



CONSERVATION AGREEMENT

between the

DEPARTMENT OF THE ENVIRONMENT, WATER, HERITAGE AND THE ARTS

on behalf of the

COMMONWEALTH OF AUSTRALIA

and

ROADS CORPORATION

pursuant to the

**PROTECTION AND CONSERVATION OF BIODIVERSITY UNDER THE *ENVIRONMENT
PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999***

in relation to

**Growling Grass Frog Conservation Management Plan for proposed Donnybrook-Hume Highway
interchange, Kalkallo, Victoria by Biosis Research**

in the

STATE OF VICTORIA

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SCHEDULES

Schedule 1: *Growling Grass Frog Conservation Management Plan for proposed Donnybrook Road-Hume Highway interchange, Kalkallo, Victoria* by Biosis Research Pty. Ltd. ABN 65 006 175 097

THIS CONSERVATION AGREEMENT is made on day of 2008.

PARTIES

This is an agreement between:

Parties		The Minister for the Environment and Roads Corporation
Minister	Name	Ms Di Mead, Acting Assistant Secretary, Compliance and Enforcement Branch, Department of the Environment, Water, Heritage and the Arts on behalf of the Commonwealth of Australia
	ABN/ACN/ARBN	34 190 894 983
	Address	Department of the Environment, Water, Heritage and the Arts GPO Box 787 CANBERRA ACT 2601
	Telephone	02 6274 1111
	Fax	02 6274 1607
	Attention	Assistant Secretary Compliance and Enforcement Branch Approvals and Wildlife Division
Roads Corporation	Name	Mr Adam Maguire, Project Director – Northern City Projects, Roads Corporation (trading as VicRoads)
	ABN/ACN/ARBN	61 760 960 480
	Address	60 Denmark Street Kew, VIC
	Telephone	03 9854 2666
	Attention	Project Director Northern City Projects

PURPOSE

- A. Subsection 305(1) of the EPBC Act provides that the Minister may, on behalf of the Commonwealth, enter into an agreement for the protection and conservation of biodiversity in the Australian jurisdiction.
- B. The Roads Corporation (Victoria) have agreed to implement a conservation management plan for the protection and conservation of the Growling Grass Frog (*Litoria raniformis*) in relation to the Hume Freeway/Donnybrook Road Interchange at Kalkallo, Victoria.
- C. The Minister is satisfied that the implementation of the final approved management plan for the protection and conservation of the Growling Grass Frog, in accordance with this Agreement, will result in a net benefit to the Growling Grass Frog and is not inconsistent with the principles under the EPBC Act.
- D. This Agreement has the effect of binding the parties for the duration of this Agreement (see clauses 2.2 and 7.1 below as to the duration of this Agreement).
- E. The Minister and Roads Corporation (Victoria) acknowledge and agree that, subject to Roads Corporation (Victoria) entering into this Agreement and completing the works in accordance with this Agreement, the Minister will continue to recognise the validity of the *Environmental Reform (Consequential Provisions) Act 1999* Certification of Coverage of Impacts by Assessment dated 12 July 2002.

OPERATIVE PART

1. Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Agreement means this Agreement signed by all the Parties.

DSE means the Victorian Department of Sustainability and Environment.

The Department means the Australian Government Department of the Environment, Water, Heritage & the Arts.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

Litoria raniformis means the Growling Grass Frog which is listed as a vulnerable species under the EPBC Act.

Minister means the Minister administering the EPBC Act or a delegate of the Minister under the EPBC Act (in this case the position of Assistant Secretary, Compliance and Enforcement Branch of the Department).

Management Plan means the Growling Grass Frog Conservation Management Plan for proposed Donnybrook Road-Hume Highway interchange, Kalkallo Creek, Donnybrook, by Biosis Research Pty Ltd (ABN 65 006 175 097) a copy of which is contained in Schedule 1 to this Agreement.

Parties means the parties to this Agreement and/or their legal successors and permitted assigns, and includes any person bound by this Agreement as a result of section 307(c) of the EPBC Act.

VicRoads means Roads Corporation (Victoria) (ABN 61 760 960 480).

Victoria means the State of Victoria in Australia.

Writing means any representation of words, figures or symbols capable of being rendered in a visible form.

1.2 In this Agreement, unless the contrary intention appears:

- (a) words importing a gender include any other gender;
- (b) words in the singular include the plural and words in the plural include the singular;
- (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
- (d) words importing persons include a partnership and a body whether corporate or otherwise;
- (e) all references to dollars are to Australian dollars;
- (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
- (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (h) reference to an Item is to an Item in the attached conservation management plan for the protection and conservation of the Growling Grass Frog at Kalkallo Creek, Donnybrook, Victoria.
- (i) any Schedule or any attachments form part of this Agreement;
- (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of a Schedule or attachment (if any), the terms and conditions of the clauses prevail;
- (k) reference to a Schedule or an attachment is a reference to a Schedule or an attachment to this Agreement, including as amended or replaced from time to time.

1.3 This Agreement records the entire agreement in relation to its subject matter.

1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

2. Commencement and Duration

2.1 This Agreement commences on the date on which it is made.

2.2 Subject to clause 8.1 below, this Agreement will remain in force until the earlier to occur of:

- (a) The parties agree this Agreement should be ended.

