

Twofold Bay Indigenous Land Use Agreement (Area Agreement)

between

s47G

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and

s47G

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and

Minister for Land and Water Conservation

and

Commonwealth of Australia

and

Waterways Authority

and

s47G

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BETWEEN: s47G [REDACTED]

AND: s47G [REDACTED] s22 [REDACTED]

AND: John Joseph Aquilina
~~Richard Sanderson Amery~~, Minister for Land and Water Conservation of the State of New South Wales for and on behalf of the State of New South Wales and in both his capacities as State Minister for New South Wales under the *Native Title Act 1993* (Cth) and the Minister administering the *Crown Lands Act 1989* (NSW) ("Minister") s22 [REDACTED]

AND: Commonwealth of Australia ("Commonwealth")

AND: Waterways Authority constituted by the *Ports Corporatisation and Waterways Management Act 1995* (NSW) (ABN 21 220 712 305) ("WA")

AND: s47G [REDACTED]

Background

- A. The Commonwealth wishes to construct and operate a multi-purpose wharf and jetty in Twofold Bay on the far south coast of New South Wales. It also seeks to construct a storage facility for certain munitions within close proximity to the proposed wharf and ensure that appropriate transport facilities are available between the wharf and the storage facility.
- B. The WA wishes to construct and operate a commercial storage facility in close proximity to the proposed wharf.
- C. The s47G [REDACTED] wishes to construct and operate an aquaculture facility in the waters and adjacent lands of Twofold Bay. The land based component of the aquaculture facility will be constructed and operated on the lands known as Fisheries Beach and the water based component of such facility in the waters of Twofold Bay from or in close proximity to the proposed wharf and jetty.
- D. s47G [REDACTED] assert that they hold native title to all the land and waters that are proposed to be the subject of this agreement apart from any in which native title has been extinguished.
- E. s47G [REDACTED] agree to the Project and the aquaculture facility proceeding subject to the terms of this Agreement.
- F. The parties intend that this agreement be an Indigenous Land Use Agreement (Area Agreement) under Subdivision C of Division 3 of Part 2 of the *Native Title Act 1993* (Cth) and that the agreement be registered on the Register of Indigenous Land Use Agreements under Part 8A of that Act.

Operative Part

1. Definitions & Interpretations

1.1 Definitions

In this Agreement, the following terms have the following meanings:

“Act” has the same meaning as in Section 226 of the NTA:

“Aquaculture Facility” means the construction, maintenance and use of buildings, plant and equipment on the lands referred to as Fisheries Beach and adjacent waters of Twofold Bay for the purpose of spawning of marine species and/or maturation in hatcheries and nurseries.

“Armaments Explosives Area” means the area within the Purple Arc around the Armaments Storage Area.

“Armaments Storage Area” means the area hatched in black within the Purple Arc in figure 3(ii) of the Plans.

“Commercial Storage Area” means the area bounded by a line beginning at the point with co-ordinates A, then running through the points with co-ordinates B to H consecutively and then back to A as shown in figure 3(iv) of the Plans.

“Cultural Heritage Management Plan” means the Cultural Heritage Management Plan set out in Schedule 2 of this Agreement.

“Draft Environmental Impact Statement” means the report prepared by Woodward-Clyde dated November 1999 for the Department of Defence and Waterways Authority titled “Twofold Bay Multi-Purpose Wharf and Naval Munitions Storage Facility”.

“Edrom Road” means the current formed and sealed road owned by the State and managed by State Forests between Princes Highway and the Jetty Access Road along the route indicated on the Plans.

“Environmental Assessment Report” means the report dated May 2000 by Environment Australia titled “Proposed Multi-Purpose Wharf and Naval Ammunitioning Facility at Twofold Bay, NSW”.

“Fisheries Beach” means the parcel of land of about 206 hectares identified under the heading “Fisheries Beach area: Part East Boyd State Forest No 127” in item (4) of Part 1.1 of Schedule 6 of the *Forestry and National Park Estate Act 1998* (NSW) and described in that item.

“Future Act” has the same meaning as in the NTA.

“Green Arc” means the relevant lines indicated as such around, respectively, the Wharf & Jetty and the Armaments Storage Area shown on figures 3(i) and 3(ii) of the Plans.

"Jetty Access Road" means the access road to be constructed in the approximate location shown hatched in black as area C in figure 3(i) of the Plans but the route of which road and its attendant Road Corridor may vary due to geographic considerations but which will link the Wharf & Jetty with Edrom Road.

"LAA" means the *Lands Acquisition Act 1989* (Cth).

"LA(JTC)Act" means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

"Minister for Transport" means the Minister for the time being administering the *Ports Corporatisation and Waterways Management Act 1995* (NSW).

"Native Title" and **"Native Title Rights and Interests"** have the same meaning as in the NTA.

"North Atlantic Treaty Organisation's Explosives Restrictions" means the North Atlantic Treaty Organisation's Treaty Organisation Restrictions as detailed in the Defence Operations Manual 3 – Safety Principles for the Handling of Explosive Ordnance (July 2000) including restrictions of the type set out in the booklet titled "Safeguarding Maps For Explosives Facilities (Public Information Brochure)" and is Defence Reference Book No. 42, a copy of which is included in Schedule 4.

"NTA" means the *Native Title Act 1993* (Cth).

"Plans" means the plans annexed in Schedule 1.

"Project" means the construction, maintenance and use of the Wharf and Jetty, Roads, Commercial Storage Area and Armaments Storage Area in the region of Twofold Bay, more particularly described in the Draft Environmental Impact Statement and including Wharf Option A, Jetty Option B, Access Road Option B and the Hut Road Depot Site.

"Project Area" means the areas within the Twofold Bay/East Boyd region described in Schedule 1 that are affected by the Project.

"Purple Arc" means the relevant lines indicated as such on figures 3(i) and 3(ii) of the Plans around, respectively, the Wharf & Jetty and the Armaments Storage Area.

"Register of Indigenous Land Use Agreements" has the same meaning as in the NTA;

"Register", "registered" or "registration" in relation to the act of registering this Agreement in the Register of Indigenous Land Use Agreements means both the entry of details of the Agreement by the Native Title Registrar in the Register of Indigenous Land Use Agreements and the act of the Registrar notifying such entry in accordance with section 199B of the NTA.

"Restrictions On Use" means appropriate restrictions on use (as deemed appropriate by the Commonwealth) within the relevant coloured arcs and which generally are intended to follow the appropriate North Atlantic Treaty Organisation's Explosives Restrictions, including without limitation:

- a) any directions given under the *Explosives Areas Regulations* (Cth) by the area manager for the Armaments Explosives Area or the Wharf Explosives Area; or

- b) any restrictions imposed by the *Explosives Areas Regulations* (Cth) in relation to the Armaments Explosives Area or the Wharf Explosives Area; or
- c) any restrictions imposed by order under regulation 54 of the *Explosives Areas Regulations* (Cth) in relation to the Armaments Explosives Area or the Wharf Explosives Area.

"Roads" means the network of roads and tracks involved (directly or indirectly) in the Project including without limitation the Jetty Access Road, Edrom Road and the South Access Road.

"Road Corridor" means a corridor for construction, firebreak, maintenance and drainage around any of the Roads.

"South Access Road" means an access road for State Forests to be constructed as a replacement for an existing access road in the vicinity of the Armaments Explosives Area/Armaments Storage Area. The South Access Road is to be located in the area shown hatched in black between co-ordinates C & D and marked as Hut Link Road in figure 3 (ii) of the Plans.

"State" means the State of New South Wales.

"State Forests" means the Forestry Commission of New South Wales constituted under the *Forestry Act 1916* (NSW).

"Temporary Construction Area" means any temporary construction areas, storage areas or similar areas located within the Project Area which is connected directly or indirectly with the Project.

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"Turning Basin" means the ship turning area indicated as Turning Basin in figure 3(i) of the Plans.

"Wharf Explosives Area" means the area within the Purple Arc around the Wharf & Jetty.

"Wharf & Jetty" means the wharf and jetty indicated as the proposed Wharf & Jetty in figure 3(i) of the Plans.

"Wharf & Jetty Perimeter" means the curtilage around the Wharf & Jetty being required for such matters as access, maintenance and dredging being the areas A & B hatched in black in figure 3(i) of the Plans.

"Yellow Arc" means the relevant lines indicated as such on figures 3(i) and 3(ii) of the Plans around, respectively, the Wharf & Jetty and the Armaments Storage Area.

1.2 Interpretation

A reference to this Agreement includes the background and any schedules to this Agreement and where amended means this Agreement as so amended.

1.3 Joint and several

Any agreement, warranty, representation or obligation which binds or benefits two or more persons under this Agreement binds or benefits those persons jointly and severally.

1.4 Successors and assigns

A person includes the trustee, executor, administrator, successor in title and permitted assign of that person.

1.5 Headings and table of contents

Headings and any table of contents must be ignored in the interpretation of this Agreement.

1.6 References to and calculations of time

1.6.1 Unless the context otherwise requires a reference to a time of day means that time of day in New South Wales.

1.6.2 For the purposes of determining the length of a period (but not its commencement) a reference to:

- (a) a day means a period of time commencing at midnight and ending 24 hours later; and
- (b) a month means a calendar month.

1.6.3 Where a period of time is specified and dates from a given day or the day of an act or event the period must be calculated exclusive of that day.

1.7 Areas

The parties acknowledge that areas indicated within the outer boundaries of the Plans may vary slightly when the relevant facilities are built due to geographic and construction practicalities and accordingly all consents are given for the as built facilities.

1.8 Commencement

This Agreement takes effect upon its execution by all of the parties.

2. Consent to Acts for the Project

2.1 For the avoidance of doubt:-

- (a) a reference in this clause 2 to either "all interests in the land" or "all the interests in land" includes a reference to any native title in the land;
- (b) the non-extinguishment principle set out in Section 238 of the NTA applies to all Future Acts to which the parties consent under this Agreement.

- 2.2 s47G consents to the doing of any Acts that are required for the Project other than compulsory acquisition by the Minister for Transport on behalf of the WA of all interests in the land required for the Commercial Storage Area.
- 2.3 For the purpose of section 24EB of the NTA the parties consent to the following for the purposes of or incidental to the Project:
- 2.3.1 Any Future Acts that are necessary or convenient for the construction, maintenance and use of the Wharf & Jetty including the compulsory acquisition by:-
- a) the Minister for Transport on behalf of the WA in accordance with the LA(JTC)Act; or
 - b) the Commonwealth in accordance with the LAA,
- of all interests in the land required for the Wharf & Jetty.
- 2.3.2 Any Future Acts that are necessary or convenient for the purpose of repair or reconstruction works on or in relation to the Wharf & Jetty and for dredging of the Wharf & Jetty Perimeter and of the Turning Basin including the grant of an easement over or the compulsory acquisition of all the interests in land in the Wharf & Jetty Perimeter by:-
- a) the Minister for Transport on behalf of the WA in accordance with the LA(JTC)Act; or
 - b) the Commonwealth in accordance with the LAA.
- 2.3.3 Any Future Acts necessary or convenient for the imposition of Restrictions On Use of the land and waters within the Wharf Explosives Area including a declaration that the Wharf Explosives Area is a Commonwealth explosives area within the meaning of Part III of the *Explosives Act 1961* (Cth) or under the *Explosives Areas Regulations* or any similar legislation or process.
- 2.3.4 Compulsory acquisition by:-
- a) the Minister for Transport on behalf of the WA in accordance with the LA(JTC)Act; or
 - b) the Commonwealth in accordance with the LAA,
- of all interests in the land required for the construction and use of any Road within any Road Corridor.
- 2.3.5 Compulsory acquisition by the Commonwealth in accordance with the LAA of all the interests in land in the Armaments Storage Area and all Future Acts required to enable the construction, maintenance and use of the Armaments Storage Area as a munitions storage facility.
- 2.3.6 Any Future Acts necessary or convenient for the imposition of Restrictions On Use of the land within the Armaments Explosives Area including a declaration that the Armaments Explosives Area is a Commonwealth explosives area within the meaning of Part III of the *Explosives Act 1961* (Cth) or under the *Explosives Area Regulations* or any similar legislation or process.

