



CONSERVATION AGREEMENT

between the

COMMONWEALTH OF AUSTRALIA

and

Stephen Ryves

in relation to the

**PROTECTION AND CONSERVATION OF SPECIES LISTED AS THREATENED
UNDER THE *ENVIRONMENT PROTECTION AND BIODIVERSITY
CONSERVATION ACT 1999***

in relation to

Portion 108b

NORFOLK ISLAND

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THIS CONSERVATION AGREEMENT is made on twentieth day of June 2005.

PARTIES

This is an agreement between:

Mark Flanigan, Assistant Secretary, Policy and Compliance Branch, Approvals and Wildlife Division, Australian Government Department of the Environment and Heritage, John Gorton Building, King Edward Terrace, Parkes in the Australian Capital Territory acting on behalf of

Ian Campbell, Minister for the Environment and Heritage on behalf of the Commonwealth of Australia ("the Commonwealth")

and

Stephen Ryves, ("the Landholder")

(hereinafter called "the parties").

LOCATION

This Agreement relates to the protection and conservation of seven areas on Portion 108b Norfolk Island as shown on the map at Schedule 1 to this Agreement (the Area)

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 Minister and the Landholder have agreed that the Commonwealth and the Landholder should work together to manage the Area for the object of enhancing the conservation of certain species listed as threatened under the EPBC Act and which either do or may occur in the Area.
- C. The Minister is satisfied that management of the Area in accordance with this Agreement will result in a net benefit to the protection and conservation of biodiversity, and in particular of species listed as threatened under the EPBC Act.
- D. The Minister accepts that the Management Plan annexed to this agreement provides for the protection and conservation of the environment and biodiversity by:
 - excluding non-native grazing animals by fencing,

- removal of, and prevention of reinfestation by, exotic weeds to the extent that endemic threatened plants are not prevented from completing their life cycles; and
 - selective replanting and management of endemic species.
- E. The agreement has the effect of binding the Commonwealth and the Landholder, including any Landholder that is a successor to the whole or any part of any interest that the Original Landholder has in the Area or any part of the Area when this Agreement is entered into.

OPERATIVE PART

1. Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Area means the area or place described under the heading Location and shown in the map at Schedule 1.

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.

Landholder means the owner of the Area, and is a party to this Agreement and includes any Landholder that is a successor to the whole or any part of any interest that the Original Landholder have in the Area or any part of the Area when this Agreement is entered into.

Minister means the Minister administering the Environment Protection and Biodiversity Conservation Act 1999 ("EPBC Act") or a delegate of the Minister under the EPBC Act.

Parties means the parties to this Agreement and their legal successors and permitted assigns.

Plan of Management means the Plan of Management for Portion 108b, Norfolk Island dated the twentieth day of June 2005, a copy of which is Schedule 2 to this Agreement.

Original Landholder means the owner of the Area at the time this Agreement is entered into.

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 Plan of Management;
- (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 between the parties 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 and continues in **perpetuity** after its commencement (unless terminated in accordance with the EPBC Act or the Agreement).

3. Protection and Conservation of the Area

3.1 The Area is to be managed in accordance with the **Plan of Management** in Schedule 2.

4. Alteration to the Plan of Management

4.1 The Plan of Management may only be changed by written agreement between the Parties.

5. Notification of Change of Ownership

- 5.1 The Landholder shall notify the Minister in writing of any agreement entered into by the Landholder to effect any change of ownership or control of the Area, or any portion of the Area and that notice shall detail the name and address of all parties to the agreement and the nature of the change of ownership or control. An example of this would be a proposal to subdivide the Area into lots or a transfer of all or part of the Land. The Landholder 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. The Landholder must ensure that each contract for sale contains a provision that makes the Purchaser aware of the form and effect of the Conservation Agreement and that they agree to include a similar provision in any subsequent sale.
- 5.2 Nothing in this instrument shall render a person liable for any breach of its terms committed after that person ceases to be the registered proprietor of the Area.

6. Financial Assistance

- 6.1 The Commonwealth will provide to the landholder such financial assistance as required by the Plan of Management to accomplish the specific tasks set out in the Plan of Management. In particular, the Commonwealth will provide funding for the specified fencing, weeding and planting of the Area during the financial years 2004/05 and 2005/06.
- 6.2 The Landholder may decide whether to purchase any asset deemed necessary to enable the tasks specified in the Plan of Management to be undertaken.

