



## **Conservation Agreement**

between the

**MINISTER FOR THE ENVIRONMENT AND WATER RESOURCES**

on behalf of the

**COMMONWEALTH OF AUSTRALIA**

And

**GALAWAY HOLDINGS PTY LTD**

in relation to the

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

in relation to the

**Conservation Management Plan for Grassland and Wetland Reserves at Laverton**

in the

**STATE OF VICTORIA**

## **TABLE OF CLAUSES**

1. Interpretation
2. Commencement and Duration
3. Protection and Conservation of Listed Threatened Species and their Habitats
4. Access to the Land
5. Notification of Change of Ownership
6. Obligations of Successors
7. Changes to the Agreement
8. Assignment and novation
9. Dispute resolution
10. Termination by agreement
11. Termination or variation by the Minister
12. Negation of employment, partnership and agency
13. Waiver
14. Taxes, Duties and Government Charges
15. Costs
16. Notification of matters adversely affecting environmental values
17. Notices
18. Governing Law
19. Signatures to Agreement

## **SCHEDULES**

- Schedule 1: Conservation Management Plan for Grassland and Wetland Reserves at Laverton
- Schedule 2: Map of the Reserves (A, B and C) to which the Management Plan applies

**THIS CONSERVATION AGREEMENT** is made on 27 day of JUNE 2007.

**PARTIES**

This is an agreement between:

<b>Parties</b>	<b>The Minister for the Environment and Heritage and, Galaway Holdings Pty Ltd and the Department of Sustainability and Environment</b>	
<b>Minister</b>	Name	<b>Malcolm Turnbull</b> , Minister for the Environment and Water Resources on behalf of the Commonwealth of Australia
	ABN/ACN/ARBN	34 190 894 983
	Address	Department of the Environment and Water Resources, John Gorton Building, King Edward Terrace Parkes ACT 2600
	Telephone	02 6274 1111
	Fax	02 6274 1607
	Attention	Assistant Secretary Environment Assessment Branch Approvals and Wildlife Division
<b>Galaway</b>	Name	<b>Galaway Holdings Pty Ltd</b>
	ABN/ACN/ARBN	38 078 663 993
	Address	Level 4, Zurich House, 66 Kings Park Road, West Perth WA 6005
	Telephone	08 9480 1500
	Fax	08 9480 1599
	Attention	State Manager

## **PURPOSE**

- A. Section 305 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 Australia, including the protection, conservation and management of any listed species or ecological communities, or their habitats.
- B. The Minister has determined that entry into this Agreement is a prerequisite to granting Galaway approval to alter the zoning to undertake a mixed use development, comprising commercial, industrial, retail and residential at Laverton Activity Centre (formerly the RAAF Williams Laverton Airfield), Laverton, Victoria (EPBC 2006/2054).
- C. Under this Agreement, Galaway agrees to implement a management plan for the protection and conservation of listed threatened species and their habitats in grassland and wetland reserves at Laverton.
- D. For the purposes of section 305 of the EPBC Act, the Minister is satisfied that this Agreement will result in a net benefit to the conservation of biodiversity and is not inconsistent with a recovery plan, threat abatement plan or wildlife conservation plan.
- E. The effect of this Agreement is intended to replace the effect of a Charge of Annuity created under section 74(1) of the Victorian *Transfer of Land Act* 1958, created by Galaway in favour of the Commonwealth dated 15 June 1998.

F. OPERATIVE PART

1 **Interpretation**

1.1 In this Agreement, unless a contrary intention appears:

**Agreement** means this Agreement signed by all the Parties.

**Charge of Annuity** means the Charge of Annuity under section 74(1) of the Victorian *Transfer of Land Act* 1958, created by Galaway in favour of the Commonwealth dated 15 June 1998.

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

**Galaway** means Galaway Holdings Pty Ltd or its successors in title being the registered proprietor of the land from time to time.

**Land** means the land to which the Management Plan applies, being the areas marked 'A', 'B' and 'C' in Schedule 2 and described as 'Reserve A', 'Reserve B' and 'Reserve C' in the Management Plan.