2.3.7. All relevant acts relating to the Project (other than compulsory acquisition by the Minister for Transport on behalf of the WA of all interests in the land required for the Commercial Storage Area) including without limitation (and whether or not consents are required or otherwise):

- construction of the Wharf & Jetty;
- dredging for the Wharf & Jetty Perimeter and Turning Basin;
- grant of licences by the Minister for Land and Water Conservation under the *Crown Lands Act 1989* or by WA under the *Ports Corporatisation and Waterways Management Act 1995* (NSW) for construction and use of the Wharf & Jetty, Wharf and Jetty Perimeter and Turning Basin;
- grant of a licence, right of way and/or an easement from State Forests or WA for the use and construction of any Temporary Construction Area, the Jetty Access Road, Edrom Road and the Commercial Storage Area;
- grant of a lease of the Wharf & Jetty on terms acceptable to the Commonwealth including all necessary access rights and services for the Wharf & Jetty (including without limitation over the Jetty Access Road and Edrom Road);
- surveys of all relevant areas and registration of appropriate deposited plans;
- grant of sub-leases, licences and operations agreements for the Wharf & Jetty;
- any change in status in the Roads (including, without limitation, any dedication of any part as a public road) including the dedication of Edrom Road under the *Roads Act 1993* (NSW) as a public road;
- grant of any occupation permits for construction or upgrading of any part of the Roads;
- construction, the grant of licences and use of any of the Roads;
- relevant pre-acquisition declarations for the acquisition of interests in land by an acquiring authority of the State or the Commonwealth for the purpose of the Project;
- the construction by State Forests of the South Access Road.

2.3.8 For the purposes of or incidental to the Project:

- (a) the Minister for Transport on behalf of the WA, may compulsorily acquire all interests, including any native title, in the land required for the Commercial Storage Area; and
- (b) to the extent that the compulsory acquisition is a Future Act, the Minister for Transport will effect the acquisition under coverage of section 24MD of the NTA and not as a future act that the parties consent to under this Agreement; and
- (c) the parties do not object to the Minister for Transport effecting the compulsory acquisition in this manner.

2.3.9 It is intended that the Minister for Transport will do the Future Acts set out in clauses 2.3.1, 2.3.2 and 2.3.4. If the Minister for Transport does not do them, it is intended that the Commonwealth will do them.

3. Consent to Acts for Aquaculture Facility

3.1 For the purposes of Section 24EB of the NTA the s47G consents to the following for the purposes of or incidental to construction, use and maintenance of the Aquaculture Facility:-

3.1.1 Any Future Acts that are necessary or convenient for the construction use and maintenance of the Aquaculture Facility.

3.1.2 All relevant acts relating to the Aquaculture Facility without limitation (and whether or not consents are required or otherwise), including:

- a) construction of buildings, plant and equipment;
- b) grant of licences or permits from the NSW Minister for Fisheries under the *Fisheries Management Act 1994* (NSW) for the operation of the Aquaculture Facility;
- c) grant of development approvals from relevant planning authorities;
- d) entering into agreements, the grant of licences or subleases from or with any of the parties relating to the use of or occupation in or upon plant, equipment, roads, jetty, wharf, storage areas or lands or waters subject to Restrictions on Use, for the purposes of the construction, use and maintenance of the Aquaculture Facility.

4. Management of Resources

4.1 s47G authorises the s47G to protect, manage, take or use for domestic or commercial purposes such of the marine resources as:

4.1.1 may, from time to time, exist in the waters of Twofold Bay the subject of this Agreement; and

4.1.2 are the subject of an assertion of native title rights and interests by the s47G s47G

4.2 The authority in clause 4.1 is given for the term of the agreement commencing from the date of registration of this Agreement on the Register of Indigenous Land Use Agreements but may be terminated by the s47G on twelve months notice at any time after the expiration of fifteen years from the date of registration of this Agreement on the Register of Indigenous Land Use Agreements.

4.3 The authority in clause 4.1 is given for the benefit of all persons from time to time in the s47G and all persons who are members from time to time of the s47G

5. Authority

5.1

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5.1.1 they are members of s47G

5.1.2 they are authorised by s47G to enter into this Agreement on behalf of themselves and s47G in accordance with the provisions of section 251A of the NTA;

5.1.3 in their opinion s47G are the only persons who hold or who may hold native title in relation to the Project Area or any other relevant area referred to in this Agreement; and

5.1.4 where in this Agreement they purport to bind s47G to act or to refrain from acting in a particular manner they do so:

- a) pursuant to the authority referred to in clause 5.1.2; and
- b) so as to bind s47G collectively to act or to refrain from acting in that manner.

6. Compensation

6.1 Acts done by the Commonwealth

6.1.1 The parties agree that if there is an approved Determination by the Federal Court that native title exists in any part of the Project Area, any of the members of s47G s47G who have been determined to hold that native title shall be entitled to compensation from the Commonwealth for the loss, diminution, impairment or other effect on that native title of any thing done that is attributable to the Commonwealth and consented to by s47G under this Agreement, to the extent that it is a Future Act.

6.1.2 The parties agree that where any member of s47G is entitled under clause 6.1.1 to compensation in relation to any act, thing, or matter done that is attributable to the Commonwealth, the Commonwealth and the relevant members of s47G shall negotiate with a view to reaching agreement about the amount of the compensation. In these negotiations, the Commonwealth and the relevant members of s47G shall apply the principles set out in Division 5 of Part 2 of the NTA (including that compensation is only payable once for acts that are essentially the same). If the parties are unable to come to an agreement in relation to the amount of compensation, the amount is to be determined by the Federal Court (or another court of competent jurisdiction at the option of those claiming compensation) applying those principles.

6.2 Acts done by the State

6.2.1 This clause applies if:-

- (a) there is an approved Determination of Native Title that native title exists in any part of the Project Area or existed in any part of the Project Area at the date this Agreement is made; and
- (b) s47G hold the native title, or held the native title at the date this Agreement is made; and
- (c) there is any loss, diminution, impairment or other effect on that native title by anything done under this Agreement that is a Future Act attributable to the State; and
- (d) the Future Act was consented to by s47G under this Agreement; and
- (e) s47G are entitled under any law to compensation from the State for the loss, diminution, impairment or other effect on the native title.

6.2.2 The parties agree that the State and s47G shall negotiate with a view to reaching agreement about the compensation to be made by the State.

6.2.3 In these negotiations the State and s47G shall apply the principles set out in Division 5 of Part 2 of the NTA or, as the case may require, shall apply the principles set out in Part 4 of the LA(JTC)Act.

6.3 Clauses 6.1 and 6.2 above constitute "compensation provided for in the agreement" pursuant to Section 24EB(5) of the NTA.

7. Employment and Training Opportunities

The Commonwealth agrees to work with s47G including through the Liaison Committee as set out in Schedule 3 to examine opportunities for local Aboriginal People to participate in the Project especially by way of direct employment and related training programmes.

8. Cultural Heritage Management Plan

The parties agree to implement the Cultural Heritage Management Plan set out in Schedule 2 of this Agreement.

9. Liaison Committee

There shall be a liaison committee as set out in Schedule 3 of this Agreement.

10. Right to Negotiate Provisions do not Apply – Statement Pursuant to s.24EB(1)(c) of the NTA

The “right to negotiate” provisions in Subdivision P of Division 3 of Part 2 of the NTA are not intended to and do not apply to any of the Future Acts referred to in this Agreement to which they otherwise would apply.

11. Dispute Resolution

- 11.1 This clause 11 does not apply to the Cultural Heritage Management Plan set out at clause 8 and Schedule 2 to this Agreement.
- 11.2 A party will not start court proceedings in respect of a dispute arising out of this Agreement (“dispute”) unless it has complied with this clause.
- 11.3 A party claiming that a dispute has arisen must notify the other parties giving details of the dispute.
- 11.4 During the seven (7) day period after notice is given under clause 11.3 (or a longer period agreed in writing by the parties) (“initial period”) each party must use its best efforts to resolve the dispute, and if any party requires, a meeting of the liaison committee must be held during the initial period.
- 11.5 If the parties are unable to resolve the dispute within the initial period, at the request of any party, the dispute must be referred for mediation in accordance with the mediation rules of the Law Society of New South Wales to:
- (a) a mediator agreed upon by the parties; or
 - (b) if the parties are unable to agree on a mediator within three (3) days after the end of the initial period, a mediator nominated by the then current President of the Law Society of New South Wales.
- 11.6 The role of any mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has so agreed in writing.
- 11.7 Any information or documents disclosed by a party under this clause:
- (a) must be kept confidential; and
 - (b) may not be used except to attempt to resolve the dispute.
- 11.8 Each party must bear its own costs of complying with this clause and the parties must bear equally the costs of any mediator engaged.
- 11.9 After the initial period the party that claimed that a dispute had arisen may terminate the resolution process by giving notice to each other party.
- 11.10 If, in relation to a dispute, a party breaches any provision of clauses 11.4 to 11.7 each other party need not comply with clauses 11.2 to 11.7 in relation to that dispute.

- 11.11 In the event that the dispute is not settled by mediation within twenty-one (21) days of written notice by one party to the others of the dispute (or such further period agreed in writing between the parties), any party may commence proceedings in a court of competent jurisdiction.
- 11.12 For the purposes of clause 11.4 the Commonwealth is deemed to be a reference only to the Commonwealth in its capacity as the Department of Defence.

12. Registration of Agreement

12.1 Registration in Register of Indigenous Land Use Agreements

12.1.1 The parties will not raise any objection:

12.1.1.1 to the effect that this Agreement does not meet the requirements of paragraphs 203BE(5)(a) and (b) of the NTA; or

12.1.1.2 to the registration of this Agreement on the Register of Indigenous Land Use Agreements.

12.1.2 For the purposes of section 24CD of the NTA, the native title group for this Agreement consists of s47G and s47G in its capacity as the representative Aboriginal/Torres Strait Islander body under the NTA for the land and waters covered by the Agreement.

12.1.3 s47G, as the representative Aboriginal/Torres Strait Islander body for the whole of New South Wales, for the purpose of carrying out its certification function under section 203BE(1)(b) of the NTA, is of the opinion that:

- (a) all reasonable efforts have been made to ensure that all persons who hold or who may hold native title in relation to the land and waters covered by the Agreement have been identified; and
- (b) all of the persons so identified have authorised the making of the Agreement.

12.1.4 Within fourteen (14) days following the date the Agreement is made, s47G for the purpose of section 24CG(3)(a) of the NTA, will deliver to the Commonwealth a certificate under section 203BE(1)(b) of the NTA which certificate must comply with the requirements of section 203BE(6) of the NTA in relation to the application to be made by the Commonwealth pursuant to the following clause for registration of the Agreement on the Register of Indigenous Land Use Agreements.

12.1.5 Upon receipt of the certificate the Commonwealth will forthwith apply in writing to the Native Title Registrar for the Agreement to be registered on the Register of Indigenous Land Use Agreements. The application will be accompanied by:

- (a) a copy of the Agreement; and
- (b) the certificate provided by s47G and
- (c) all other documents and information prescribed by regulation 7 of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth) that must accompany the application.