7. Records and Reports

- 7.1 The Landholder must provide to the Commonwealth on request periodic reports of the Landholder's progress in undertaking the Agreement. Reports will be limited to disbursement of funds under the Agreement and to the landholders' assessment of outcomes for conservation of biodiversity.

8. Access to the Landholder's Area

- 8.1 The Landholder agrees to give to the Minister, or to any persons authorised in writing by the Minister and agreed between the Minister and Landholder as being a suitable person, reasonable access to the Area for the purpose of:
- (a) monitoring the Agreement;
 - (b) conducting any works which are required to preserve or prevent degradation of the biodiversity protected under the Agreement; and
 - (c) obtaining information necessary to provide advice to the Landholder in relation to the implementation of the Agreement.
- 8.2 Where the landholder and the Minister cannot reach agreement within two weeks on the suitability of a person to undertake the tasks set out in clause 8.1, the

Minister shall appoint an officer of Department of the Environment and Heritage to undertake those tasks.

8.3 Where an access route is specified in the Agreement or has been otherwise agreed in writing by the parties, the Commonwealth, or the said persons authorised by the Commonwealth shall follow such route (except in cases of emergency or where it is not reasonably practicable to do so) and shall follow all directions given by the Landholder where it is reasonably practicable to do so.

8.4 The Minister will ensure that all laws, permits, licences and other authorisations are obtained and complied with for the purposes of carrying out any works specified in sub-clause 8.1. The Landholder agrees to do all things reasonably necessary to assist the Minister in obtaining such permits, licences or authorisations.

9. Assignment and novation

9.1 The Landholder cannot novate his or her obligations, and must not assign its rights, under this Agreement or enter into any other arrangements or novation, without in either case, prior approval in writing from the Minister.

10. Dispute resolution

10.1 The parties agree that 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;
- (b) secondly, the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the parties have 10 business days from the sending 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 in writing not to do so) continue to perform the Agreement.

10.3 This clause does not preclude either party from commencing legal proceedings for urgent interlocutory relief.

11. Variation

- 11.1 The Parties acknowledge that this Agreement may be varied at any time by a variation agreement entered into by the Parties.

12. Termination by agreement

- 12.1 This Agreement may be terminated by agreement between the parties, in accordance with the EPBC Act.

13. Termination or variation by the Minister

- 13.1 The Parties acknowledge that 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 the Landholder:

(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.

- 13.2 If the Minister under the preceding subclause varies the Agreement, the Landholder may, by notice in writing to the Minister, terminate the Agreement.

- 13.3 The parties acknowledge that the rights of the Minister under this agreement are in addition to any rights the Minister has under the EPBC Act.

14. Negation of employment, partnership and agency

- 14.1 The Landholder agrees not to represent him or herself, and to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

- 14.2 The Landholder is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does the Landholder have any power or authority to bind or represent the Commonwealth.

15. Waiver

- 15.1 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.

- 15.2 Whole or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

In this clause 'rights' means rights or remedies provided by this Agreement or at law.

16. Costs

- 16.1 Each Party will bear their own costs of and in relation to this Agreement (including all taxes, levies etc. for which the Party may be liable) unless otherwise provided for in the Agreement.

17. Governing law

- 17.1 As the Commonwealth seat of government resides in Canberra, the laws in the Australian Capital Territory apply to this Agreement.

18. Notification of matters adversely affecting environmental values

- 18.1 The Landholder and the Minister will:

- (a) advise each other of any proposed action or event, including a proposed action or event by a person not party to this agreement, which could adversely affect the environmental values under protection, conservation or management under this Agreement;
- (b) advise each other of any information, proposals or suggestions that may assist in the protection, conservation or management of the environmental values under this Agreement;
- (c) respond promptly to all communications from each other relating to the Agreement.

19. Notices

- 19.1 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 the Landholder to the Commonwealth – marked for the attention of the First Assistant Secretary, Approvals and Wildlife Division, The Department of the Environment and Heritage GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Commonwealth; or
- (b) if given by the Commonwealth to the Landholder – signed by an officer of the Department and marked with the name of the landholder and the address **PO Box 351, Norfolk Island** or as otherwise notified by the Landholder.

- 19.2 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.