**Management Plan** means the Conservation Management Plan for Grassland and Wetland Reserves at Laverton, a copy of which is at Schedule 1 to this Agreement.

**Minister** means the Minister administering EPBC Act or a delegate appointed under the EPBC Act.

**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.

**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 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 The Parties agree that this Agreement commences on the date on which:

- (a) it is executed; or
- (b) Galaway receives approval from the Minister under the EPBC Act to proceed with the action as described in referral 2006/2054 to the Minister under the EPBC Act; or
- (c) The Charge of Annuity is released.

whichever is the later date.

- 2.2 This Agreement continues in perpetuity after its commencement unless terminated in accordance with the EPBC Act or by written agreement between the Minister and Galaway.

## **3 Protection and Conservation of Listed Threatened Species and Their Habitats**

- 3.1 Galaway jointly and severally agrees that:

- (a) Listed threatened species and their habitats on the Land are to be conserved and protected in accordance with the Management Plan; and

- (b) They shall ensure that the Management Plan is fully implemented in relation to the Land.

#### **4 Access to the Land**

- 4.1 Galaway agrees to give to the Minister, or to any persons authorised in writing by the Minister, reasonable access to the Land for the purpose of:
  - (a) Monitoring the Agreement;
  - (b) Conducting any works which are required to remedy any breach of this Agreement or to protect or conserve any listed threatened species or their habitats on the Land ; and
  - (c) Obtaining information necessary to provide advice to Galaway in relation to the implementation of this Agreement.
- 4.2 Where an access route is agreed in writing, the Minister or the persons authorised by the Minister shall follow that route (except in the case of emergency or where it is not reasonably practicable to do so) and shall follow all directions given by Galaway where it is reasonably practicable to do so.
- 4.3 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 mentioned in clause 4.1. Galaway agree to do all things reasonably necessary to assist the Minister in obtaining such permits, licences or authorisations.

#### **5 Notification of Change of Ownership**

- 5.1 Galaway must notify the Minister in writing of any agreement entered into by it to effect any change in ownership or control of the Land or any part of the Land. That notice shall detail the name and address of all parties to the agreement and the nature of the change of ownership or control.
- 5.2 Galaway must ensure that any agreement mentioned in clause 5.1 contains a provision that makes the other parties to the agreement aware of this Agreement and of the effect of section 307(c) of the EPBC Act.

#### **6 Obligations of Successors**

- 6.1 The obligations of Galaway under clauses 3, 4 and 5 are legally binding on any person who is a successor to the whole or any part of any interest that Galaway has in the Land or any part of the Land.
- 6.2 Section 307(c) of the EPBC Act is intended to have the effect that it would have if clause 6.1 was not included in this Agreement.

**7 Changes to the Agreement**

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

**8 Assignment and novation**

- 8.1 Galaway may assign or novate this Agreement to any successor in title to the Land or other person who it has agreed will take responsibility for complying with the Management Plan, provided Galaway, subject to clause 8.2 to 8.5, has first received written notice from the Minister stating that the Minister is satisfied that the assignee is a person who has the intention and capacity to comply with this Agreement.
- 8.2 Galaway may apply in writing to the Minister to give a notice under clause 8.1 about a proposed assignee. The application shall include sufficient information to enable the Minister to decide whether a notice should be given. The Minister may request further information if the Minister considers that this is necessary to enable an informed decision to be made.
- 8.3 The Minister must decide whether to give a notice under clause 8.1 within 60 days after receiving an application under clause 8.2. If the Minister has requested further information under clause 8.2, the period of 60 days does not include any day that is:
- (a) on or after the making of the request; and
  - (b) on or before the receipt of the requested information.
- 8.4 If the Minister does not decide whether to give a notice under clause 8.1 within the period stipulated in clause 8.3, on the day after the expiry of that period the Minister shall be deemed to have given a notice to Galaway stating that the Minister is satisfied that the person named in the application under clause 8.2 has the intention and capacity to comply with the Agreement.
- 8.5 The Minister must not unreasonably withhold his consent.

