

Department of Agriculture, Water and the Environment

**ENFORCEABLE UNDERTAKING**

*Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*

Undertaking to the Minister for the Environment  
given for the purposes of s 486DA of the EPBC Act

by

Novalee Nominees Pty Ltd - ABN 72 111 776 017

Estates 77 Pty Ltd – ABN 68 008 688 131

Spatial Property Group Pty Ltd – ABN 35 143 991 646

**1. Persons giving undertaking**

- a. For the purposes of section 486DA of the EPBC Act, the persons giving the undertaking are Novalee Nominees Pty Ltd (ABN 72 111 776 017), Estates 77 Pty Ltd (ABN 68 008 688 131) and Spatial Property Group Pty Ltd (ABN 35 143 991 646), hereby known as the entities.

**2. Background and conduct to which the undertakings relate**

- a. Between May 2015 and 28 August 2017 at lots 635, 739 and 740 Baldvis Road, Baldvis, Western Australia (the location), 10.18 hectares of vegetation, deemed habitat for Carnaby's Black Cockatoo (*Calyptorhynchus latirostris*), Baudin's Black Cockatoo (*Calyptorhynchus baudinii*) and Forest Red-tailed Black Cockatoos (*Calyptorhynchus banksii naso*) (the protected cockatoos) was removed (the action). The entities, being jointly responsible, took this action, without approval, which had, or is likely to have had a significant impact on a listed threatened species in contravention of ss 18(3) and ss18(4) of the EPBC Act.

**3. Conclusion as to breach of the EPBC Act**

- a. Section 486DA(1) applies if the Minister considers that an action taken by a person after the commencement of this section contravened a civil penalty provision of Part 3. Under section 515 of the EPBC Act, Mr Andrew Tongue, as the Minister's delegate (Delegate) considers for the purpose of s 486DA of the EPBC Act, that the entities contravened ss 18(3) and ss18(4) the EPBC Act, by removing 10.18 hectares of habitat, for the protected cockatoos.

#### 4. The undertaking

- a. Acknowledging that their actions have resulted in the removal of 10.18 hectares of habitat for the protected birds, the entities will ensure commitments are met by implementing the following:
- b. Within 12 months of the date of this undertaking, provide funds to the Western Australian Museum Boola Bardip, Perth Cultural Centre, Perth, Western Australia, 6000. The funds will be to the value of \$250,000 (AUS). These funds will contribute to research for the protected cockatoos'. The research will involve one or more of the following:
  - i. Identify the current distribution and ecological status of all the protected birds and their threats to survival;
  - ii. document areas of critical habitat (breeding, roosting and foraging sites), species ranges, changes in population due to impacts of land clearing, nest competitors, fire and climate change;
  - iii. provide targeted surveys for the protected birds within the south-west region, especially in areas where breeding is known/recorded. Noting the surveys will be conducted to account for seasonal variation, with an aim to confirm the significance of breeding, foraging, migration and roosting sites within the region;
  - iv. investigate alternate food species to reduce the impact of food shortages;
  - v. map important feeding sites used by the protected birds, for future development planning;
  - vi. document and map the changing foraging ecology of Forest red-tailed Black cockatoos in the northern Darling Range west onto the Swan Coastal Plain and north and east into the wheatbelt;
  - vii. monitor nest hollows have already been located and determine the timing of nesting events and breeding success;
  - viii. identify and monitor Baudin's Cockatoo breeding sites in the Jarrah-Marri forest to gain a better understanding of their breeding biology;
  - ix. document nest trees describing hollow size, height, aspect, circumference at breast height, distance apart from other nests and details of local vegetation type;
  - x. assess over consecutive breeding seasons the size and health of some of the breeding populations.

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<sup>1</sup> Coincide with banding project, "Breeding biology of three endemic WA cockatoos". Project is targeting the protected birds and has been in operation since 1992.

- xi. document clutch size, incubation period, fledging period, breeding behaviour and movements; and
- xii. determine and implement ways to remove feral European honeybees from nesting hollows.

#### **5. Reporting**

- a. The entities shall report the payment described in clause 4 by email (director.compliance@awe.gov.au) to the Assistant Secretary of the Environment Compliance Branch, Department of Agriculture Water and the Environment. This report will be sent within 7 business days following the payment.

#### **6. Acknowledgement**

- a. The entities acknowledge that:
  - i. the Delegate will make this undertaking available for public inspection including on a public register;
  - ii. the Delegate, and/or the Commonwealth, may from time to time publicly refer to this undertaking including through, but not limited to, media releases.
  - iii. the entities bear their own costs associated with providing and complying with the undertaking; and
  - iv. any breach of the undertaking may result in the Minister applying to the Court for enforcement of the undertaking under section 486DB of the EPBC Act.
- b. The Delegate acknowledges and agrees that on the basis the entities comply with this undertaking, the Minister will not pursue any action (prosecution, civil or otherwise) against the entities, or against their Directors, staff, employees, contractors, agents, representatives or assigns in relation to the action, works or impacts referred to in this undertaking, and this document may be pleaded as a bar to any proceedings commenced.

#### **7. Commencement and duration of undertaking**

- a. This undertaking comes into effect into when it has been executed by the entities and accepted by the Delegate.
- b. This undertaking will continue until such a time that the funds have been allocated appropriately, as per clause 4, to the Western Australian Museum Boola Bardip, Perth Cultural Centre, Perth, Western Australia, 6000.
- c. Notwithstanding clause 7(b), the provisions in clause 6(b) shall remain in full force and effect.

Signed by Novalee Nominees Pty Ltd (ABN 72 111 776 017):



Signature of director

ANTHONY ROBERT CARCIONE  
DIRECTOR

Name of director (print)

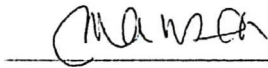


Signature of director/secretary

RONALD JOHN CARCIONE  
DIRECTOR

Name of director/secretary (print)

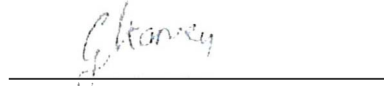
Signed by Estates 77 Pty Ltd (ABN 68 008 688 131):



Signature of director

SUSAN MICHELLE MANSON

Name of director (print)



Signature of director/secretary

GREGORY JOHN HARNEY

Name of director/secretary (print)

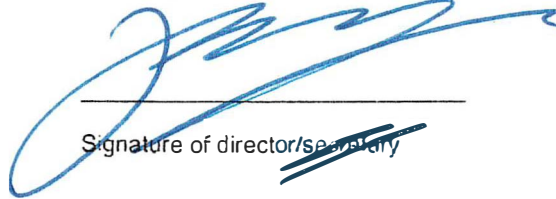
Signed by Spatial Property Group Pty Ltd (ABN 35 143 991 646):



Signature of director

VINCENZO GIUSEPPE CARCIONE  
DIRECTOR

Name of director (print)



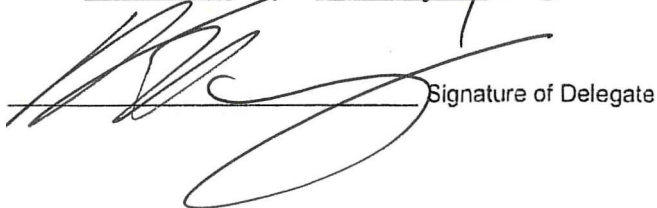
Signature of director/secretary

BRUCE JAMES YOUNG

Name of director/secretary (print)

Accepted by the Deputy Secretary of the Department of Agriculture, Water and the Environment under s486DA of the EPBC Act.

on this 20th day of January 2022

  
Signature of Delegate