charitable funds, authorities or institutions to apply the assets exclusively for the public charitable purposes of providing money, property or benefits for the Objects set out in clause 2.

11.2 For the avoidance of doubt, the Land is not an asset of the Trust.
12 Trustee may vary Deed

12.1 It shall be lawful for the Trustee, having resolved to do so by Special Resolution, with the Settlor’s prior written consent at any time or times by deed or deeds:

12.1.1 to vary or extend the provisions of this Deed and generally to declare new or further trusts affecting the Trust Fund or the Land to further the Objects Provided That no alteration shall be made which would cause the Trust to cease to be a charity according to the laws in force in the State of Victoria and Provided Further That the Trustee shall be expressly empowered to modify or vary the trusts and powers hereby declared if and insofar as the same may be required for the purpose of obtaining exemption for the income of the Trust Fund pursuant to and in accordance with Subdivision 50B of the Income Tax Assessment Act 1997 as amended from time to time or of any Act repealing or replacing the same;

12.1.2 if at any time after the creation of the Trust it shall appear to the Trustee that either by reason of change in the law affecting the administration of charities or trusts or of changes in social or political conditions or by reason of any defect or omission in the provisions of this Deed or for the more effectual execution of the Objects, the Trustee should possess or be invested with any further or other administrative powers which the Trustee does not or may not possess it shall be lawful for the Trustee by deed or deeds to supplement or alter or amend the provisions of this Deed to such an extent (but to such an extent only) as may in their opinion by requisite for the purpose of conferring on the Trustee such further or other administrative powers;

12.1.3 if it is considered necessary to do so, to vary the Deed to enable the Trust to become an organisation capable of being endorsed as a tax deductible gift recipient or income tax exempt under the Income Tax Assessment Act 1997;

12.1.4 to terminate the Trust and to pay or apply the whole of the property of the Trust and Trust Fund then remaining to or for the benefit of any of the Objects.

13 Severability

13.1 If any provision of this Deed shall:

13.1.1 be held by a court to be contrary to or inconsistent with the provisions of a charitable trust;

13.1.2 be invalid and not enforceable in accordance with its terms;

13.1.3 be contrary to any exemption granted to the Trust under the Income Tax Assessment Act, 1997 as amended,
Then such provision shall be deemed to be deleted from this Deed and all other provisions which are self-sustaining and capable of separate enforcement without regard to such provisions, shall be and continue to be valid and enforceable in accordance with their terms.

14 Governing Law

14.1 This Trust is established under the laws of the State of Victoria and the rights and liabilities of all parties and the construction and effect of the provisions hereof shall be subject to the exclusive jurisdiction of and construed and regulated only according to the laws in force in the said State which shall be the forum for the administration hereof.

15 Breach by Trustee

15.1 If the Trustee breaches an obligation under this Deed, the Commonwealth may give the Trustee a notice that the Trustee is in breach and require the Trustee to correct it within a reasonable time specified in the notice. If the Trustee fails to do so, the Commonwealth may do any one or more of the following:

15.1.1 do anything lawful that the Commonwealth believes is necessary or desirable to correct it;

15.1.2 enforce the terms of this Deed in any Court of competent jurisdiction; or

15.1.3 remove the Trustees or any of them as Trustee of the Trust and appoint a new Trustee to act in its place.

15.2 This clause does not limit any other rights of the Commonwealth.

16 Definitions and Interpretation

Definitions

16.1 In this Deed unless the context indicates a contrary intention, the following words and expressions shall have the meanings set opposite them below (and cognate expressions shall have corresponding meanings):

Charitable or any reference to a charitable company, institution, trust or body of the type is a reference to one whose purposes are charitable:

• within the legal meaning of the word "charitable";

• which has been endorsed as such by the Commissioner of Taxation; and

• within the Objects defined in clause 2 of this Deed.

Commonwealth means the Commonwealth of Australia which is also the Settlor of this trust.
Community Reference Group means the group of people consulted by the Department of Defence to formulate the Draft Community Master Plan that are named as such in that plan.


EPBC Act means the Environmental Protection and Biodiversity Conservation Act 1999 as amended from time to time.

Heritage Values means:

- the heritage value of a place that includes the place’s natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians;

- if the Land, or part of the Land, is entered on the Register of the National Estate, the national estate values for the Land or part of the Land;

- if the Land, or part of the Land, is included on the Commonwealth Heritage List, the Commonwealth Heritage values for the Land or part of the Land; or

- if the Land, or part of the Land, is included on the National Heritage List, the National Heritage values for the Land or part of the Land.

Words used in this definition have the same meaning as used in the EPBC Act and regulations made under that Act as amended from time to time.

