



Australian Government

Department of the Environment

CONSERVATION AGREEMENT

Conservation Agreement for the
protection and conservation of the
Carnaby's cockatoo
(*Calyptorhynchus latirostris*)

Commonwealth of Australia as represented by
the Minister for the Environment (**Minister**)

Peet Southern JV Pty Ltd (**Participant**)

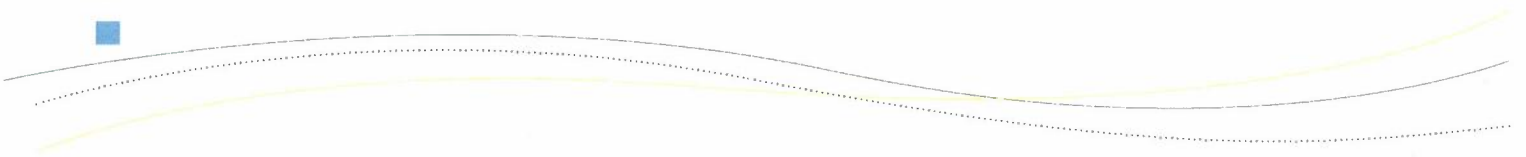


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Details

Parties

1. The Minister for the Environment on behalf of the Commonwealth (the **Minister**).
2. Peet Southern JV Pty Limited ABN 50 100 853 441 (the **Participant**).

Recitals

- A. Section 305 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) provides that the Minister may, on behalf of the Commonwealth, enter into a conservation agreement for the protection and conservation of biodiversity in the Australian jurisdiction.
- B. Section 307A of the EPBC Act provides that the Minister may enter into a conservation agreement with the person that provides for the protection and conservation of a matter referred to in section 305 by providing for the taking of measures to repair or mitigate damage to the matter protected by the provision of Part 3 (whether or not the damage may or will be, or has been, caused by the action).
- C. It is common ground between the parties that in the period between March 2010 and June 2013, the Participant caused clearing of approximately 55 ha of native vegetation at the Village at Wellard development at Lot 242, Wellard Road, Wellard, Western Australia (the **Action**). The Participant is of the view that it satisfied itself that the studies conducted by Coffey Environments, Terrestrial Ecosystems and Strategen Environmental did not indicate the Action would constitute a breach of Part 3 of the EPBC Act.
- D. It is the view of the Minister's delegate that the Action constituted a breach of Part 3 of the EPBC Act.
- E. Following an investigation by the Department, the Minister's delegate formed the view that the Action constituted a breach because:
 - a. the area cleared during the Action was habitat of the Carnaby's cockatoo at the time of the Action;
 - b. the Carnaby's cockatoo was listed as a threatened species in the endangered category under the EPBC Act on 11 July 2000;
 - c. the Action had a significant impact on the Carnaby's cockatoo;
 - d. taking an action which has a significant impact on a threatened species in the endangered category is *prima facie* prohibited by sections 18 and 18A in Part 3 of the EPBC Act; and
 - e. the Action was not subject to an approval under Part 9 of the EPBC Act, or otherwise excluded from the operation of Part 3 of the EPBC Act.
- F. The Participant has agreed to enter into this conservation agreement with the Minister pursuant to sections 305 and 307A of the EPBC Act to repair or mitigate

damage to the Carnaby's cockatoo, and thereby contribute to the conservation of that species. In so doing, the Participant makes no admission that the Action constitutes a breach of Part 3 of the EPBC Act.

- G. For the purposes of section 305(2) of the EPBC Act, the Minister is satisfied that the implementation of this Agreement will result in a net benefit to the conservation of biodiversity and is not inconsistent with any recovery plan, threat abatement plan or wildlife conservation plan.
- H. At the time of entering into this Agreement, it is common ground that the Participant intends to meet its obligations under this Agreement by working cooperatively with the Western Australian Department of Parks and Wildlife to purchase and conserve a particular property with good conservation values for the Carnaby's cockatoo.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Agreement, except where the contrary intention is expressed, terms have the meaning they are given in the EPBC Act and otherwise the following definitions are used:

Action	the action specified in Item C of the Recitals
Activity	the activity specified in Item 1.2 of the Activity Particulars.
Activity Objectives	the activity objectives described in Item 1.1 of the Activity Particulars.
Activity Particulars	set out in Schedule 2.
Agreement	this conservation agreement between the Minister and the Participant, as amended from time to time in accordance with section 308 of the EPBC Act or clause 10.3 and includes its Schedules and any Annexures.
Agreement Details	set out in Schedule 1.
Agreement Period	the period specified in clause 2.
Business Day	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
Commonwealth	the Commonwealth of Australia.
Department	the Commonwealth agency responsible for administering the EPBC Act, currently the Department of the Environment.
Department Representative	the person from time to time performing the duties of the position identified in Item 2 of the Agreement Details.
Electronic Communication	has the same meaning as in the <i>Electronic Transactions Act 1999</i> (Cth).