12.1.6 For the purposes of regulation 7(2)(b) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth) each party to this Agreement states that it agrees to the application being made by the Commonwealth pursuant to the preceding clause for registration of the Agreement on the Register of Indigenous Land Use Agreements.

12.1.7 For the purposes of regulation 7(3)(a) of the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth), the address at which each party to this Agreement can be contacted is the address for the party specified in clause 22.4 to this Agreement.

12.1.8 The parties will do all things necessary to provide to the Commonwealth:

- (a) any document, information or statement required by section 24CG of the NTA to be included within, or to accompany, the application for registration of the Agreement on the Register of Indigenous Land Use Agreements; and
- (b) any other document, information or statement that might be reasonably requested by the Native Title Registrar to assist the Registrar in giving notice of the Agreement under section 24CH of the NTA, resolving any objection that may be made to the Registrar under section 24CI of the NTA and deciding under section 24CJ of the NTA whether or not to register the Agreement on the Register of Indigenous Land use Agreements.

12.2 Registration in General Register of Deeds

12.2.1 The Commonwealth is authorised by the other parties to hold this Agreement once it is executed as a deed by the parties and as soon as reasonably practicable after registration of it on the Register of Indigenous Land Use Agreements to lodge this Agreement with the Registrar-General for registration in the General Register of Deeds maintained under section 184C of the *Conveyancing Act 1919* (NSW).

12.2.2 Following registration of this Agreement in the General Register of Deeds, the Commonwealth will provide to each other party a copy of this Agreement bearing the distinctive reference and seal placed on the original by the Registrar-General.

13. Further Acts

Each party agrees to execute and deliver such documents and do such further acts and things as shall be reasonably required to give full effect to each provision of this Agreement and to refrain from taking any action which is or is likely to be inconsistent with the proper fulfilment of its undertakings under each provision of this Agreement.

14. Pre-Acquisition Process (Commonwealth)

- 14.1 s47G [REDACTED] agree not to take or support any action to challenge or delay any pre-acquisition process set out in Part 5 of the LAA by any means, including by:
- 14.1.1 Disputing the validity of the procedure adopted to effect the pre-acquisition process.
 - 14.1.2 Disputing the terms of the pre-acquisition declaration or other documentation required to effect the compulsory pre-acquisition process.
 - 14.1.3 Alleging a failure to follow any processes or procedures or afford any rights granted to them under the LAA, the NTA or any other legislation, at common law or in equity.
 - 14.1.4 Any application for reconsideration or review of the pre-acquisition process pursuant to Section 26 of the LAA.
- 14.2 s47G [REDACTED] agree that they will not act for or fund any action by any person or group, whether or not a party to this Agreement, which has, or is designed to have, the effect of challenging or delaying the pre-acquisition process.

15. Pre-acquisition Process (NSW)

- 15.1 s47G [REDACTED] agree not to take or support any action to challenge or delay the pre-acquisition process set out in Division 1 of Part 2 of the LA(JTC)Act by any means, including by:
- 15.1.1 Disputing the validity of the procedure adopted to effect the pre-acquisition process.
 - 15.1.2 Disputing the terms of any notice or other documentation required to effect the compulsory pre-acquisition process.
 - 15.1.3 Alleging a failure to follow any processes or procedures or afford any rights granted to them under the LA(JTC)Act, the NTA or any other legislation, at common law or in equity.
- 15.2 s47G [REDACTED] agree that they will not act for or fund any action by any person or group, whether or not a party to this Agreement, which has, or is designed to have, the effect of challenging or delaying the pre-acquisition process.
- 15.3 s47G [REDACTED] agree that any period of notice required to be given to s47G [REDACTED] of a proposed acquisition by the Minister for Transport on behalf of the WA under section 13 of the LA(JTC)Act be shortened from 90 days to 14 days.
- 15.4 15.4.1 This clause applies if before the Agreement is registered in the Register of Indigenous Land Use Agreements the Minister for Transport gives a proposed acquisition notice under section 11(1) of the LA(JTC)Act for the acquisitions of land

and interests in land referred to in clauses 2.3.1, 2.3.2, 2.3.4 and 2.3.8 (land required for Wharf & Jetty, Wharf & Jetty Perimeter, Roads and Commercial Storage Area).

15.4.2 Pursuant to section 14(2)(b) of the LA(JTC)Act the parties agree that the period of 120 days referred to in section 14(2)(a) of the LA(JTC)Act is extended to a period of:

- (a) 120 days after the date the Agreement is registered in the Register of Indigenous Land Use Agreements; or
- (b) 12 months after the date the Agreement commences;

whichever period ends first.

16. Conditions

16.1 If this Agreement is not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of execution of this Agreement or such other time as the parties may agree, the Commonwealth may terminate this Agreement on twenty-eight (28) days notice to the other parties.

16.2 The termination or ending of this Agreement does not affect accrued rights.

17. No acknowledgment of Native Title

s47G [REDACTED] acknowledges that the making of this Agreement or the doing of any act under this Agreement by the Commonwealth or State is not evidence that the Commonwealth or State recognises that s47G [REDACTED] holds native title in the land or waters of the Project Area or the waters of Twofold Bay and agrees that they will not assert the Agreement or the making of the Agreement as evidence of the existence of native title in any legal proceeding relating to native title.

18. Entire Agreement

This Agreement and the Agreement dated on or about the date of this Agreement between s47G [REDACTED] and s47G [REDACTED] and the Commonwealth titled "Twofold Bay Deed of Agreement for Consideration of Consent" constitutes the entire agreement of the parties in relation to the subject matter and any previous agreements and negotiations on that matter cease to have any effect. This clause does not affect other agreements between instrumentalities of the State of New South Wales and the Commonwealth.

19. Execution of Separate Documents

This Agreement is properly executed if each party executes either this document or an identical document. In the latter case this Agreement takes effect when the last of the identical documents is executed.

20. Variation

The parties may only amend this Agreement, by agreement of all of the parties in writing.

21. Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws in force in New South Wales.

22. Notices

22.1 Any notice or other communication (in the clause referred to as “notice”) to or by any party shall be in writing and addressed to the address for service of the recipient.

22.2 In addition to any means authorised by law any notice may be given by:-

22.2.1 Being personally served on a party;

22.2.2 Being left at the party's current address for service;

22.2.3 Being sent to the party's current address for service by prepaid ordinary mail; or

22.2.4 Facsimile to party's current number for service;

22.3 A notice shall be deemed duly given or made in the case of:

22.3.1 Delivery in person, when delivered;

22.3.2 Delivery by post, on the third business day after posting; or

22.3.3 Delivery by facsimile, upon transmission report being printed by the sender's facsimile machine that the document has been sent to the recipient's facsimile machine number.

22.4 The addresses and numbers for service are initially:

Commonwealth of Australia
c/- Defence Infrastructure Division
Russell Offices Canberra R4-2-002
CANBERRA ACT 2600
Tel: 47E [REDACTED]
Fax: (02) 6265 3552

Waterways Authority
Maritime Trade Towers
Level 11, 207 Kent Street
SYDNEY NSW 2000
Tel: 47E
Fax: (02) 9365 2108

s47G

s47G

Minister for Land and Water Conservation of
the State of New South Wales
23-33 Bridge Street
SYDNEY NSW 2000
Tel: 47E
Fax: (02) 9228 6385

Executed as a Deed.

Dated this **SIXTH** day of **DECEMBER** 2001.

SIGNED SEALED & DELIVERED

s47G

s22

the presence of:

s22

Signature of Witness

s22

Name of Witness

SIGNED SEALED & DELIVERED

by s47G for and on behalf of
the s47G in
the presence of:

s22

Signature of Witness

s22

Name of Witness

The Common Seal of the s47G
s47G was
affixed hereto in the presence of:

s22

Signature of Witness

s47G

Name and Position of Witness

s22

Signature of Witness

s47G

Name and Position of Witness

SIGNED SEALED & DELIVERED by)
~~John Joseph Aquilina~~)
~~Richard Sanderson Amery~~ Minister for)
Land and Water Conservation of the)
State of New South Wales in the presence)
of: s22)

Signature of Witness

Name of Witness

Ann Burt

SIGNED SEALED & DELIVERED for)
and on behalf of the **Commonwealth of**)
Australia by a delegate of the **Minister**)
for Finance Administration Mr Ross)
Bain, Assistant Secretary Estate)
Management Infrastructure Division)
Department of Defence in the presence of:)

s22

s22

.....
Signature of Witness.....
Name of Witness

SIGNED SEALED & DELIVERED)
for and on behalf of the **Waterways**)
Authority by **Matthew Taylor, Chief**)
Executive of the **Waterways Authority**)
in the presence of:)

s22

s22

.....
Signature of Witness.....
Name of Witness

The Common Seal of the s47G)
s47G) was)
affixed hereto in the presence of:)

s22

.....
Signature of Witness

s47G

.....
Name and Position of Witness

s22

.....
Signature of Witness

s47G

.....
Name and Position of Witness

Schedule 1

Location Maps and Plans

This Schedule contains the following maps, plans and descriptions of the Project Area:-

1. Locality Plan – Figure 1
2. Project Location Plan – Figure 2
3. Wharf and related areas in and adjacent to East Boyd Bay being the area of land and waters within the geographic co-ordinates (AMG Coordinate Datum AGD66, zone 55):-

5890700N 758000E
5890700N 761300E
5887800N 761300E
5887800N 758000E

being Figure 3(i)

4. A map of the area known as the Munitions Storage Facility Hut Road being the area of land within the following geographic co-ordinates (AMG Coordinate Datum AGD66, zone 55):-

5881000N 752000E
5881000N 757000E
5877000N 757000E
5877000N 752000E

being Figure 3(ii)

5. Map of Edrom Road corridor being the area of land bounded by the following geographic co-ordinates (AMG Coordinate Datum AGD66, zone 55):-

5881000N 757000E
5884500N 758000E
5886250N 759750E
5886250N 761000E
5888750N 761000E
5888750N 762000E
5885250N 762000E
5885250N 760165E
5883975N 758890E
5882000N 758325E

being Figure 3(iii)

6. Plan of State Commercial Storage Area – Edrom being the area of land and waters bounded by the following geographic co-ordinates:-

5888617.6N 761250.4E
5888779.1N 760522.1E
5888852.4N 760538.3E
5888775.9N 760380.9E
5888375.9N 760380.9E
5888308.6N 760684.4E
5888202.7N 761329.5E
5888457.0N 761339.5E

being Figure 3(iv).

The Project Area comprises all of the land and waters described in the above paragraphs 3 to 6 inclusive and shown on Figures 3(i), 3(ii), 3(iii) and 3(iv). The external boundary of the Project Area is the outer boundary of all of these areas.