- (b) This Agreement is terminated by the Minister pursuant to section 308(4) of the EPBC Act.
- (c) This Agreement is terminated by VicRoads pursuant to section 308(7) of the EPBC Act.

3. Protection and Conservation of the Growling Grass Frog and Habitat

- 3.1 VicRoads will meet their obligations in accordance with the conservation management plan for the protection and conservation of the Growling Grass Frog at Kalkallo Creek, Donnybrook, Victoria by Biosis Reseach Pty Ltd, a copy of which is contained in Schedule 1 of this Agreement.

4. Notification of Change of Control

- 4.1 VicRoads shall notify the Department of any arrangement entered to effect any change of control of the area, or any portion of the area, required to implement the conservation management plan. That notice shall detail the name and address of all parties to the arrangement on the nature of the change of control. Both parties shall ensure that all other parties to the agreement are informed of this Agreement and of the effect of section 307 of the EPBC Act.

5. Monitoring and Survey Program

- 5.1 VicRoads will undertake monitoring and survey programs for *Litoria raniformis* as specified in the conservation management plan, attached at Schedule 1.

6. Mitigation of Potential Impacts – VicRoads

- 6.1 VicRoads will undertake the mitigation measures as specified in the conservation management plan, attached at Schedule 1.

7. Changes to the Agreement

- 7.1 This Agreement, including the Conservation Management Plan, may be changed by written agreement between the parties or otherwise in accordance with the EPBC Act.

8. Taxes, Duties and Government Charges

- 8.1 All relevant taxes, duties and government charges imposed or levied in Australia, now or in the future, in connection with this Agreement will be borne by VicRoads.

9. Assignment and novation

- 9.1 VicRoads must not novate their obligations, and must not assign their rights, under this Agreement, without obtaining prior approval in writing from the Minister.

10. Dispute resolution

- 10.1 Any dispute arising during the course of this Agreement will be dealt with as follows:
- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute ("Notice");
 - (b) secondly, the parties will try to resolve the dispute by direct negotiation;
 - (c) thirdly, the parties have 10 business days from the date of the Notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure;
 - (d) fourthly, the parties will try to resolve the dispute by arbitration; and
 - (e) lastly, if:
 - there is no resolution or agreement; or
 - there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days,then, either party may commence legal proceedings.
- 10.2 Despite the existence of a dispute, the parties will (unless requested by either party in writing not to do so) continue to perform the Agreement in relation to any matters that are not in dispute.
- 10.3 This clause does not preclude either party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

11. Termination or variation with agreement

- 11.1 This Agreement may be terminated or varied in the manner specified by the EPBC Act or otherwise as agreed by the parties.

12. Termination or variation by the Minister

- 12.1 If the Minister is satisfied that this Agreement is not capable of achieving its purpose, the Minister may, in accordance with subsection 308(4) of the EPBC Act, without the consent of VicRoads:
- (a) terminate the Agreement; or,
 - (b) vary the Agreement in any way the Minister thinks necessary to ensure that it becomes capable of achieving its purpose.
- 12.2 If the Minister under the preceding subclause varies the Agreement, VicRoads may, by notice in writing to the Minister, terminate the Agreement.
- 12.3 The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.

13. Waiver

- 13.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.
- 13.2 Whole or partial exercise by a party of any of its rights does not prevent the further exercise of any right.
- 13.3 In this clause 'rights' means rights or remedies provided by this Agreement or at law.

14. Costs

- 14.1 Each Party will bear their own costs of and in relation to this Agreement unless otherwise provided for in this Agreement, as specified in clause 8.

15. Notification of matters adversely affecting environmental values

15.1 VicRoads will:

- (a) advise the Department of any proposed action or event including actions proposed or undertaken by a third party which could adversely affect the environmental values under protection, conservation or management by this Agreement;
- (b) respond promptly to all communications from the Department relating to the Agreement.

16. Notices

16.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:

- (a) if given by VicRoads to the Commonwealth – marked for the attention of Compliance Section (Victoria), Approvals and Wildlife Division at the Department of The Environment and Water Resources, Heritage and the Arts, GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Commonwealth; or
- (b) if given by the Commonwealth to VicRoads – sent to the registered address of VicRoads.

16.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

16.3 A notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 20 business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

SIGNED AS AN AGREEMENT

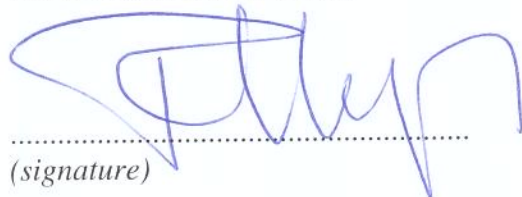
SIGNED for and on behalf of the
COMMONWEALTH of AUSTRALIA
by


.....
(signature)

Di Mead
Acting Assistant Secretary
Compliance and Enforcement Branch
Department of the Environment, Water, Heritage and the Arts

Date: 30 June 2008

In the Presence of Witness:


.....
(signature)

PURDEY WONG
.....
(name)

SIGNED for and on behalf of)
ROADS CORPORATION)
By authority of its *directors in accordance*)
with section 127 of the Corporations Act)



Signature of Director

ADAM MAGUIRE

Print name of Director

Date: 23/6/08

In the Presence of Witness:


.....
(signature)

NEIL RANKIN
.....
(name)