End Date	the date specified in Item 5 of the Agreement Details.
EPBC Act	the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
EPBC Regulations	the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (Cth).
Insolvency Event	in respect of a party means: (a) if the party: (i) makes an assignment of its estate for the benefit of creditors or enters into any arrangement or composition with its creditors; or (ii) suffers any execution against its assets which has or will have an adverse effect on its ability to perform this Agreement; or (b) if the party is an incorporated entity: (i) being insolvent; or (ii) an administrator, liquidator, provisional liquidator, receiver, manager or controller under the <i>Corporations Act 2001</i> (Cth) being appointed to the party; or (iii) an order being made for the winding up of the party; or (c) if the party is an individual: (i) being bankrupt; or (ii) entering into a scheme of arrangement with creditors; or (iii) a mortgagee's or a chargee's agent being appointed.
Land	the area described in Item 6 of the Agreement Details.
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, or a local government.
Minister	the Minister administering the EPBC Act or a delegate of the Minister pursuant to section 515(1) of the EPBC Act.
Offset Calculator	The offset calculator contained in the EPBC Act 'offsets assessment guide' available at www.environment.gov.au
Participant Representative	the person identified in Item 4 of the Agreement Details.
Protected Matter(s)	the matter(s) specified in Recital A.
Purchase Price	funds required to purchase the Land and provide for any Significant Measures.

Remediation Provision	a provision for the taking of measures to repair or mitigate damage to the Carnaby's cockatoo, which may be enforced in the Federal Court under section 307A of the EPBC Act.
Significant Impact	the impact of actions as described under the EPBC Act and the Department's EPBC Act policy statement as amended or replaced, currently referred to as <i>Matters of National Environmental Significance Significant Impact Guidelines 1.1</i> , December 2009.
Significant Measures	measures taken to conserve the Land indefinitely which are acceptable to the Minister or his delegate, including permanent protection and long term management to maintain its biodiversity values.

1.2 Interpretation

In this Agreement, except where the contrary intention is expressed:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by meaning of, for example or similar expressions;
- (d) a reference to a clause, paragraph, Schedule or Annexure is to a clause or paragraph of, or Schedule or Annexure to, this Agreement;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to AUD, A\$, \$A, dollar or \$ is to Australian currency;
- (g) a reference to time is to the time in the place where the obligation is to be performed;
- (h) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) if the Participant is a trustee, the Participant enters this Agreement personally and in its capacity as trustee and:
 - (i) any warranties given under this Agreement are given in both capacities; and
 - (ii) warrants that it has the power to perform its obligations under this Agreement;

- (k) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.

2. Agreement Period

- (a) This Agreement commences on the date of execution by the last party.
- (b) This Agreement ends on and ceases to be of any effect on the earlier of:
 - (i) the End Date;
 - (ii) the date the parties subsequently agree in writing that this Agreement should end; or
 - (iii) the date this Agreement is terminated under clause 10.

3. Priority of documents

If there is any inconsistency between any of the documents forming part of this Agreement those documents will be interpreted in the following order of priority to the extent of the inconsistency:

- (a) the 'Agreed terms' of this Agreement (being clauses 1 through to 13);
- (b) the Schedule(s) in their order of appearance;
- (c) any Annexure(s) in their order of appearance; and
- (d) documents incorporated by reference in this Agreement.

4. Protection and conservation of Protected Matter(s) by repair or mitigation

4.1 Obligation to undertake Activity

The Participant must carry out the Activity:

- (a) As described at clause 1.2 in Schedule 2;
- (b) to protect and conserve the Protected Matter(s);
- (c) in accordance with all applicable Laws;
- (d) so as to deliver the Activity Objectives and meet all reporting requirements, in accordance with the requirements of this Agreement; and
- (e) otherwise in accordance with the provisions of this Agreement.

4.2 Appointment of subcontractors

- (a) The Participant is responsible for the performance of the Participant's responsibilities under this Agreement regardless of whether the Participant has subcontracted any of its obligations.
- (b) The Participant must not enter into a subcontract under this Agreement with a subcontractor that is currently named as not complying with the *Equal Opportunity for Women in the Workplace Act 1999* (Cth).
- (c) If requested, the Participant must promptly provide to the Department a copy of any contract relating to the Activity.

4.3 Remediation Provisions

- (a) Clause 4.1 is a Remediation Provision for the purposes of section 307A of the EPBC Act.
- (b) For the avoidance of doubt, the Remediation Provisions are specified as the Minister considers the Participant has or may have, by taking the Action, contravened sections 18 and 18A of the EPBC Act.