Integrated National Park means one National Park comprising the existing Mornington Peninsula National Park and the Land, together with any other land owned by the State of Victoria which was previously owned by the Commonwealth and has been transferred to the State of Victoria in the Point Nepean area for use as a National Park under Victorian legislation.

Land means that part of the land described as Lot 2 on Transfer Plan No. TP 839163E which is North of Defence Road, other than the area designated ‘Cliff Area’ on the copy of the Transfer Plan attached to this Deed, consisting of approximately 90 hectares and all accretions thereto, and includes without limiting the generality thereof, fixtures, improvements of all kinds, and all aspects of natural and cultural material on, in or forming part of the Land.

Minister means:

- a Minister in the Defence portfolio whilst the Department of Defence retains responsibility for the Land; or

- if responsibility for the Land is transferred to the Commonwealth Department of the Environment and Heritage, the Minister for Environment and Heritage,
as appointed from time to time, or any other Minister or Australian Public Service official authorised in writing by the relevant Minister to exercise the Minister’s powers under this Deed, subject to compliance with applicable laws.

**Police Point Land** means the land described as Lot 1 on Transfer Plan No. TP 839163E.

**Secretary** means the Secretary of the Department which has responsibility for the Land or an official authorised by the Secretary to perform his or her powers and functions under this Deed.

**Special Majority** means a total of 75% or more of the individual Trustees by number voting in favour of a decision.

**Special Resolution** means a resolution of the Trustee passed by a Special Majority.

**Trust** means the trust or trusts established pursuant to clause 1, and shall be known as the ‘Point Nepean Community Trust’.

**Trustee** means the Trustees from time to time of this Trust acting together unless the context otherwise requires.

**Trust Fund** means the sum of Five million Dollars ($5,000,000.00) paid by the Settlor to the Trustee and all such further moneys or other property which may be hereinafter accepted by the Trustees from any person, institution or body, as contributions to the Trust Fund, the income of the Trust Fund for the time being and the investment and property of every description representing the same.

**Interpretation**

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

- words denoting the singular number shall include the plural and vice versa;
- words denoting individuals shall include corporations and vice versa;
- headings are for convenience only and shall not affect interpretation;
- references to clauses are references to clauses of this instrument;
- references to this Deed, any deed, agreement or instrument shall be deemed to include references to this Deed, such deed, agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
- references to any party to this Deed shall include its successors or permitted assigns;
- words denoting any gender shall include all genders; and
reference to any legislation or to any section or provision shall include any statutory modification or re-enactment thereof or any statutory provision substituted for it and ordinances, by-laws, regulations and other statutory instruments issued under it.
Execution and date

Executed as a deed.

Date: 10 June 2004

Executed for and on behalf of the Commonwealth of Australia by The Honourable Fran Bailey MP Parliamentary Secretary to the Minister for Defence in the presence of:

[Signature]
Name of witness

[Signature]
Signature of witness

Signed sealed and delivered by Simon McKeon in the presence of:

[Signature]
Name of witness

[Signature]
Signature of witness
LOCATION OF LAND
PARISH: NEPEAN
CROWN ALLOTMENT: 15%, (PART)
LTO BASE RECORD: VICMAP DIGITAL PROPERTY
LAST PLAN REFERENCE: PS 435239 M, S-11192,
SURVEY BY AUSLIG IN SUPPORT OF
TRANSFER N716899 S
TITLE REFERENCE: VOL 5758 FOL 1151598
DEPTH LIMITATION: 45.72m

Easement Information

<table>
<thead>
<tr>
<th>Easement Reference</th>
<th>Purpose / Authority</th>
<th>Width (Metres)</th>
<th>Origin</th>
<th>Land benefited / in favour of</th>
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<tbody>
<tr>
<td>E-1</td>
<td>CARRIAGEWAY DRAINAGE SEWERAGE SUPPLY OF ELECTRICITY WATER SUPPLY SUPPLY OF GAS COMMUNICATIONS</td>
<td>20</td>
<td>LOT 2 ON THIS PLAN</td>
<td></td>
</tr>
</tbody>
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Legend: A - Appurtenant E: Encumbering Easement R: Encumbering Easement (Road)

PORT PHILLIP BAY

PT. 2
293.0ha
TOTAL AREA - 2 PARTS BY DEDUCTION FROM TITLE

SEE SHEETS 2, 3 AND 4 FOR ENLARGEMENT AND FURTHER DETAIL

BASS STRAIT

LICENSED SURVEYOR
TIMOTHY J. BARD
SIGNATURE
DATE 26/03/2004

SCALE
1:15000
SHEET SIZE
A3

Sheet 1 of 4 sheets
Enlargement Plan of Cliff Area

Cliff Area is all area between High Water mark and Top of Bank