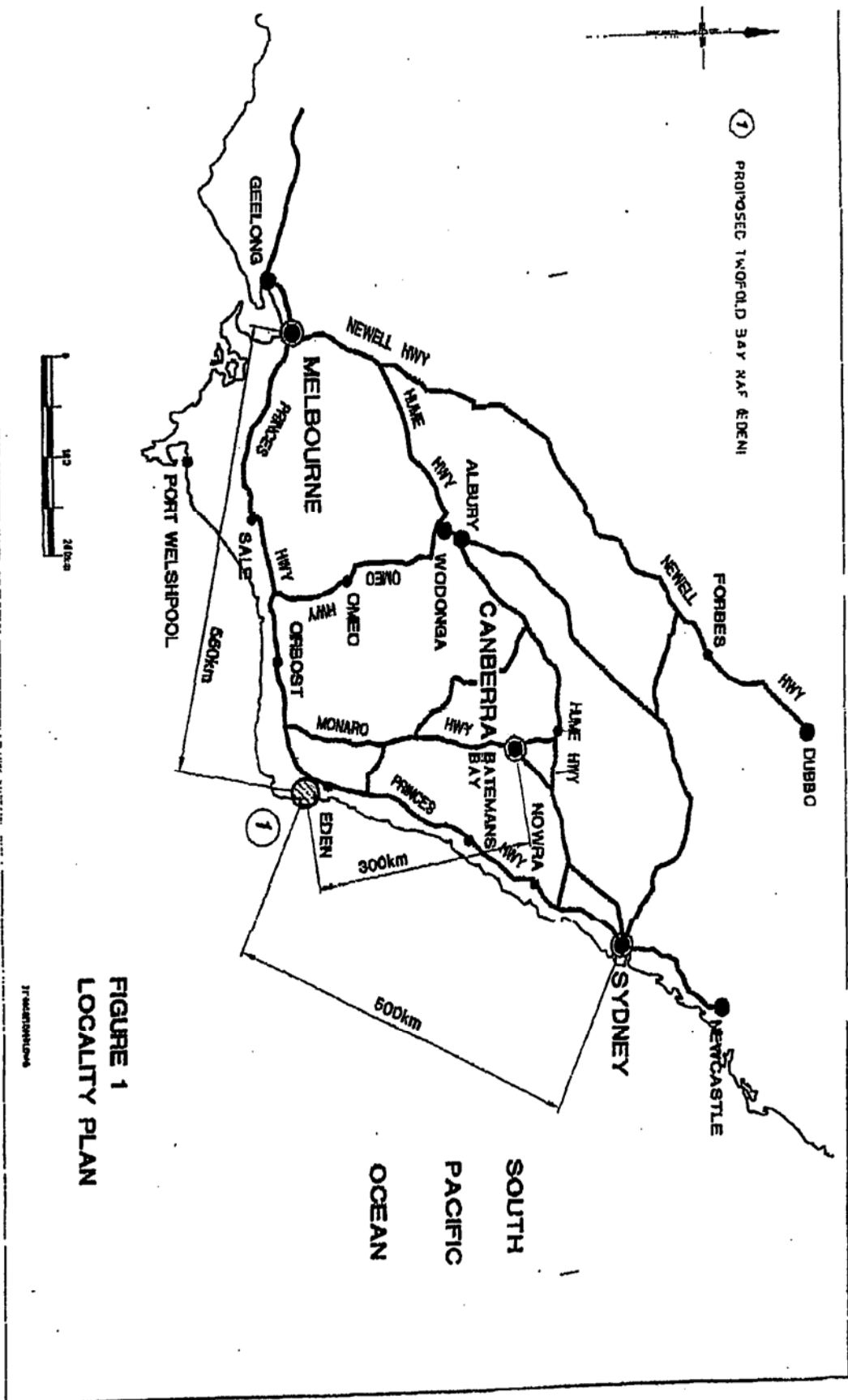
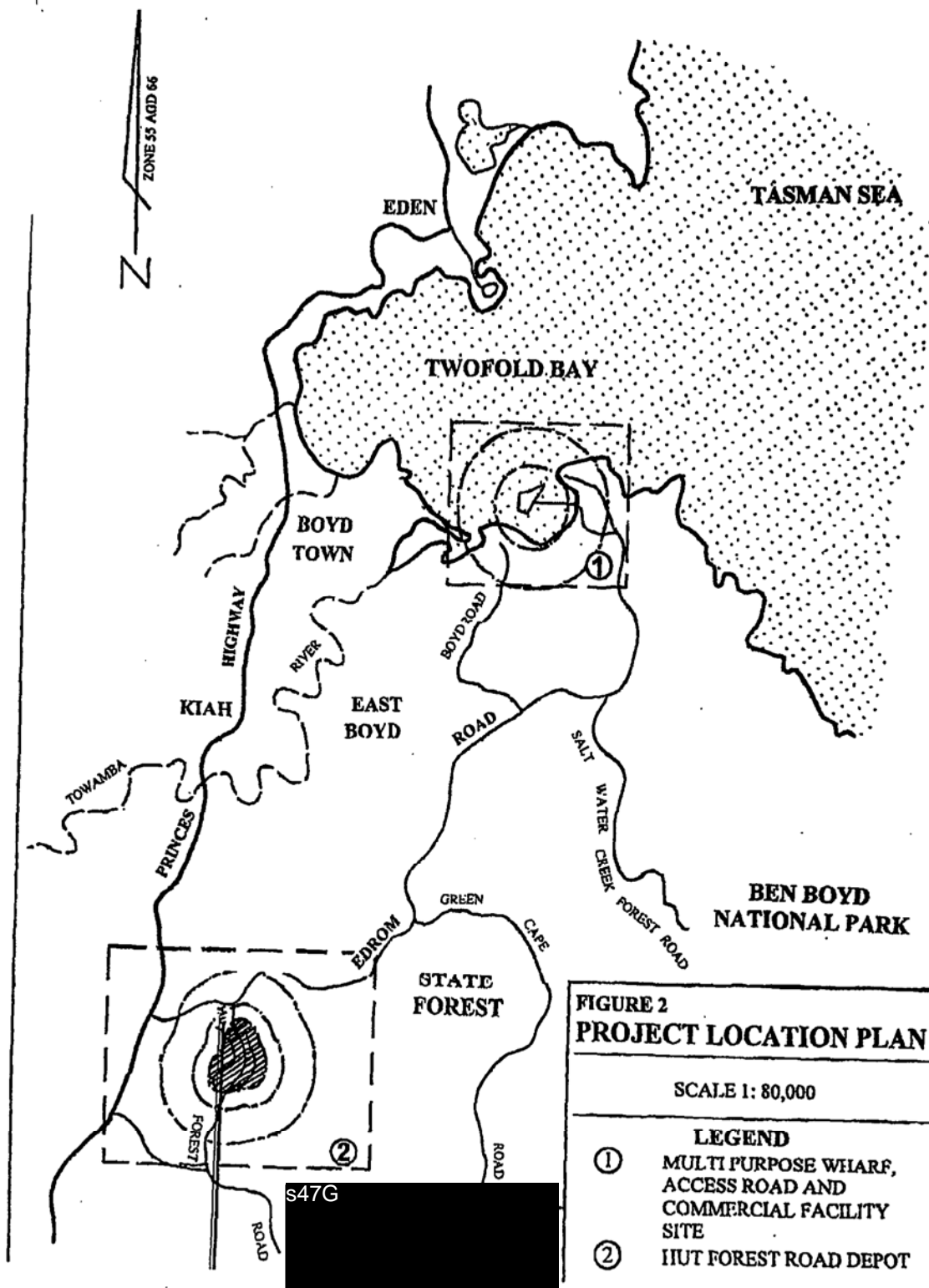
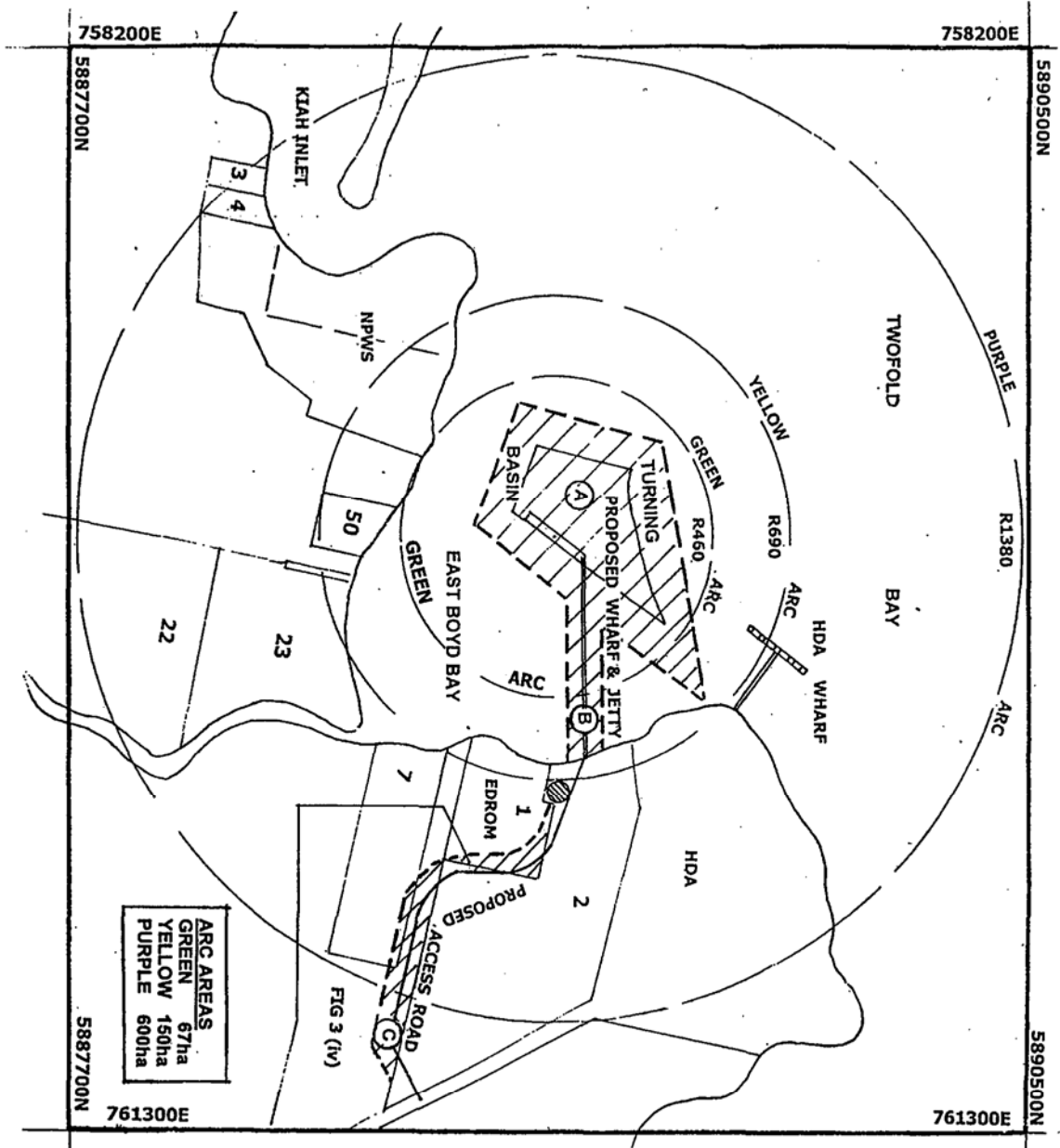


FIGURE 1
LOCALITY PLAN



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**TWOFOLD BAY ILUA
FIGURE 3 (i)
WHARF AREA
EAST BOYD BAY**

SCALE 1:15000 (A4)