5. Representations and warranties

The Participant hereby represents and warrants to the Minister that:

- (a) it has not offered or otherwise used the Land as an offset, remediation or mitigation measure for the environmental effect of any action it has taken or proposes to take, other than the Action;
- (b) it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- (c) the execution, delivery and performance of this Agreement has been duly and validly authorised by the Participant; and
- (d) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due inquiry, are threatened which, if adversely decided, could have an adverse effect on the Participant's ability to perform its obligations under this Agreement.

6. Notification requirements

6.1 Significant Impact

The Participant must notify the Department Representative within 10 Business Days of any proposed action or event, including actions proposed or undertaken by a third party, which:

- (a) are under the control or subject to the authorisation of the Participant; or
- (b) are made aware to the Participant; and

could have a Significant Impact upon the environmental values and/or conservation values of the Land.

7. Obligations of successors

- (a) The obligations of the Participant under this Agreement are legally binding on any person who is a successor to the whole or any part of any interest that the Participant has in the Land or any part of the Land.
- (b) For the avoidance of doubt and notwithstanding clause 7(a), section 307(c) of the EPBC Act applies to this Agreement.

8. Audit and access

8.1 Audit by the Department

- (a) The Department or a representative may conduct audits relevant to the performance of the Participant's obligations under this Agreement.
- (b) The Participant acknowledges and agrees that the Department, or any authorised representative, may, at all reasonable times and on giving reasonable notice to the Participant:
 - (i) access and inspect the Land for the purposes of:
 - (A) monitoring compliance with this Agreement; and
 - (B) taking any action that is required to remedy or monitor any breach of this Agreement; and
 - (ii) require the Participant, including any subcontractors, to provide records, documents and information relevant to the performance of this Agreement in a data format and storage medium accessible by the Department.

8.2 Audit of Agreement

- (a) From time to time the parties may agree to an independent audit of compliance with this Agreement.
- (b) If an audit under clause 8.2(a) is to be undertaken, the parties will agree in writing on:
 - (i) the terms of the audit;
 - (ii) the scope of the audit;
 - (iii) the date by which the audit will be completed; and
 - (iv) who will bear the costs of the audit or if these costs will be shared.

8.3 Cooperation and publication

- (a) The Participant must fully cooperate with any audit conducted under this clause.
- (b) The Department may cause the results of an audit to be published on the Department's website.

8.4 General

- (a) Subject to any agreement between the parties under clause 8.2(b)(iv), each party must bear its own costs of any inspections, reviews, audits and enquiries conducted pursuant to this clause 8.
- (b) The Participant must ensure that any subcontract entered into for the purpose of this Agreement contains an equivalent clause granting the rights specified in this clause 8.
- (c) This clause 8 applies for the duration of the Agreement Period and for a period of seven years from the termination or expiry of this Agreement.

9. Dispute resolution

9.1 Obligations continue

- (a) In the event of a dispute, both parties must continue to perform their respective obligations under this Agreement, unless a direction is issued in accordance with clause 9.1(b).
- (b) If directed and notified in writing by the Department to do so, the Participant must cease performing the obligations of the Participant under this Agreement which are specified in the Department's notice until the Department issues a further written notice to the Participant directing it to resume performance of those obligations.

9.2 Costs

Each party to a dispute must pay its own costs of complying with this clause 9.

10. Termination or variation

10.1 Termination for default

If:

- (a) the Participant repeatedly fails to comply with any timeframe under this Agreement;
- (b) the Participant fails to remedy its failure to comply with any term or condition of this Agreement within 10 Business Days of receiving a notice (or such longer period as the Department may at its sole and unfettered discretion specify in the notice) from the Department requiring the Participant to do so;
- (c) the Department is satisfied on reasonable grounds that any statement, representation or warranty made by the Participant is incorrect or incomplete in a way which would have affected the original decision to enter into this Agreement;
- (d) the Department is satisfied on reasonable grounds that a report (including a Report) given by the Participant is significantly misleading, or substantially incomplete or inaccurate;
- (e) there is an Insolvency Event,
- (f) the owner of the Land decides not to sell it, or the conservation of the Land is otherwise frustrated by the actions or omissions of a third party;

the Minister or the Department may by written notice to the Participant, terminate this Agreement in its entirety.

10.2 Termination or variation by order

Notwithstanding any other provision of this Agreement:

- (a) this Agreement may be terminated or varied by the Minister by order published in the *Gazette* in accordance with section 308(4) of the EPBC Act. The Participant is not entitled to any compensation in respect of the termination or variation by such an order; and
- (b) this Agreement may be terminated by the Participant in accordance with section 308(7) of the EPBC Act.

10.3 Variation

Subject to the Minister's rights under section 308 of the EPBC Act, no agreement or understanding varying or extending this Agreement is legally binding upon either party unless the agreement or understanding is in writing and signed by both parties.

