



CONSERVATION AGREEMENT

between the

MINISTER FOR THE ENVIRONMENT, HERITAGE AND THE ARTS

on behalf of the

COMMONWEALTH OF AUSTRALIA
and

BURNETT WATER PTY LTD
and

**BURNETT MARY REGIONAL GROUP FOR NATURAL RESOURCE
MANAGEMENT INC**

in relation to the

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

in relation to the

**PROTECTION, RESTORATION AND REHABILITATION OF HABITAT FOR
MIGRATORY SHOREBIRDS IN THE BURNETT RIVER ESTUARY AND
ASSOCIATED AREAS
QUEENSLAND**

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THIS CONSERVATION AGREEMENT is made on 21ST day of FEBRUARY 2008.

PARTIES

This is an agreement between:

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

and

Burnett Water Pty Ltd (ABN 82 097 206 614), Level 9, 120 Edward Street, Brisbane in the State of Queensland ("BWPL")

and

Burnett Mary Regional Group for Natural Resource Management Inc (ABN 22 019 142 308), of 193 Bourbong St, BUNDABERG, in the State of Queensland ("BMRG").

(the "Parties")

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 Parties have agreed to a package of Measures for the protection, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas, Queensland.
- C. The Minister is satisfied that the implementation of the Measures for the protection, restoration and rehabilitation of habitat for Migratory Shorebirds, in accordance with this Agreement, will result in a net benefit to the Migratory Shorebirds and is not inconsistent with the objectives of the EPBC Act.
- D. The entry into and compliance with this Agreement will have the effect of satisfying Condition 2 of the approval granted to BWPL on 25 January 2002 in relation to the construction and operation of the Paradise Dam (EPBC 2001/422).

OPERATIVE PART

1. Interpretation

1.1. In this Agreement, unless a contrary intention appears:

Administration Fee means \$2500 per annum (being 10% of the financial contribution payable by BWPL pursuant to clause 4.2) payable quarterly.

Burnett River estuary and associated areas means the areas identified in white in Schedule 1.

BMRG means the Burnett Mary Regional Group for Natural Resource Management Inc (ABN 22 019 142 308).

BWPL means Burnett Water Pty Ltd (ABN 82 097 206 614).

Business Day means a day other than a Saturday, Sunday or public holiday in the location of any of the Parties.

DEW means the Australian Government Department of the Environment & Water Resources.

Environmental Values means the Migratory Shorebirds and their environment within the Burnett River estuary and associated areas.

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.

GST has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas, as contained in clauses 4 and 6 of this Agreement.

Migratory Shorebirds means those bird species protected under the Agreement between the Government of Australia and the Government of Japan for the protection of migratory birds and birds in danger of extinction and their environment (JAMBA), the Agreement between the Government of Australia and the Government of the People's Republic of China for the protection of migratory birds and their environment (CAMBA), and the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention).

Parties means the parties to this Agreement and their legal successor and permitted assigns, and includes any person bound by this Agreement as a result of section 307 of the EPBC Act.

Paradise Dam means the Paradise (formerly Burnett River) Dam constructed by BWPL.

Tax Invoice has the meaning given to it by the GST Law.

Taxable Supply has the meaning given to it in section 9-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Agreement account means the management account established by BMRG pursuant to clause 5.1 to hold the financial contribution made by BWPL pursuant to clause 4.2.

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 corresponding meaning;
- h. any Schedule or any attachments form part of this Agreement;
- i. 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;

- j. 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 executed by the last Party.

2.2. Subject to clauses 12 and 13, this Agreement will remain in force until the earlier of:

- a. 30 July 2012;
- b. the Parties agree that this Agreement should be ended;
- c. this Agreement is terminated by the Minister pursuant to section 308(4) of the EPBC Act; or
- d. this Agreement is terminated by BWPL and/or BMRG pursuant to section 308(7) of the EPBC Act.

3. Protection, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas, Queensland

3.1. BWPL and BMRG agree to assist with the protection, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas, Queensland. In particular, this Agreement:

- a. prescribes the financial contribution by BWPL as outlined in clause 4 of this Agreement; and
- b. provides for protection, restoration and rehabilitation programs to be undertaken by BMRG as outlined in clause 6 of this Agreement.

4. Financial Contribution

4.1. BWPL is to contribute funding towards the protection, restoration and rehabilitation of habitat for migratory shorebirds in the Burnett River estuary and associated areas, Queensland.

4.2. BWPL is to contribute an amount of \$25,000 each year for five years. This amount is to be paid at the beginning of each financial year, beginning 2007/2008 and ending 2011/2012.