MEASUREMENTS IN METRES

AMG COORDINATE DATUM AGD 66

COORDINATES

CENTRE POINT OF WHARF

759603.6E 5889110.0N

PERIMETER

NW 758200E 5890500N

NE 761300E 5890500N

SE 761300E 5887700N

SW 758200E 5887700N

LEGEND

ILUA PERIMETER

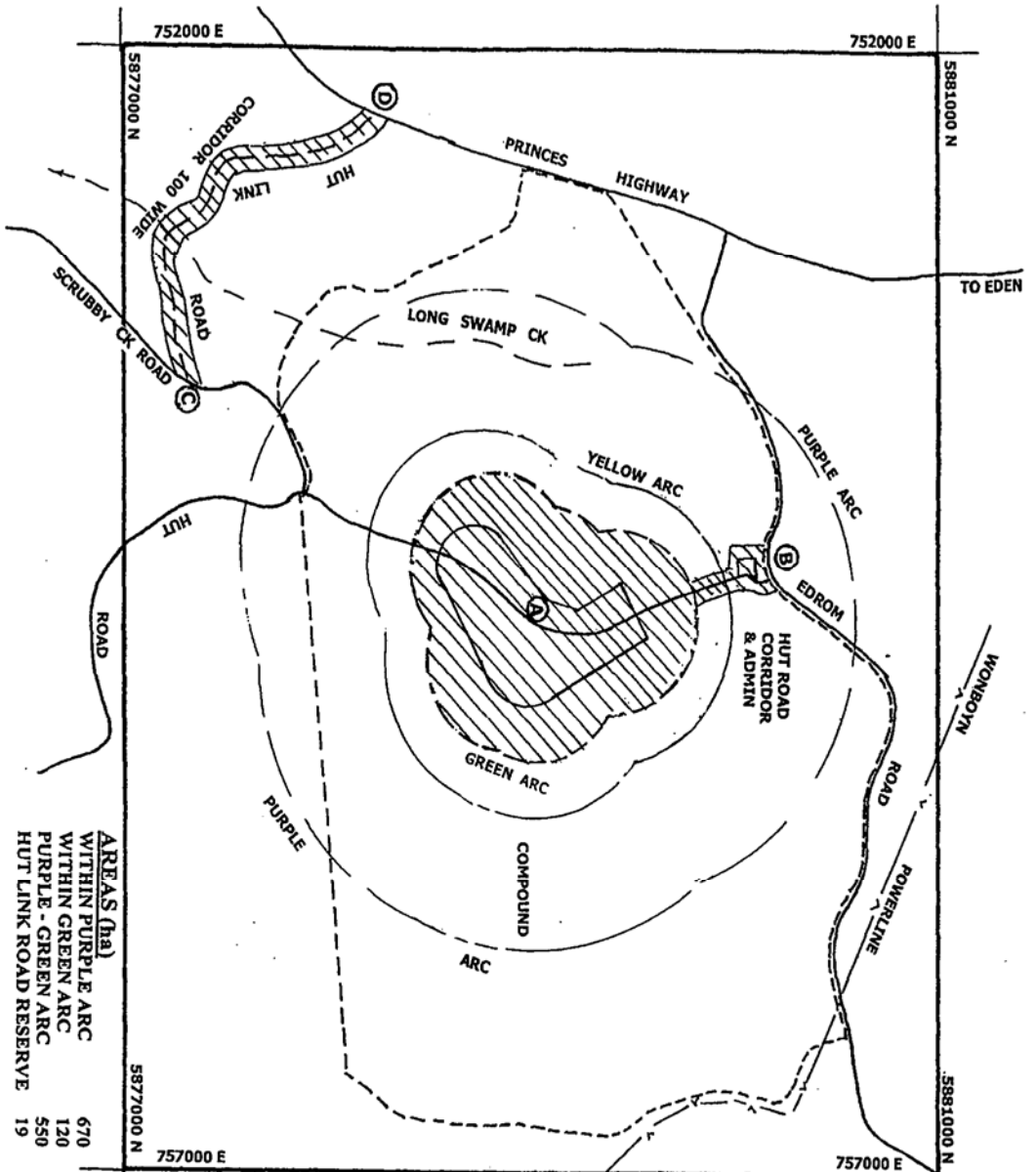
ILUA ITEMS DESCRIBED

- ① WHARF & TURNING BASIN FOOTPRINT PLUS 100M (30ha)
- ② JETTY 50M EACH SIDE OF CENTRELINE (4ha)
- ③ ROAD CORRIDOR 50M EACH SIDE OF CENTRELINE
- SITE WORKS DEPOT PROPOSED ON HDA PROPERTY

s47G

REFERENCE 413.31

E:\Data\Defence - Twofold Bay final docs\Twofold Bay ILUA.clean.25.10.01.doc



AREAS (ha)	
WITHIN PURPLE ARC	670
WITHIN GREEN ARC	120
PURPLE - GREEN ARC	550
HUT LINK ROAD RESERVE	19

REFERENCE 413.32

s47G

SAFEGUARDING ARCS

EXISTING ROADS

COMPOUND

ACQUISITION AREA

ILUA ITEMS

ILUA PERIMETER

LEGEND

PERIMETER	
NW	752000
NE	757000
SE	757000
SW	752000

AMG COORDINATES DATUM AGD66	
A	754500E
B	754350E
C	753500E
D	752300E

TWOFOLD BAY ILUA
FIGURE 3(ii)
MUNITIONS STORAGE
FACILITY HUT ROAD
SCALE 1:25000 (A4)
MEASUREMENTS IN METRES
AMG COORDINATES DATUM AGD66
SCHEDULE OF COORDINATES

AGD 66 ZONE 55

TWOFOLD BAY ILUA
FIGURE 3 (iii)
EDROM ROAD CORRIDOR
1 KILOMETRE WIDTH
AREA 952.9ha

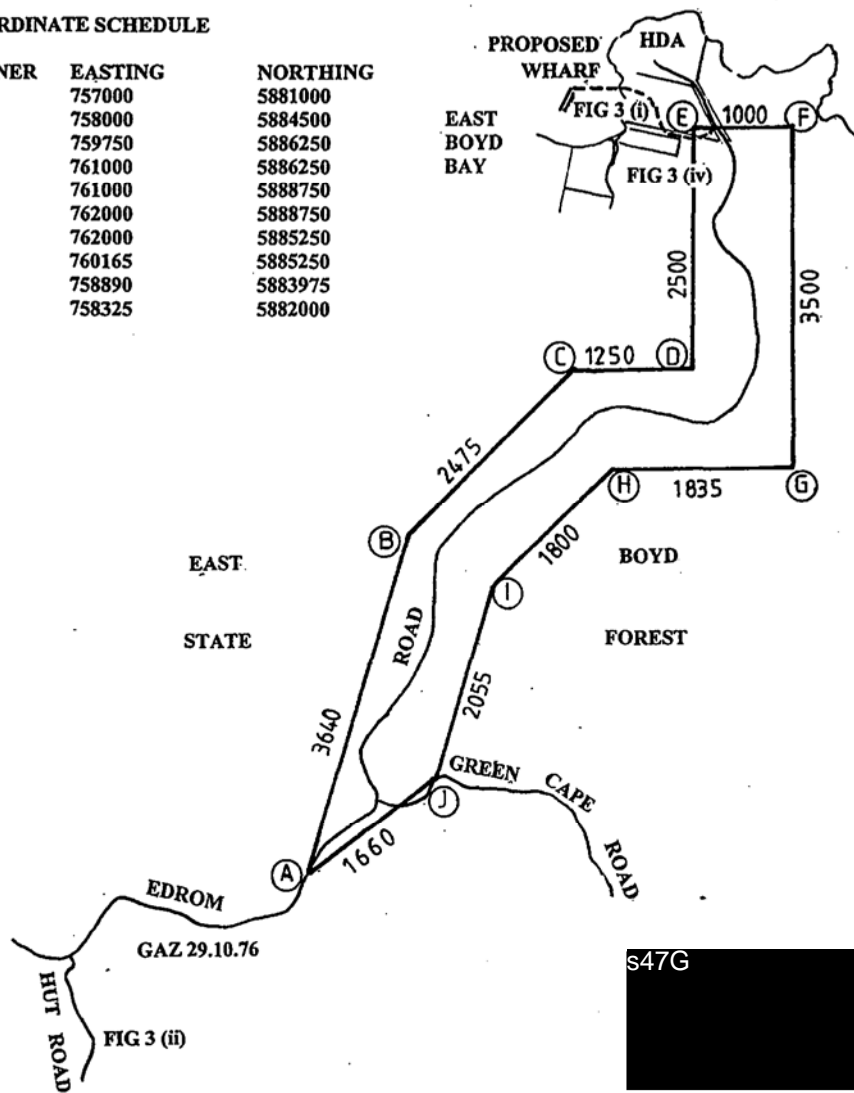
SCALE 1:50 000 (A4)

MEASUREMENTS IN METRES

AMG COORDINATE DATUM AGD66

COORDINATE SCHEDULE

CORNER	EASTING	NORTHING
A	757000	5881000
B	758000	5884500
C	759750	5886250
D	761000	5886250
E	761000	5888750
F	762000	5888750
G	762000	5885250
H	760165	5885250
I	758890	5883975
J	758325	5882000



s47G

REFERENCE 0413.33

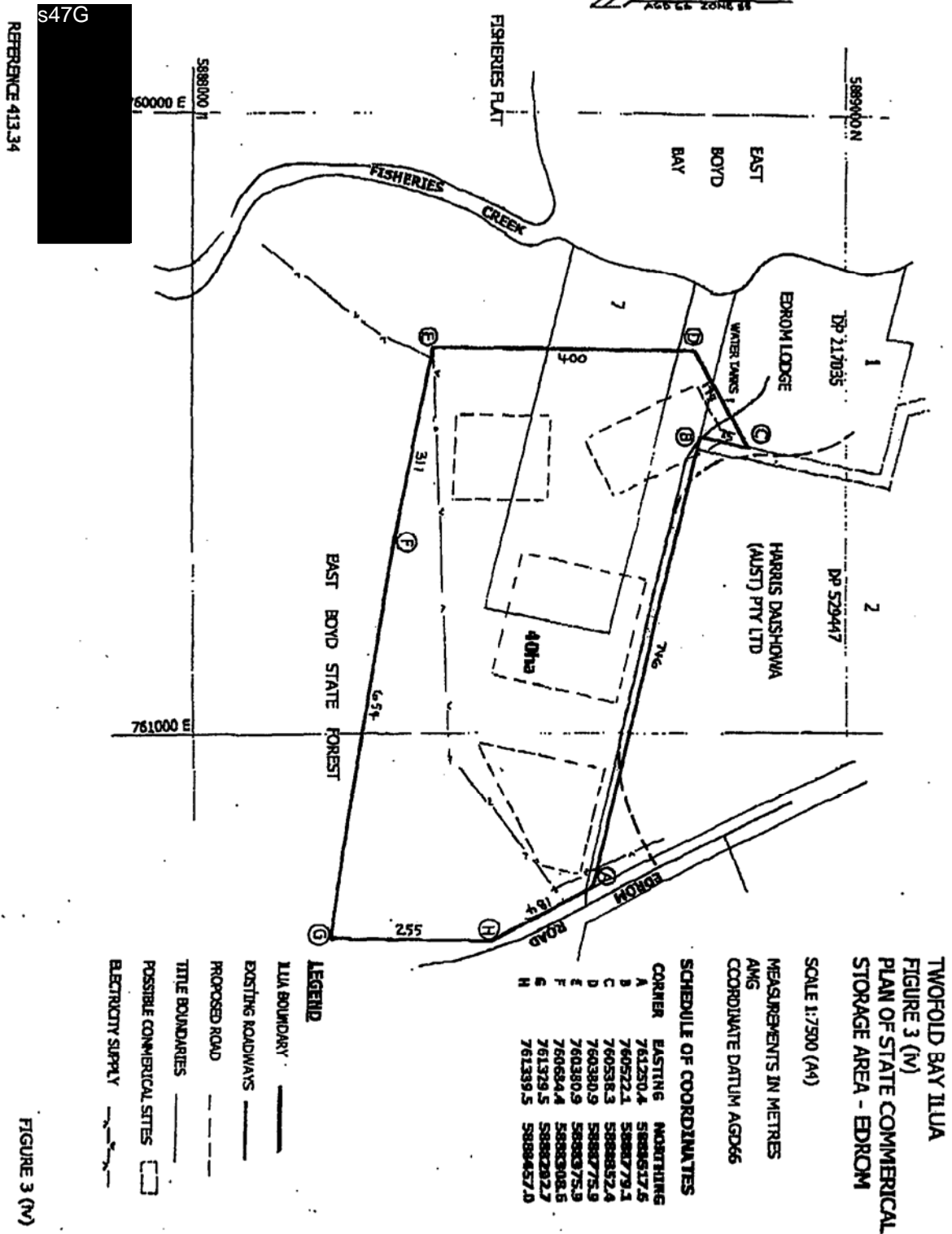


FIGURE 3 (iv)

Schedule 2

Cultural Heritage Management Plan

1. Background

- 1.1 Navin Officer Heritage Consultants carried out a cultural heritage assessment for the Project Area. They produced a report in October 1999 entitled "proposed multi-purpose wharf, commercial facility and Navy ammunition facility, Twofold Bay, NSW" ("the Report"). The Report forms Appendix I to the Draft Environmental Impact Statement. The Environmental Assessment Report of May 2000 clarified the sites that may be affected by the proposed Project.
- 1.2 The Report identifies certain Aboriginal Sites and makes recommendations about them.
- 1.3 The purpose of this Management Plan is to ensure that appropriate mechanisms are established to protect and manage Aboriginal Sites to ensure that minimal impact is caused to them while allowing the Project to be completed within an acceptable timeframe.

