



CONSERVATION AGREEMENT

between the

MINISTER FOR THE ENVIRONMENT AND HERITAGE

on behalf of the

COMMONWEALTH OF AUSTRALIA

and

SATTERLEY PROPERTY GROUP

ABN 38 009 054 979

and

**DALYELLUP BEACH PTY LTD AS TRUSTEE FOR THE DALYELLUP BEACH
JOINT VENTURE**

ABN 49 501 536 914

and

THE HOUSING AUTHORITY

ABN 52 167 671 885

and

**HOME SATTERLEY DALYELLUP PTY LTD AS TRUSTEE FOR THE CAPEL
LAND PARTNERSHIP**

ABN 62 454 510 614

in relation to the

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

in relation to the

**RESEARCH AND MONITORING OF THE WESTERN RINGTAIL POSSUM IN
URBAN DEVELOPMENT AREAS OF BUSSELTON AND BUNBURY**

WESTERN AUSTRALIA

TABLE OF CLAUSES

Interpretation

Commencement and Duration

Protection and Conservation of the Western Ringtail Possum

Financial Contribution

Monitoring and Survey

Minister will not pursue further action

Changes to the Agreement

Taxes, Duties and Government Charges

Access to the Area

Assignment and novation

Dispute resolution

Termination or variation with agreement

Termination or variation by the Minister

Waiver

Costs

Notification of matters adversely affecting environmental values

Notices

Signatures to Agreement

THIS CONSERVATION AGREEMENT is made on day of 2006.

PARTIES

This is an agreement between:

Ian Campbell, Minister for the Environment and Heritage on behalf of the Commonwealth of Australia, c/- the Department of the Environment and Heritage, John Gorton Building, King Edward Terrace, Parkes in the Australian Capital Territory ("the Commonwealth")

and

Satterley Property Group Pty Ltd (ABN 38 009 054 979), 18 Bowman Street, South Perth, in the State of Western Australia (SPG)

and

Dalyellup Beach Pty Ltd as trustee for the Dalyellup Beach Joint Venture (ABN 49 501 536 914), of 18 Bowman Street, South Perth, in the State of Western Australia (DB)

and

The Housing Authority of WA (ABN 52 167 671 885), 99 Plain Street, East Perth, in the State of Western Australia (THA)

and

Home Satterley Dalyellup Pty Ltd as trustee for the Capel Land Partnership (ABN 62 454 510 614), C/- 18 Bowman Street, South Perth, in the State of Western Australia (HSD)

(the Developers).

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 Developers have agreed to a package of Measures for the Protection and Conservation of the Western Ringtail Possum (*Pseudocheirus occidentalis*).
- C. The Minister is satisfied that the implementation of the Measures for the Protection and Conservation of the Western Ringtail Possum, in accordance

with this Agreement, will result in a net benefit to the Western Ringtail Possum 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 6.1 below as to the duration of this Agreement).
- E. The Minister and the Developers acknowledge and agree that, subject to the Developers entering into this Agreement and completing the works in accordance with this Agreement, the Minister will not pursue further action at any time against SPG, DB, THA, HSD and/or any other entity and/or person in relation to the Activities.

OPERATIVE PART

1. Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Activities mean clearing undertaken prior to November 2004 at the Dalyellup Housing Development site 10km south of Bunbury in Western Australia.

DB means Dalyellup Beach Pty Ltd as trustee for the Dalyellup Beach Joint Venture.

DEC means the Western Australian Department of Environment and Conservation.

DEH means the Australian Government Department of the Environment & Heritage.

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.

HSD means Home Satterley Dalyellup Pty Ltd as trustee for the Capel Land Partnership.

Minister means the Minister administering the EPBC Act or a delegate of the Minister under the EPBC Act.

Measure means the "Measures for the Protection and Conservation of the Western Ringtail Possum (*Pseudocheirus occidentalis*)" dated June 2006 a copy of which is contained in Schedule 1 to this Agreement.

Pseudocheirus occidentalis means the Western Ringtail Possum which is listed as a vulnerable species under the EPBC Act.

THA means The Housing Authority.

SPG means Satterley Property Group Pty Ltd.

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 Measures for Protection and Conservation;
- (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 6.1 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 SPG, DB, THA and/or HSD pursuant to section 308(7) of the EPBC Act.

3. Protection and Conservation of the Western Ringtail Possum

3.1 The Developers agree to assist with the protection and conservation of the *Pseudocheirus occidentalis* associated with future land use and development within Busselton and Bunbury. In particular, this agreement:

- (a) prescribes the financial contribution by the Developers; and
- (b) provides for monitoring and survey programs to be undertaken by SPG on behalf of the Developers.

4. Financial Contribution

- 4.1 The Developers are to contribute funding towards *Pseudocheirus occidentalis* research which will have a net benefit to the protection and conservation of *Pseudocheirus occidentalis*.
- 4.2 The Developers are to contribute an amount of \$100,000 each year for two years. This amount is to be paid at the beginning of each financial year, beginning 2006/2007 and 2007/2008.
- 4.3 At the cessation of the period of financial contribution referred to in clause 4.2 above, the Developers in consultation with DEH, will determine if any additional financial contribution is required.
- 4.4 The funding will be used by DEC for Western Ringtail Possum habitat assessment, detailed biological surveys, identification of corridors between habitat areas and the development of evaluation and risk management strategies. The work will be directed towards future land use and development in the Busselton and Bunbury areas to achieve the aims of this Agreement.
- 4.5 Funding is payable to DEC. The Developers will notify DEH in writing at the time of payment.