- 4.3. The funding will be used by BMRG to implement programs, as referred to in clause 6.1, for the protection, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas.
- 4.4. The funding is payable directly to BMRG.
- 4.5. Unless otherwise provided for in this Agreement, all monetary amounts specified in this Agreement include GST.
- 4.6. To facilitate the financial contribution by BWPL pursuant to clause 4.2, BMRG will issue to BWPL a Tax Invoice during the first week of each financial year. BWPL will then attend to the payment of the Tax Invoice within 30 Business Days of receiving the Tax Invoice.

5. Agreement Account

- 5.1. BMRG will establish a separate management account (the Agreement account) to manage the financial contributions referred to clause 4.2. The account should be described as the BMRG account for implementation of Measures for Migratory Shorebirds.
- 5.2. BMRG will use the funds deposited into the Agreement account at clause 5.1 solely for the implementation of programs outlined in clause 6.1 for the protection, restoration and rehabilitation of habitat for Migratory Shorebirds in the Burnett River estuary and associated areas.
- 5.3. Any interest accruing on the funding contribution made by BWPL must be used for protection, restoration and rehabilitation programs in accordance with this Agreement.
- 5.4. Subject to clause 5.7 and for avoidance of doubt, no money allocated to protection, restoration and rehabilitation programs shall be used to fund administrative or other activities carried out by the Minister or BMRG.
- 5.5. The total funding provided by BWPL under this Agreement and accumulated interest must be spent by the end of the financial year 2011/2012.
- 5.6. Any funding unspent by BMRG by the end of the financial year 2011/2012 will be returned to BWPL by BMRG by 30 July 2012.
- 5.7. BMRG is entitled to receive an Administration Fee from the Agreement account each quarter (or as the Parties otherwise agree in writing) as remuneration for coordinating the protection, restoration and rehabilitation programs identified in clause 6.1. For the avoidance of doubt BMRG may not receive any other remuneration for its office from the Agreement Account.

6. Protection, restoration and rehabilitation programs

- 6.1. Protection, restoration and rehabilitation programs may include, but not be limited to:
 - a. monitoring impacts of programs on the Migratory Shorebird population in the Burnett River estuary and associated areas, including a baseline

survey of migratory shorebird populations within the Burnett River estuary and other areas identified in Schedule 1;

- b. the restoration and rehabilitation of Migratory Shorebird roosting sites in the Burnett River estuary and associated areas to ensure the long term protection of Migratory Shorebirds;
 - c. the protection and management of existing Migratory Shorebird roosting sites in the Burnett River estuary and associated areas;
 - d. the creation and management of artificial habitat for Migratory Shorebirds in the Burnett River estuary and associated areas to ensure the long term protection of Migratory Shorebirds; and
 - e. the preparation of educational and interpretative materials to improve community awareness of Migratory Shorebirds and their conservation needs.
- 6.2. Within 60 Business Days from the beginning of each financial year in which a payment of funding is made by BWPL, BMRG will provide DEW and BWPL with a description of each protection, restoration and rehabilitation program to be implemented during that financial year.
- 6.3. Within 60 Business Days after the completion of each financial year in which a payment of funding is made by BWPL, BMRG must provide to DEW and BWPL an annual report on the implementation and ongoing status of the protection, restoration and rehabilitation programs initiated under this Agreement.

7. Reporting

- 7.1. Within 90 Business Days after the completion of each financial year in which a payment of funding is made by BWPL, BMRG must provide DEW with audited financial statements of income and expenditure in respect of the funding, which must include a definitive statement as to whether:
- a. the financial information for the programs identified under clause 6.1 represents the financial transactions fairly and is based on proper accounts and records; and
 - b. the funding was expended for the programs identified under clause 6.1 and in accordance with this Agreement.
- 7.2. Information required to be provided under clause 7.1 must be accompanied by a certificate that states:
- a. all funding received was spent for programs identified under clause 6.1 and in accordance with this Agreement and that BMRG has complied with this Agreement;

- b. the unspent portion of funds (if any) for the financial year, available for use in the subsequent financial year (unless the Agreement has been terminated or expired).
- 7.3. The audit referred to in clause 7.1 must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards. The financial statements referred to in clause 7.1 must be prepared in accordance with Australian Accounting Standards.
- 7.4. The certificate referred to in clause 7.2 must be provided by:
- a. BMRG as an incorporated body;
 - b. the Chairperson of BMRG;
 - c. the Chief Executive Officer of BMRG;
 - d. the Chief Financial Officer; or
 - e. a person authorised by BMRG to execute documents and legally bind BMRG by their execution. Satisfactory evidence of the authorisation is to be provided to DEW before certification.