2. Definitions

- 2.1 In this Management Plan, the terms defined in clause 1 of the Agreement and to which this Management Plan in Schedule 2 apply, and the following terms have the following meanings:-

"Aboriginal Site" includes an object, place or area of particular significance to s47G s47G in accordance with Aboriginal tradition, including the Aboriginal Sites identified in the Report.

"Excavation Work" means any work on land where either:-

- (a) vegetation is cleared by mechanical means; or
- (b) the natural surface of the ground is disturbed, dug up or removed by mechanical means for the first time for the purposes of the Project.

"Monitors" means those persons nominated by s47G to act as monitors to oversee Excavation Work for the purpose of observing whether any Aboriginal Site is uncovered by that work.

"On-site Supervisor" means the person or persons employed or engaged by the Commonwealth or WA who will be on site during the carrying out of Excavation Work, whose name and contact details will be notified by the Commonwealth or WA to the s47G from time to time.

"Management Plan" means this Cultural Heritage Management Plan.

"Vegetation" means "timber" or "trees" as those words are defined in the *Forestry Act 1916* (NSW).

3. Implementation of Report Recommendations

3.1 The Commonwealth and WA agree to implement:-

- (a) the Cultural Heritage recommendations of the Environmental Assessment Report set out in Appendix A of the Environmental Assessment Report – being the Summary of Commitments and Undertakings by the Proponent, under the heading “Cultural Heritage”; and
- (b) approved monitoring plans.

4. Monitoring Plans

- 4.1 From time to time the Commonwealth and WA will provide to s47G a schedule of works for the period stated in the schedule. The schedule of works will indicate the type and nature of Excavation Works to be carried out and the estimated time frame for them. The proposed Excavation Works will not commence within one (1) month of provision of the schedule of works to s47G unless otherwise agreed.
 - 4.2 Upon receipt of the schedule of works from the Commonwealth or WA s47G will prepare a proposed monitoring plan. The monitoring plan will set out the means by which s47G proposes to carry out monitoring of the proposed Excavation Works. s47G will provide a copy of the proposed monitoring plan to each of the Commonwealth and WA within fourteen (14) days of receipt of the schedule of works.
 - 4.3 The liaison committee referred to in Schedule 3 of this Agreement will consider the proposed monitoring plan. If the liaison committee agrees, the proposed monitoring plan will, upon that agreement, be an approved monitoring plan. The Commonwealth will confirm the agreement of the liaison committee to a proposed monitoring plan to the s47G and WA in writing. The Commonwealth and WA will not unreasonably withhold their agreement to a proposed monitoring plan.
 - 4.4 Where an approved monitoring plan is inconsistent with a provision of this Schedule 2, the terms of the approved monitoring plan will prevail.
 - 4.5 Where a proposed monitoring plan has not been agreed by the liaison committee within twenty-one (21) days of the Commonwealth or WA providing a copy of the schedule of works to s47G the provisions of clause 5 of this Schedule 2 will apply. The lack of agreement to a proposed monitoring plan will not be a dispute.
 - 4.6 s47G will provide the Commonwealth and WA with a monitoring report within fourteen (14) days (or such other time as is agreed) of the conclusion of monitoring for each monitoring plan.
- ### 5. Default Provisions for Monitoring
- 5.1 Neither the Commonwealth nor WA will carry out Excavation Work on land the subject of the Project until it has given at least seven (7) days notice to s47G of its intention to carry out the work specified in the notice.

- 5.2 s47G agree to make available at all reasonable times, at least one Elder/s and two (2) Monitors to monitor the Excavation Work set out in the notice referred to in clause 5.1. s47G will advise the On-site Supervisor of the names of the Monitors present on any particular day. The advice must be in writing and may be provided in advance or by hand upon arrival at the site.
- 5.3 The Commonwealth and WA agree that as a minimum for any monitoring that they will provide payment for at least three (3) monitors (or such other number as is included in an approved monitoring plan) at the rate of \$50 per hour per monitor inclusive of all taxes, administration costs and expenses, with payment to be made to such incorporated organisation as s47G may direct.
- 5.4 If, during Excavation Work, a Monitor advises the On-site Supervisor that an Aboriginal Site has been uncovered or disturbed as a result of the Excavation Work, then:-
- The On-site Supervisor will order the work to stop temporarily; and
 - the Monitors shall have a reasonable opportunity to inspect the relevant area and if they see fit, remove and relocate any objects of particular significance to s47G s47G in accordance with Aboriginal tradition.
- 5.5 s47G agree that the Monitors will not delay the Excavation Work for more than 48 hours unless they have provided a notice to each of the Commonwealth and WA within that time. The notice must set out:-
- A description of the Aboriginal Site;
 - An interim proposal for its preservation or management; and
 - A time (within a further 24 hours) and place at which the proposal may be discussed by the parties.
- 5.6 Unless otherwise agreed, the parties will meet at the time and place proposed by the s47G to attempt to agree on the ongoing preservation and management of the Aboriginal Site. The parties acknowledge the "interim proposal for preservation and management" set out in the notice pursuant to clause 5.5 is for the purposes of facilitating discussion and does not limit any of the parties as to the content of discussion or agreement. If agreement is not reached at that meeting, unless otherwise agreed, a dispute will be deemed to have arisen.
- 6. Dispute Resolution**
- 6.1 Any dispute arising out of or in connection with this Management Plan must be resolved in accordance with this clause.
- 6.2 In the event of a dispute s47G the Commonwealth and WA must attempt to agree on the appointment of an appropriate mediator. If no such agreement is reached within 1 day of all of s47G the Commonwealth and WA becoming aware of it, they must make a joint request to the s47G, or such other body as may from time to time be the relevant Native Title Representative Body, to nominate a mediator.
- 6.3 The mediator shall be a person who has considerable experience in alternative dispute resolution and knowledge of aboriginal cultural heritage protection mechanisms.

- 6.4 The s47G will notify the parties referred to in clause 6.2 of the nominated mediator within 2 days of receipt of the request.
- 6.5 s47G the Commonwealth and the WA shall each be entitled to make submissions to the mediator within five days of his or her appointment.
- 6.6 The mediator may request further information from any party and that party must provide that information within 2 days of the request.
- 6.7 The mediator may, at his or her own discretion call a meeting of the parties. The meeting may be held in person, by telephone or other agreed means.
- 6.8 The mediator will report on the dispute within twelve days of his or her appointment. The report will either:-
- 6.8.1 advise of the terms of agreement; or
 - 6.8.2 advise that agreement cannot be reached.
- 6.9 Upon receipt of the report or on the failure to appoint a mediator as set out in clauses 6.2 or 6.4, any party may elect to take such lawful action as they determine in their absolute discretion, including any Court proceedings.

Schedule 3

Liaison Committee

1. There shall be a liaison committee from the date of this Agreement until February 2003 or such other date as all the parties agree, called the Twofold Bay Liaison Committee ("the Committee") to which:
 - 1.1 The Commonwealth shall appoint two (2) members who may include representatives of the Managing Contractor and/or the Project Consultant;
 - 1.2 The WA shall appoint two (2) members who may include representatives of the Managing Contractor and/or the Project Consultant;
 - 1.3 s47G [REDACTED] shall appoint two (2) members;
 - 1.4 The s47G [REDACTED] shall appoint two (2) members.
2. Each party to the Committee shall give notice to the other parties of the appointment of its members and any alternate members.
3. A party to the Committee shall have the right to change any of its members and alternate members at any time by notifying the other parties.
4. The Committee may invite other people to attend a Committee meeting or part of it, as agreed by the Committee from time to time.
5. The function of the Committee is to:
 - 5.1 Discuss the operation of the Agreement;
 - 5.2 Receive, hear and attempt to resolve any questions or differences arising between the parties and/or Managing Contractor;
 - 5.3 Make recommendations and give advice concerning the working of this Agreement;
 - 5.4 Consider and agree on monitoring plans and provide advice relating to works associated with Cultural and Heritage protection; and
 - 5.5 Maintain liaison between the parties to the Committee.
6. The Chairman of the Committee shall be an appointee of the Commonwealth.
7. If at any meeting the Chairman is not present at the time appointed for holding the meeting, the members present may choose one of their number to preside at the meeting.
8. The Commonwealth will be responsible for recording the minutes of all meetings of the Committee.

9. A quorum for each meeting of the Committee shall consist of three members, being one member appointed by each of the parties to the Committee, present in person and where there is no quorum the Chairman may determine a new meeting time.
10. All decisions, approvals, recommendations and determinations at a meeting of the Committee shall be made by the agreement of all the members attending the meeting.
11. The Committee shall hold its inaugural meeting within four (4) weeks of the date of the Agreement and, subsequently, subject to clause 11.4 of the Agreement, shall meet whenever any member of a party requests a Committee meeting on fourteen (14) days notice (or such other period as the members agree) to be given by the Chairman to the members of the Committee.
12. The Committee shall meet at a place agreed between the parties to the Committee.
13. Meetings will be conducted in accordance with the procedures established by the Committee.
14. The Commonwealth will meet the reasonable costs of the members of the Committee appointed by s47G in attending Committee meetings where such costs have been estimated by s47G and agreed by the Commonwealth.

Schedule 4

Safeguarding Maps for Explosives Facilities (Public Information Brochure)

Defence Reference
Book No. 42



DEPARTMENT OF DEFENCE

**SAFEGUARDING MAPS
FOR
EXPLOSIVES FACILITIES**

A Public Information Brochure

Note: Facilities can be Australian Defence Force bases, explosives storage depots, armament wharves and Defence research establishments where explosives are stored and processed.

SAFEGUARDING MAPS FOR EXPLOSIVES FACILITIES

Introduction

The Department of Defence stores explosives in numerous locations throughout Australia, and in this regard has adopted 'safeguarding' practices and procedures. These standards are to ensure public safety and operational capability are not compromised. Safeguarding procedures are outlined in this brochure.