5. Monitoring and Survey

- 5.1 SPG will undertake monitoring and survey programs for *Pseudocheirus occidentalis* at Dalyellup in Bunbury and Provenge in Busselton and at other sites developed by SPG in the south west region of Western Australia which may impact on the Western Ringtail Possum.
- 5.2 The monitoring and survey program is to address the following:
 - (a) the effect of development on utilisation of retained habitat by *Pseudocheirus occidentalis*;

- (b) the identification of the combination of habitat values that ensures the retention of robust Western Ringtail Possum populations;
- (c) the identification of habitat augmentation or creation measures that are successful in increasing or attracting resident populations of *Pseudocheirus occidentalis*;
- (d) the data generated will be comparable to the data from other research projects on the *Pseudocheirus occidentalis*, with data collection and sharing methods consistent with other work;
- (e) to minimise duplication of existing *Pseudocheirus occidentalis* research; where existing research addresses this matter, any further research by SPG should be designed to complement the existing work;
- (f) to be designed in consultation with the Western Ringtail Possum Recovery Team and CALM and to the satisfaction of DEH.

6. Minister will not pursue further action

- 6.1 Notwithstanding clause 2.2 above, subject to SPG complying with clauses 4 and 5 of this Agreement, the Minister will not pursue further action at any time, including after the duration of this Agreement, against SPG, DB, THA, HSD and/or any other entity and/or person in relation to the Activities.
- 6.2 This Agreement may be pleaded as a bar to any action brought by the Minister at any time against SPG, DB, THA, HSD and/or any other entity and/or person in relation to the Activities.

7. Changes to the Agreement

- 7.1 This Agreement including the Measures for Protection and Conservation 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 SPG.

9. Assignment and novation

- 9.1 SPG, DB, THA and/or HSD 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.

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 SPG, DB, THA and/or HSD:

- (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, SPG, DB, THA and/or HSD 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

13.1 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 this Agreement.

15. Notification of matters adversely affecting environmental values

15.1 The Developers will:

- (a) advise the Minister 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 Minister 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 SPG, DB, THA and/or HSD to the Commonwealth – marked for the attention of EPBC Compliance and Audit Section at 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 SPG, DB, THA and/or HSD – sent to the registered address of SPG.

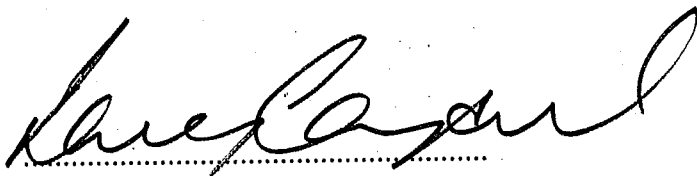
16.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

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)

The Hon Senator Ian Campbell
Minister for the Environment and Heritage

Date: 23/10/06

In the Presence of Witness:


.....
(signature)

Peta Lane
.....
(name)

SIGNED for and on behalf of)
SATTERLEY PROPERTY GROUP PTY)
LTD)
By authority of its directors in accordance)
with section 127 of the Corporations Act)



Signature of Director



Signature of *Director/*Secretary

NIGEL FRANK SATTERLEY

Print name of Director

Anthony Robert Carr

Print name of ~~Director~~/*Secretary

** delete that which does not apply*

In the Presence of Witness:

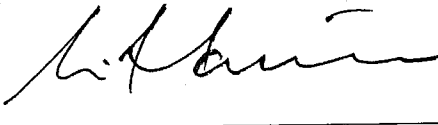


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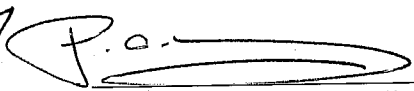
DARREN LLOYD WALSH

.....
(name)

SIGNED for and on behalf of)
DALYELLUP BEACH PTY LTD)
By authority of its directors in accordance)
with section 127 of the Corporations Act)



Signature of Director



Signature of *Director/*~~Secretary~~

NIGEL FRANK SATTERLOTT

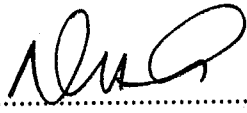
Print name of Director

PAMELA ALICE LOWERY

Print name of *Director/*~~Secretary~~

** delete that which does not apply*

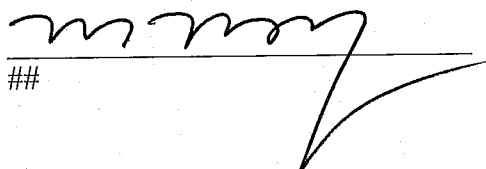
In the Presence of Witness:


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(signature)

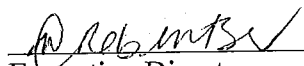
DARRIN LYND WASH
.....
(name)

The Common Seal of)
THE HOUSING AUTHORITY)
was hereunto affixed in accordance with)
the Housing Act 1980 and the Regulations)
made thereunder by authority of its)
Members in the presence of:



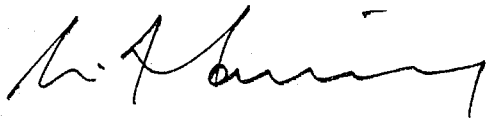


##



Executive Director

SIGNED for and on behalf of)
HOME SATTERLEY DALYELLUP PTY)
LTD)
By authority of its directors in accordance)
with section 127 of the Corporations Act)



Signature of Director



Signature of *Director/*Secretary

NIGEL FRANK SATTERLEY

Print name of Director

GARY WAYNE BLACK

Print name of *Director/*Secretary

** delete that which does not apply*

In the Presence of Witness:



.....
(signature)

DARREN LLOYD WATSH

.....
(name)