11. Taxes, duties and government charges

11.1 Liability for taxes, duties and government charges

Subject to this clause 11, all taxes, duties and government charges imposed or levied in Australia or overseas, now or in the future, in connection with this Agreement must be borne by the Participant.

11.2 GST

- (a) Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- (b) If one party (the **supplier**) makes a taxable supply to the other party (the **recipient**) under this Agreement, the recipient must pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question, subject to receipt of a valid tax invoice.
- (c) No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

12. Notices

12.1 Service of notices

A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:

- (a) directed to the other party's contact person at the other party's address (as set out in the Agreement Details and as varied by any notice); and
- (b) hand delivered or sent by prepaid post or Electronic Communication to that address.

12.2 Effective on receipt

A notice given in accordance with clause 12.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth),

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

13. General clauses

13.1 Rights and powers of the Minister

The rights and powers of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.

13.2 Ownership of Agreement

All copyright and other intellectual property rights contained in this Agreement remain the property of the Commonwealth.

13.3 Approvals and consents

Except where this Agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Agreement.

13.4 Assignment and novation

A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

13.5 Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

13.6 Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

13.7 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

13.8 Entire agreement

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

13.9 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and any transaction contemplated by it.

13.10 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the terms of this Agreement continue in force.

13.11 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

13.12 Relationship

- (a) The parties must not represent themselves, and must ensure that their officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the other party, or as otherwise able to bind or represent the other party.
- (b) This Agreement does not create a relationship of employment, agency or partnership between the parties.

13.13 Governing law and jurisdiction

This Agreement is governed by the law of the Australian Capital Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

Schedule 1 – Agreement Details

Item No.	Description	Clause reference	Details
1.	Department details	1.1	Commonwealth of Australia as represented by the Department of the Environment ABN 34 190 894 983
2.	Department Representative	1.1	Position: Mr Shane Gaddes, Assistant Secretary, Compliance and Enforcement Branch Phone: 02 6274 2760 Fax: 02 6274 1607 Email: shane.gaddes@environment.gov.au
3.	Participant details	1.1	Peet Southern JV Pty Ltd 50 100 853 441
4.	Participant Representative	1.1	Name: Craig Graham Position: Senior Development Manager Phone: (08) 9420 1111 Fax: (08) 9481 4712 Email: craig.graham@peet.com.au
5.	End Date	1.1 and 2	None specified
6.	Land	1.1	A property or properties approved by the Departmental Representative, with at least 320ha in total of habitat for the Carnaby's cockatoo rated by the Department at least 7 on the Offset Calculator
7.	Address for notices	12.1	Department: Position: Assistant Secretary, Compliance and Enforcement Branch The Department of the Environment Postal address: GPO Box 787, Canberra, ACT, 2601 Physical address: ☒ 51 Allara St, Canberra, ACT, 2601 Fax: 02 6274 1607 Email: shane.gaddes@environment.gov.au

Item No.	Description	Clause reference	Details
			Participant: Name: Craig Graham Position: Senior Development Manager Postal address: PO Box 7224, CLOISTERS SQUARE WA 6850 Physical address: Level 7, 200 St Georges Terrace, PERTH, WA 6000 Fax: (08) 9481 4712 Email: craig.graham@peet.com.au

Schedule 2 – Activity Particulars

1. Activity

1.1 Activity Objective

The Activity Objective is to secure habitat for Carnaby's cockatoo for conservation, to support the survival of the species.

1.2 Activity description

The Participant must:

- (a) within 12 months of the date of this agreement pay the Purchase Price for the Land to the Western Australian Department of Parks and Wildlife for the purpose of achieving the Activity Objective;
- (b) within 7 days of performing the obligation in 1.2(a) – provide documentary evidence of performance of that obligation to the Department Representative; and
- (c) refrain from offering to any person or otherwise using the Land or any part thereof whatsoever as an offset, remediation or mitigation measure for the environmental effect of any action it has taken or proposes to take, other than the Action.

Execution page

EXECUTED as a Conservation Agreement under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)

SIGNED for and on behalf of the
Commonwealth of Australia as
represented by the Minister for the
Environment

DEAN KUNDSON
Name
[Signature]
Signature
23 Feb 16
Date

PATRICIA RANDEN
Name of witness (print)
[Signature]
Signature of witness
23.2.16
Date

SIGNED SEALED AND DELIVERED by
Peet Southern JV Pty Limited ABN 50 100
853 441 in accordance with section 127 of
the *Corporations Act 2001* (Cth) by

[Signature]
Name of Director (print)
BRENDAN DAVID GORE
Signature of Director
11/2/16
Date

[Signature]
Name of Director / Company Secretary (print)
DOMENICO SCAFETTA
Signature of Director / Company Secretary
11/02/2016
Date