Safety Principles

In the 1970s, the United Nations (UN) recommended changes to procedures for classifying and transporting a wide range of dangerous goods including explosives. These UN recommendations have now been adopted internationally. As a consequence, the nations of the North Atlantic Treaty Organisation developed explosives storage and handling principles to incorporate the requirements of the UN system. The principles have been tested by large scale trials, some of which were conducted in Australia, and are constantly under review. These storage and handling procedures, and the UN system form the basis of current Department of Defence explosives safety procedures.

Public Consultation

It is Department of Defence policy to consult with appropriate planning authorities in an endeavour to ensure that community and Department of Defence interests are recognised by all parties and that public safety is not compromised.

To permit certain types of community development in the vicinity of a Department of Defence explosives facility may not be in the best interests of public safety and operational capability. The Department of Defence would not wish to see developments of this nature approved by the planning authorities and may appeal against their approval. In the event of such a development being approved, the implications for public safety would require the Department of Defence to modify or reduce its operations to preserve public safety. This may involve considerable expenditure of public monies and adversely affect Defence capabilities.

Safeguarding Maps

To assist consultation, the Department of Defence has produced Safeguarding Maps for distribution to appropriate planning authorities. These maps show up to three different safeguarding lines, delineating areas outside an explosives facility boundary where construction or public access should be controlled. The three safeguarding lines are as follows:-

PURPLE LINE - defines the minimum distance from an explosives facility within which large public buildings where many people may congregate, or major community amenities, may not be sited;

YELLOW LINE - defines the minimum distance from an explosives facility within which inhabited buildings, general community amenities or major traffic routes, may not be sited; and

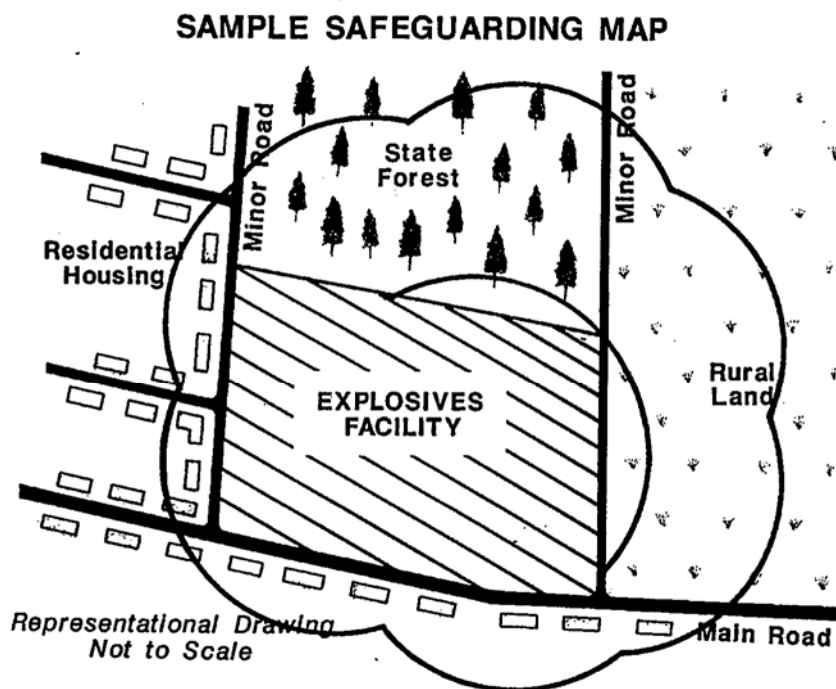
GREEN LINE - defines the minimum distance from an explosives facility within which public recreation areas should not be permitted.

The Department of Defence follows a policy of containing Yellow and Green lines within their own land boundaries. Where this does not presently occur corrective action is planned.

Examples of facilities that should not be permitted within the various safeguarding lines are listed in the Annexes to this publication.

Residential Housing

Safety Principles allow for ordinary residential housing and its associated services to be located between the Purple and Yellow Lines.



ANNEX A

PURPLE SAFEGUARDING LINE

The following are examples of structures and facilities that the Department of Defence may not wish to see approved inside the Purple Line eg :-

- major public structures or facilities of economic importance or of vulnerable construction, eg transportation terminals, telephone exchanges; and
- major structures or facilities that attract large populations, eg multi-storey buildings, schools, hospitals, shopping centres, sports stadiums.

ANNEX B

YELLOW SAFEGUARDING LINE

The following are examples of structures and facilities that the Department of Defence may not wish to see approved inside the Yellow Line eg:-

- the structures and facilities listed at Annex A (Purple Safeguarding Line);
- residential housing and its associated services;
- major public roads and railways;
- places where people permanently or temporarily assemble, eg golf and tennis clubhouses, churches; and
- facilities which serve the needs of the general public, eg water, gas and electricity installations.

ANNEX C

GREEN SAFEGUARDING LINE

The following are examples of structures and facilities that the Department of Defence may not wish to see approved inside the Green Line eg :-

- the structures and facilities listed at Annex A (Purple Safeguarding Line) and Annex B (Yellow Safeguarding Line);
- railroads and public roads of minor to medium importance; and
- 'open space' recreational areas to which members of the general public have uncontrolled access.

Published by Directorate of Departmental Publications Department of Defence

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Deed of settlement

47E

A large black rectangular redaction box covering several lines of text.

Commonwealth of Australia as represented by the
Department of Finance and Deregulation (**Commonwealth**)

s47G

A large black rectangular redaction box covering the bottom half of the page.

Deed of settlement

Details	3
Agreed terms	4
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1.1 Defined terms	4
1.2 Interpretation	4
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7. Confidentiality	5
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Details

Date

18 April 2011

Parties

Name
Short form name
Role
Notice details

s47G

Name **Commonwealth of Australia as represented by the Department of Finance and Deregulation**
Short form name **Commonwealth**
Role **Respondent**
Notice details s47G

Background

- A The Commonwealth compulsorily acquired interests in land owned by s47G at Twofold Bay, Eden, known as Lots 65, 67 and 68 in Deposited Plan 1040135 (**the Land**), pursuant to the *Lands Acquisition Act 1989* (Cth) (**the Acquisition**).
- B The Commonwealth made advance payments of compensation and costs to s47G totalling \$201,412.85 (**the Advance Payments**).
- C s47G and the Commonwealth were unable to agree on the amount of compensation payable due to the Acquisition (**the Dispute**).
- D s47G applied to the Federal Court of Australia in proceedings NSD 978 of 2008 for a determination of the amount of compensation payable due to the Acquisition (**the Proceedings**).
- E s47G and the Commonwealth have agreed to settle the Dispute and discontinue the Proceedings for the further payment of \$710,000 (**the Settlement Sum**) on the terms herein.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Acquisition means the acquisition of interests in the Land by the Commonwealth by a declaration pursuant to s 41(1) of the *Lands Acquisition Act 1989* (Cth) dated 25 September 2002.

Advance Payments means payments totalling \$201,412.85.

Claims includes actions, suits, causes of action, arbitrations, debts, dues, cost, claims, demands, verdicts and judgments either at law or in equity or arising under a statute.

Commonwealth means the Commonwealth of Australia as represented by the Department of Finance and Deregulation.

s47G

Land means Lots 65, 67 and 68 in Deposited Plan 1040135.

Parties means s47G and the Commonwealth.

Person includes individuals, partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies.

Proceedings means proceedings NSD 978 of 2008 in the Federal Court of Australia.

1.2 Interpretation

In this document:

- (a) a reference to a party to this deed includes its successors and assigns;
- (b) if covenants or obligations are undertaken or benefits are received by a party to this deed comprising 2 or more persons or a group of parties described by one term by this deed, then:
 - (i) they are undertaken or received by those persons or the persons comprising the group of parties jointly and severally; and
 - (ii) claims the subject of the release or indemnity include claims by or against those persons or the persons comprising the group of parties or any one or more of them.

2. Payment

- (a) In full and final settlement of all Claims between s47G and the Commonwealth concerning the circumstances the subject of this deed and in consideration of the releases given in this deed, the Commonwealth agrees to pay to s47G the sum of seven hundred and ten thousand dollars (\$710,000) (**the Settlement Sum**).
- (b) The Settlement Sum is to be paid to s47G within 60 days of the date of execution of this deed.

- (c) The Settlement Sum is to be paid by way of a cheque in the amount of \$710,000 payable to s47G [REDACTED]

3. Costs, Interest and GST

s47G [REDACTED] and the Commonwealth agree that the Settlement Sum is inclusive of all costs (including legal costs), interest and GST or any other taxes which may be imposed or levied in respect of any supply by a party under or in accordance with this deed.

4. Release

4.1 Release by s47G [REDACTED]

s47G [REDACTED] releases and discharges the Commonwealth, its officers and agents from all Claims which it has or may in the future have against the Commonwealth, its officers or agents by reason of:

- (a) the Acquisition;
- (b) the Proceedings;
- (c) anything arising directly or indirectly from or incidental to the facts giving rise to or the matters alleged or raised by the Acquisition or the Proceedings; or
- (d) anything arising directly or indirectly from or incidental to the facts giving rise to or the matters alleged or raised in this deed.

4.2 Release by the Commonwealth

The Commonwealth releases and discharges s47G [REDACTED] from all Claims which it has or may in the future have against s47G [REDACTED] by reason of:

- (a) the Advance Payments; or
- (b) the Proceedings.

5. Indemnity

s47G [REDACTED] indemnifies the Commonwealth, its officers and agents against all Claims, which have arisen or may arise in the future by reason of or in any way connected with the Acquisition or the Proceedings.

6. Disposal of the Action

- (a) s47G [REDACTED] and the Commonwealth agree to dispose of the Proceedings by a Notice of Discontinuance providing for a discontinuance of the Proceedings and no order as to costs of the Proceedings (**Notice of Discontinuance**).
- (b) Within seven days after receipt by the Commonwealth of the Notice of Discontinuance signed on behalf of s47G [REDACTED], the Commonwealth will file the Notice of Discontinuance also signed on its behalf at the Federal Court of Australia, New South Wales District Registry.

7. Confidentiality

The terms of this deed are confidential. No Party may disclose or permit to be disclosed either directly or indirectly the terms of this deed except to the extent required by law or as required by the Commonwealth Parliament, the Commonwealth Auditor General or for the purpose of enforcement of its terms.

8. Counterparts

This deed may be executed in any number of counterparts.

9. Governing law

This deed is governed by and will be construed according to the laws of the Australian Capital Territory.

Signing page

EXECUTED as a deed.

Executed by

on behalf of the

s47G

s47G

in the presence of

s22

Signature of witness

s47G

Name of witness (print)

s22

Signature of chair

s47G

Name of chair (print)

Signed sealed and delivered for and on behalf of the **Commonwealth of Australia** by its duly authorised delegate in the presence of

s22

Signature of witness

DAVID ROBERTSON HANSTON
Name of witness (print)

s22

Signature of delegate

GUY VERNEY
Name of delegate (print)

ASSISTANT SECRETARY
Position of delegate (print)

02/05/2011

Taylor, Jonathan MR 1

From: FOI
Sent: Friday, 11 July 2008 12:42 PM
To: Holcroft, Lorraine MS
Cc: Andonovski, Amanda MS; Clarke, Allison MS 1; Wynn, Gerald MR
Subject: FW: payment confirmation-twofold bay legal fees ~~[SEC - IN CONFIDENCE . COMMERCIAL]~~
Attachments: Signed letter authorising payment.tif

IN-CONFIDENCE : COMMERCIAL

Anne McInnes
A/Assistant Director &
National Property Manager
Directorate Property Leasing
and Acquisitions
Regions NQ - SQ
47E
s22

From: Bowd, Jarrod 47E
Sent: Thursday, 10 July 2008 17:32
To: Thomson, Fiona MS
Cc: McInnes, Anne MRS; Clarke, Allison MS 1; Hanstein, David
Subject: FW: payment confirmation-twofold bay legal fees ~~[SEC - IN CONFIDENCE COMMERCIAL]~~

Fiona

Please see the attached letter which has been signed by Guy Verney directing Defence to pay \$14,046.93 to s47G s47G for professional costs reasonably incurred by s47G, the legal representatives for 47E

<<Signed letter authorising payment.tif>>

Please note that this letter is similar (some changes to reflect the current banking details of s47G to the letter that Finance had thought may have been sent in March 2008. However, as either Defence or Finance could locate a signed version of a letter, please take the attached letter as the only version.