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

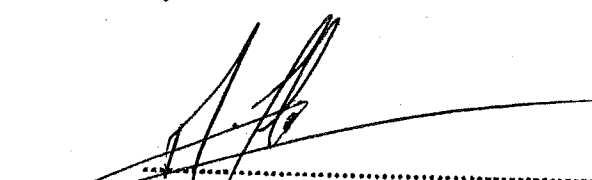
- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 20 business days after the date on which it was sent; and

- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

0011 6723 22800

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of the
COMMONWEALTH of AUSTRALIA
by


(signature)

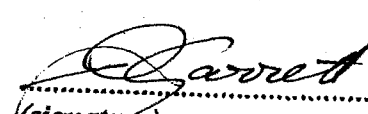
MARK FLANIGAN
Assistant Secretary
Policy and Compliance Branch
Approvals and Wildlife Division
Department of the Environment and Heritage

On behalf of
Senator The Hon Ian Campbell
Minister for the Environment and Heritage

Date:

21/6/05

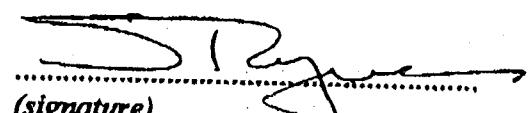
In the Presence of Witness:


(signature)

PAUL GARRETT
.....
(name)

21/6/05

SIGNED for and on behalf of the
LANDHOLDERS
by

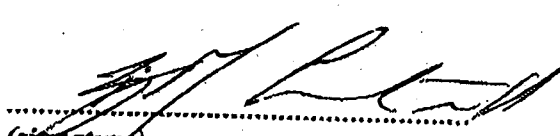

(signature)

Stephen Ryves

Date:

21-06-05

In the Presence of Witness:

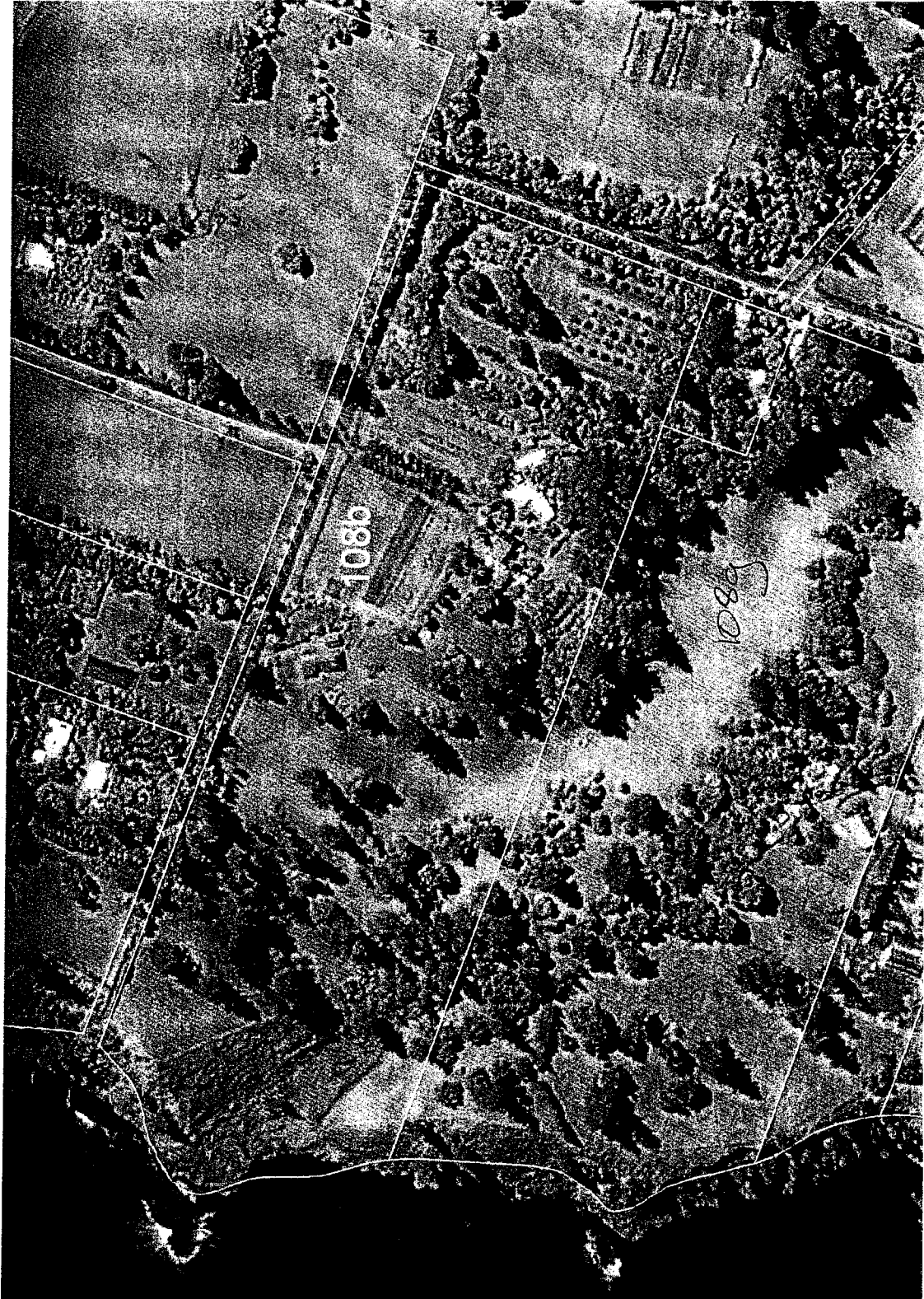

(signature)

BRYAN GAETA
.....
(name)

Schedule 1
(to be replaced by
map of 7 areas)



Schedule 1
(to be replaced by
map of 7 areas)



Plan of Management

Portion 108b

Note: As blocks 108B and 108g have been owned and used by one family for over 40 years, the fence line may not lie along the boundary between the Portions. Without a survey being undertaken it is not clear how much of the forest remnant lies on which block.

Both lessees (mother and son) are very supportive of the Conservation Agreement proceeding.

Only the area containing remnant forest habitat is included in this Plan.

METHOD

To simplify surveying the forested area of the Portion, it was treated as 6 separate areas, delineated by changes in flora or landscape.

Boundary lengths and area widths were measured on the ground, and plant species present were noted. Presence only, and not abundance, was recorded except in the case of prolific weed infestations.

SUPPLY OF PLANTS & MARKERS

Where planting is indicated, it should be noted that the supply of any plants required for rehabilitation purposes under these Agreements, have been offered free of charge by the Norfolk Island National Park Manager, from supplies at the Norfolk Island Administration/Norfolk Island National Parks joint nursery.

Guava stakes (*Psidium cattleianum*) harvested from Parks weeding operations will also be available at no cost, to utilise as markers for the plants.

FENCING

The lessee is satisfied that the existing fences will not be in need of replacement or maintenance during the life of this Plan.

NEW AREA (Area 7)

An area containing some valuable native species lies outside the area currently fenced, but is contiguous with it. The lessee is willing for this area to be fenced (which is currently grazed), and undertakes to manage it in such a way as to expand the existing habitat.

The provision of approximately 200m of fencing would provide an additional 3,700 sq.m. (approx).

O.H. & S. ISSUES

The historic tip site mentioned in areas 4 and 5 is extremely hazardous, particularly as traversing the area is made more difficult due to the slope. Removal by the lessee of all possible broken glass, crockery and metal should be undertaken before any contractors are brought into these areas.

Attachment 1 provides a list of all plant species recorded in each area.

Area 1

Approx.1100 sq.m. (20 x 55m). Flat, sloping gently towards the western end.

A row of 11 very large *Grevillea robusta* (silky oak) once lined an entrance driveway along the southern side of this area. As native canopy cover is almost intact since the driveway has not been used in over 40 years (although the trees remain), there is little regeneration of this exotic species, and their removal would cause a great deal of damage to the native forest. It is recommended that these trees be left in place.

The removal of a few scattered, medium-sized *Olea europea*, (african olive) and other small exotic plants (see Attachment 1), would enhance the integrity of this area. It is in a reasonably good condition floristically, apart from the southern fenceline where domestic plants have crept through from a neighbouring property. None of these plants are difficult to remove or aggressively invasive, due to the intact canopy. Some infill planting would be required, and the application of woodchip mulch, following the removal of olives in particular, as their removal would create light gaps.

ACTION REQUIRED –

- | | |
|---------------|---|
| Year 1 | <i>removal of larger woody weeds (excluding row of Silky Oaks)</i> |
| | <i>planting in light gaps created by removal</i> |
| | <i>mulching</i> |
| Year 2 | <i>maintenance weeding, and removal of domestic invasives</i> |
| Year 3 | <i>maintenance weeding only</i> |

ESTIMATED BUDGET

Year 1	\$350
Year 2	\$100
Year 3	\$ 75

Area 2

Approx 2000 sq.m. (irregularly shaped). Gradually increasing slope towards the western end and to the southern side of this area.

This area is in almost pristine condition, with rare ground orchids scattered beneath almost pure native forest, with a healthy number of lianas and an intact canopy. One very large Norfolk Island pine (4.7m dbh) stands near the northeastern corner of this area. A few domestic escapees from the neighbouring property are struggling on the southern boundary.

This area requires only monitoring and some very light weeding to maintain its condition.