**9 Dispute resolution**

- 9.1 Any dispute arising during the course of this Agreement shall be dealt with as follows:
- (a) first, the Party claiming that there is a dispute shall send to the other a notice setting out the nature of the dispute;
  - (b) secondly, the Parties shall 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 ten (10) business days from the sending of the notice to reach a resolution or to agree that the dispute shall be submitted to mediation or some other form of alternative dispute resolution procedure;
- (d) fourthly, the Parties shall try to resolve the dispute by arbitration; and
- (e) lastly, if:
  - i. there is no resolution or agreement; or
  - ii. there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within fifteen (15) business days of the submission, or such extended time as the Parties may agree in writing before the expiration of the fifteen (15) business days,

then, a Party may commence legal proceedings.

9.2 Despite the existence of a dispute, a Party shall (unless requested in writing not to do so by the Minister) continue to perform the Agreement.

9.3 This clause does not preclude any Party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

## **10 Termination by agreement**

10.1 This Agreement may be terminated by agreement between the Minister and Galaway in accordance with subsection 308(3) of the EPBC Act.

## **11 Termination or variation by the Minister**

11.1 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 any other Party:

- (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.

11.2 If the Minister, under the preceding subclause, varies the Agreement, Galaway Holdings may, by notice in writing to the Minister, terminate the Agreement.

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

**12 Negation of employment, partnership and agency**

12.1 The Parties, other than the Minister, agree not to represent themselves and to ensure that their officers, employees, agents and subcontractors do not represent themselves, as being officers, employees, partners or agents of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

12.2 The Parties, other than the Minister, are not by virtue of this Agreement officers, employees, partners or agents of the Commonwealth, nor do the Parties, other than the Minister, have any power or authority to bind or represent the Commonwealth.

**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 Taxes, Duties and Government Charges**

14.1 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 Galaway.

**15 Costs**

15.1 Each Party shall bear their own costs in relation to the preparation and execution of this Agreement (including all taxes, levies etc. for which it may be liable).

15.2 Unless otherwise provided for in this Agreement, all monetary amounts specified in this Agreement include GST.

15.3 The recipient of a monetary amount under this Agreement, must provide the supplier of the amount with a tax invoice upon receipt of the monetary amount.

**16 Notification of matters adversely affecting environmental values**

16.1 Galaway shall:

- (a) advise the Minister of any proposed action or event including actions proposed or undertaken by a third party which could materially adversely impact upon the environmental values

under protection, conservation or management under this Agreement; and

- (b) respond promptly to all communications from the Minister relating to this Agreement.

## **17 Notices**

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

- (a) to the Minister – marked for the attention of EPBC Approvals at The Department of the Environment and Heritage GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Minister; and
- (b) in all other cases - to the address of the relevant Party as set out at the beginning of this Agreement and marked to the attention of the person listed for the relevant Party at the beginning of this Agreement.

17.2 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 also to be sent to the addressee by pre-paid post.

17.3 A notice, request or other communication shall 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.

## **18 Governing law**

18.1 This Agreement is governed by the law of Victoria.

## SIGNED AS AN AGREEMENT

SIGNED for and behalf of the MINISTER  
FOR THE ENVIRONMENT AND  
HERITAGE by

  
.....  
(signed)


MARK FLANAGAN

~~Alexandria Rankin~~

Acting First Assistant Secretary  
Department of the Environment and Water  
Resources

Date: 27 JUNE 07


In the Presence of Witness:

  
.....  
(signature)

TANIA ASHNIW

(name)

SIGNED for and behalf of GALAWAY  
HOLDINGS PTY LTD by

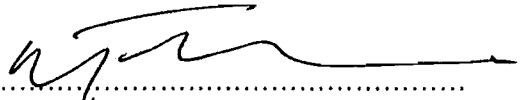
  
.....  
(signed)

PAUL SADIEIRI

(name)

Date: 6/6/07

In the Presence of Witness:

  
.....  
(signature)

NATHAN BLACKBURNE

(name)