Given the delay, I would appreciate if this payment could be expedited.

Happy to discuss.

Regards

JARROD BOWD

Department of Finance and Deregulation
Special Claims and Land Policy Branch

s47E
47E

From: Hanstein, David
Sent: Friday, 13 June 2008 12:00 PM
To: 'fiona.thomson@defence.gov.au'
Cc: Bowd, Jarrod; Matthewson, Michael
Subject: payment confirmation-twofold bay legal fees ~~[SEC - IN CONFIDENCE COMMERCIAL]~~

Fiona

Further to my previous email and telephone conversation, a note querying progress on confirmation on:

- receipt by you of the direction signed by Guy Verney on about March 2007 for payment of \$14,046.93 for s47G (lawyers for the claimants) (may we have a copy of it thanks) , and
- confirmation of payment and date of payment , if made.

As you know, we are responding to a submission by s47G on payments and claims.

Thanks

David Hanstein
Assistant Director
Special Claims and Land Policy
Asset Management Group
Department of Finance and Deregulation
ph s47E 47E

Finance Australian Business Number (ABN): 61 970 632 495
Finance Web Site: www.finance.gov.au

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Australian Government
Department of Finance and Administration

Reference: RMS06/01390
Contact: Jarrod Bowd
Telephone: s47E
e-mail: 47E

Ms Fiona Thomson
Business Manager, NPM – Tas,
Overseas Accommodation Manager
BP3-G-A38
Brindabella Park Offices
Department of Defence
CANBERRA ACT 2600

Dear Ms Thomson

Settlement of Compensation for Professional Costs – s47G

I am writing in relation to the claim for professional costs submitted by s47G for legal representation of the s47G in its claim for compensation concerning the compulsory acquisition of land for defence purposes at Twofold Bay, Eden, NSW.

By way of background, s47G submitted a claim on 27 September 2006 for costs reasonably incurred in representing s47G in the compensation claim to the Commonwealth. s47G presented accounts from s47G (\$28,993.47), s47G (\$2,571.25) and s47G (\$14,691.33). As a delegate of the Minister for Finance and Deregulation, I was unable to approve a claim by s47G due to its failure to properly substantiate costs reasonably incurred. Payment to s47G was approved on 7 November 2006.

s47G has claimed \$14,691.33 in compensation. Professional advice received considered that \$644.40 of the claim was administrative in nature. The basis of the advice was that charging separate administrative fees is unreasonable as in the normal course of events, they are inclusive of the hourly cost of the individual legal representative.

Following a meeting with s47G on 23 February 2007, at which compensation issues were discussed with a representative of s47G, I am approving, pursuant to subsection 55(2) (e) of the *Lands Acquisitions Act 1989*, an offer of \$14,046.93 to s47G in respect of its claim for professional costs.

I would appreciate if you would arrange payment of \$14,046.93 to s47G Bank
Account details for s47G are as follows:

s47G



If you have any further queries regarding this matter, please contact Jarrod Bowd on
s47E

Yours sincerely

s22



Dr Guy Verney
Branch Manager
Special Claims & Land Policy Branch
Asset Management Group

/o July 2008

From: [Hunter, Wayne MR](#)
To: [Fellon, Melissa MISS](#)
Subject: RE: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)
Date: Wednesday, 15 June 2011 7:55:25 AM

IN-CONFIDENCE/SECURITY

Hi Mel

Payment of \$710,000 was made to the **317** trust account on 26 May 2011. I can also confirm that we have received the \$250,000 contribution from Finance towards the payment.

cheers

Wayne Hunter CPA WCES
Assistant Director Property Services Finance
Defence Support Group
BP3-G-B017
Department of Defence
Ph: 02 6266 8349
E-mail: wayne.hunter@defence.gov.au

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From: Felton, Melissa MISS
Sent: Tuesday, 14 June 2011 16:44
To: Hunter, Wayne MR
Cc: Holcroft, Lorraine MS; McInnes, Anne MRS
Subject: FW: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Hi Wayne,

Also, can we please have something from you confirming that payment was made, when and how much. Just in case we are asked.

Thanks
Mel

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From: Felton, Melissa MISS
Sent: Tuesday, 14 June 2011 16:05
To: Hunter, Wayne MR
Cc: Holcroft, Lorraine MS; McInnes, Anne MRS
Subject: RE: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Hi Wayne,

I have confirmed with UGL that the acquisition was not of freehold title in land (i.e. actual land); rather it was the acquisition of 'restrictions on use' over the land.

SA is being compensated for the affect the acquisition of the 'restrictions on use' had on the value of its land.

Regards
Melissa

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From: Hunter, Wayne MR
Sent: Tuesday, 14 June 2011 13:36
To: Felton, Melissa MISS
Subject: FW: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Hi Mel

Can you please advise re Nicole's email below.

cheers

Wayne Hunter CPA WCES
Assistant Director Property Services Finance
Defence Support Group
BP3-G-B017
Department of Defence
Ph: 02 6266 8349
E-mail: wayne.hunter@defence.gov.au

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From: Rumsey, Nicole MISS
Sent: Tuesday, 14 June 2011 13:34
To: Hunter, Wayne MR
Subject: RE: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Thanks Wayne,

The reason for asking for this was to confirm what is actually being acquired. CFO believe only an interest in the property was being acquired, which seems to be confirmed by this gazettal notice... which describes the restrictions being placed on the property.

Was this your understanding as well? or are we acquiring the actual property?

Cheers

Nicole Rumsey
Assistant Director Liability Accounting
Balance Sheet Management
Chief Operating Officer Division
Defence Support Group
CP1-4-126

Ph: (02) 6266 4057
Fax: (02) 6266 4908
Email: nicole.rumsey@defence.gov.au

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From: Hunter, Wayne MR
Sent: Tuesday, 14 June 2011 13:12
To: Rumsey, Nicole MISS
Subject: FW: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Hi Nicole

as requested

cheers

Wayne Hunter CPA WCES
Assistant Director Property Services Finance
Defence Support Group
BP3-G-B017
Department of Defence
Ph: 02 6266 8349
E-mail: wayne.hunter@defence.gov.au

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From: Felton, Melissa MISS
Sent: Tuesday, 14 June 2011 13:10
To: Hunter, Wayne MR
Cc: Holcroft, Lorraine MS
Subject: RE: Executed Deed of Settlement (Access to Information Act / Confidentialité de l'information)

Regards
Melissa

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From: Hunter, Wayne MR
Sent: Friday, 10 June 2011 13:33
To: Felton, Melissa MISS
Cc: Holcroft, Lorraine MS
Subject: FW: Executed Deed of Settlement

cheers

Wayne Hunter CPA WCES
Assistant Director Property Services Finance
Defence Support Group
BP3-G-B017
Department of Defence
Ph: 02 6266 8349
E-mail: wayne.hunter@defence.gov.au

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From: Rumsey, Nicole MISS
Sent: Friday, 10 June 2011 12:04
To: Hunter, Wayne MR
Subject: FW: Executed Deed of Settlement

Attached is the gazette notice from 2003 for the other Defence property at Eden. Are you able to find out if a similar notice has been released for the land subject to this Deed (Lots 65, 67 and 68 in DP 1040135)?

Cheers

Nicole Rumsey
Assistant Director Liability Accounting
Balance Sheet Management
Chief Operating Officer Division
Defence Support Group
CP1-4-126

Ph: (02) 6266 4057
Fax: (02) 6266 4908
Email: nicole.rumsey@defence.gov.au

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From: Rumsey, Nicole MISS
Sent: Thursday, 5 May 2011 15:39
To: Hunter, Wayne MR
Subject: RE: Executed Deed of Settlement

I am trying to determine the land that is subject to this Deed (Lots 65, 67 and 68 in DP 1040135) and how it relates to the existing Defence property (leased or owned) in Two fold Bay

ROMAN (and DEMS) has two separate properties recorded for Twofold Bay:

1. Property 0288 - Eden Naval Wharf
2. Property 0289 - JLC Ammunitions and Support Facility

From my understanding, the 0289 property was compulsory acquired in 2003 and the land is currently recorded ROMAN and valued at \$800,000 (with a total area of 151.91ha).

Attached is a copy of the gazette notice from 2003 in relation to the compulsory acquisition. From reviewing the various maps included, it appears to me that Lots 65, 67 and 68 relate to the 0288 Defence site. Do you know anyone who can confirm this or otherwise?

Cheers

Nicole Rumsey
Assistant Director Liability Accounting
Balance Sheet Management
Chief Operating Officer Division
Defence Support Group
CP1-4-126

Ph: (02) 6266 4057
Fax: (02) 6266 4908
Email: nicole.rumsey@defence.gov.au

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From: Hunter, Wayne MR
Sent: Tuesday, 3 May 2011 10:33
To: Schubert, Robert MR
Cc: Rumsey, Nicole MISS; Knife, Susan MS
Subject: FW: Executed Deed of Settlement

Hi Bob

As discussed, attached is a copy of settlement for acquisition of interest in land at Twofold Bay Eden. The settlement document mentions an advance payment of \$201,412.85 which appears to be made up of various small amounts (which I have been unable to verify - T & B were also unable to confirm the payments) - see attached email - payments to [REDACTED].

Finance is contributing \$250k of the \$710k payment that is to be made and has requested advise on how to transfer this to Defence.

I would appreciate your advise on how to proceed - with regards to the transfer to be made from Finance and the payment to

cheers

Wayne Hunter CPA WCES
Assistant Director Property Services Finance
Defence Support Group
BP3-G-B017
Department of Defence
Ph: 02 6266 8349
E-mail: wayne.hunter@defence.gov.au

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From: Felton, Melissa MISS
Sent: Tuesday, 3 May 2011 09:35
To: Hunter, Wayne MR
Subject: FW: Executed Deed of Settlement (22 - F. 3041606-000011)

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From: Holcroft, Lorraine MS
Sent: Monday, 2 May 2011 19:25
To: Felton, Melissa MISS
Cc: Covey, Nicholas MR 1
Subject: FW: Executed Deed of Settlement [SEC=IN-CONFIDENCE;SECURITY]

[REDACTED]
[REDACTED]

FYI and file please Mel.

Regards
Lorraine

Lorraine Holcroft
Director Property Acquisition, Mining and Native Title
Property Services Branch
Infrastructure Division
Defence Support Group

02 6266 8581
BP3-G-A03
26 Brindabella Circuit
Canberra Airport
CANBERRA ACT 2600

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From: Li, Jason [REDACTED]
Sent: Monday, 21 May 2017 16:46
To: Holcroft, Lorraine MS
Cc: Hamblein, David
Subject: Executed Deed of Settlement (22-1-2016) [REDACTED]

Dear Lorraine,

Please find attached executed Deed of Settlement which signed by both parties for information.

Regards

Jason Li
Land Operations and Public Works
Asset Management and Parliamentary Services
Department of Finance and Deregulation
Phone: 02 6215 2690
Fax: 02 6267 7840

Finance Australian Business Number (ABN): 61 970 632 495
Finance Web Site: www.finance.gov.au

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