Action required

Year 1 - monitoring and light weeding as necessary (x 3)

Year 2 - monitoring and light weeding as necessary (x 3)

Year 3 - monitoring and light weeding as necessary (x 3)

ESTIMATED BUDGET

Year 1	\$150
Year 2	\$150
Year 3	\$150

Area 3

Approx. 2120 sq.m., including a small 'isthmus' of native vegetation of about 740 square metres, surrounded by orchard. Steepness of the slope to the southern side increasing. Removal of some building materials stored near the northern perimeter would allow easier access to this area.

Almost no weeds have established in this area. Monitoring and the manual removal of a small amount of *Ipomoea cairica* required.

Action Required

Year 1 – monitoring and light weeding as necessary (x 3)

Year 2 – monitoring and light weeding as necessary (x 3)

Year 3 – monitoring and light weeding as necessary (x 3)

ESTIMATED BUDGET

Year 1	\$150
Year 2	\$150
Year 3	\$150

Area 4

Approx. 2750 square metres.

This area becomes steep rapidly, with a 45°-50° slope to the southern fenceline. An historic domestic tip (from pre-1960s) creates a hazard as the steep gradient is littered with broken glass and crockery, partly covered in leaf litter and loam. Old barbed wire protrudes from some trees, the remains of a very old fenceline, and the endemic *Capparis nobilis* (Devils Guts) creeper lies in tangles throughout the area, bearing sharp recurved thorns.

This area contains two major weed infestations.

- 1 An area of about 1800 square metres is covered in *Tecoma Tecomeria capensis*, once used extensively on the island as a hedge. This plant spreads by suckers, and at frequent intervals sends up stiff, cane-like shoots. Apart from a small area at the top of the ridge (to the north) where it may be possible to use mechanical means (such as a 'bobcat'), this weed would have to be cleared by hand, taking 2-3 workers cutting, poisoning and removing the material possibly 5 days. As this is an unusual type of weed infestation, there is no previous local experience to base this estimate on. The material should be suitable for chipping, therefore providing mulch to cover the site at no additional cost. Extensive planting would be required and careful monitoring by the owner for reshooting. Where planting of native species is undertaken, each plant should be clearly marked with a stake to enable easy location for monitoring and assessment of survival rate
- 2 Coral Berry *Rivina humilis* covers an area of approximately 550 sq m on the southern boundary. This area is sloping more gently and is not so affected by the hazards present in and around the *Tecoma* infestation. This plant should be weeded manually also, but is easy to pull out, and being near the fenceline can be removed from the site easily. Some mulching might assist in controlling a large scale germination following the weeding, but monitoring of the site should be sufficient until adjacent ferns and native grasses take over. Two people should be able to clear this infestation in one day.

Even though these two weed infestations are in this area, it also includes some of the best species in the Portion, with the presence of the endemic orchid *Dendrobium macropus*, and the Birds Nest fern *Asplenium australasicum* both found nowhere else on this block. In addition there is an extensive ground cover of native ferns in the unaffected areas.

ACTION REQUIRED

- Year 1 -**
- Removal of Rivina humilis (Coral Berry) infestation*
 - Removal of Tecomeria capensis (Tecoma) infestation*
 - Chipping of weeded Tecoma and replacement as mulch across the weeded area of Tecoma.*
 - Plant colonising native species on northern boundary to reduce sunlight stimulating germination of weed seeds.*
 - Monitoring of remainder of area and light weeding as necessary(x3)*

- Year 2 -** *Follow up manual weeding of Coral Berry regrowth (x 3)*
 Follow up cutting and poisoning of Tecoma as required (x 3)
 Continued monitoring and light weeding of remainder of area (x 3)
 Plant 50 native plants in previously Tecoma infested area
- Year 3 -** *Monitor and weed all areas as required (x 3)*
 Monitor progress of native plantings (x 3)

ESTIMATED BUDGET

Year 1	Tecoma - \$4000.00 Coral Berry - \$350 Plant 25 colonising native species on northern boundary - \$170 Monitoring and light weeding through remainder of area - \$50 \$4570
Year 2	Coral Berry - \$60 Tecoma - \$180 Planting 75 native species - \$500 Monitoring and light weeding remainder of area - \$50 \$790
Year 3	Monitor plantings and maintenance weed throughout (x 3) - \$420 \$420

Schedule 3

Schedule of Payments

②

2004/05: \$14,991 to be paid on signature of this agreement by all parties

2005/05: \$2,840 on receipt of acquittal of first payment