8. Acknowledgements by the Commonwealth

- 8.1. The Minister acknowledges that the entry into and compliance with this Agreement by BWPL is taken to satisfy Condition 2 of the approval granted to BWPL on 25 January 2002 in relation to the construction and operation of the Paradise Dam (EPBC 2001/422).
- 8.2. The Minister declares that the protection, restoration and rehabilitation programs in this Agreement and the conditions attached to the approval are necessary and convenient for repairing or mitigating impacts on Migratory Shorebirds in the Burnett River estuary.
- 8.3. For the avoidance of doubt, if this Agreement is terminated, or comes to an end in accordance with clause 2.2, BWPL shall have no further obligations only with regard to Condition 2 of the approval granted to BWPL on 25 January 2002 in relation to the construction and operation of the Paradise Dam (EPBC 2001/422).

9. Taxes, duties and government charges

- 9.1. 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 BWPL.
- 9.2. For the avoidance of doubt, if any supply in connection with this Agreement is a Taxable Supply then the financial contributions made by BWPL in accordance with clause 4 are deemed to be inclusive of GST.

10. Assignment and novation

- 10.1. BWPL and/or BMRG must not novate their obligations, and must not assign their rights, under this Agreement, without obtaining prior approval in writing from the Minister.

11. Dispute resolution

- 11.1. 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 Parties 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:
 - 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 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.

- 11.2. Despite the existence of a dispute, the Parties will (unless requested by another Party in Writing not to do so) continue to perform the Agreement in relation to any matters that are not in dispute.

12. Termination or variation with agreement

- 12.1. Subject to clause 13 of this Agreement, this Agreement may be terminated or varied only by written agreement between the Parties.

13. Termination or variation by the Minister

- 13.1. 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 BWPL and/or BMRG:
- 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. Prior to exercising the powers outlined in clause 13.1 of this Agreement, the Minister agrees to consult with BWPL and BMRG and attempt to reach a mutual agreement.
- 13.3. If the Minister under clause 13.1(b) varies the Agreement, BWPL and BMRG may, by notice in Writing to the Minister, terminate the Agreement in accordance with clause 308(7) of the EPBC Act.
- 13.4. The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.

14. Waiver

- 14.1. 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.
- 14.2. Whole or partial exercise by a Party of any of its rights does not prevent the further exercise of any right.
- 14.3. In this clause 'rights' means rights or remedies provided by this Agreement or at law.

15. Costs

- 15.1. 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.

16. Notification of matters adversely affecting environmental values

- 16.1. BMRG will:
- a. advise the Minister of any proposed action or event including actions proposed or undertaken by an external third party which could adversely affect the Environmental Values under protection, conservation or management by this Agreement;
 - b. respond within a reasonable time to all communications from the Minister relating to this Agreement.
- 16.2. BWPL will:

- a. advise the Minister if it becomes aware of any proposed action or event by an external third party which could adversely affect the Environmental Values under protection, conservation or management by this Agreement;
- b. respond within a reasonable time to all communications from the Minister in relation 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. if given by BWPL and/or BMRG to the Commonwealth – marked for the attention of the Science and Natural Resources Section, Environment Assessment Branch at the Department of the Environment and Water Resources, GPO Box 787 Canberra ACT 2601 or as otherwise notified by the Commonwealth; or
- b. if given by the Commonwealth to BWPL and BMRG – sent to the registered addresses of BWPL and/or BMRG.

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

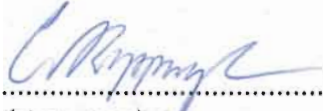
17.3. A notice, request or other communication will be deemed to be received:

- 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)

Cathy Skippington
Assistant Secretary
Environment Assessment Branch
Department of the Environment, Water, Heritage and the Arts

On behalf of:

The Hon Peter Garret MP
Minister for the Environment, Heritage and the Arts

Date: 21-2-02

In the Presence of Witness:



(signature)

JANE CAMPBELL

(name)



Signed sealed and delivered for
BURNETT WATER PTY LTD
ABN 82 097 206 614 by the *Acting*
Chief Executive Officer under
Power of Attorney No 10957110
who warrants that the Power of
Attorney is valid and has not been revoked:

Acting Peter ~~Noonan~~ Boettchen
Chief Executive

SIGNED for and on behalf of
BURNETT MARY REGIONAL GROUP
FOR NATURAL RESOURCE MANAGEMENT INC

Signature of Chief Executive Officer

DAVID BROWN

Print name of Chief Executive Officer



RUSSELL STEWART - CHAIRMAN

SCHEDULE 1

Burnett River estuary and associated areas



Migratory shorebird feeding and roosting sites are identified in white
Localities identified in red