

Biodiversity Stewardship Agreement

Biodiversity Stewardship Agreement ID number: [*]

Stewardship site: [Name] (See boundary map at Attachment 5)

Site area in hectares: [Insert]

Agreement date: [Insert]

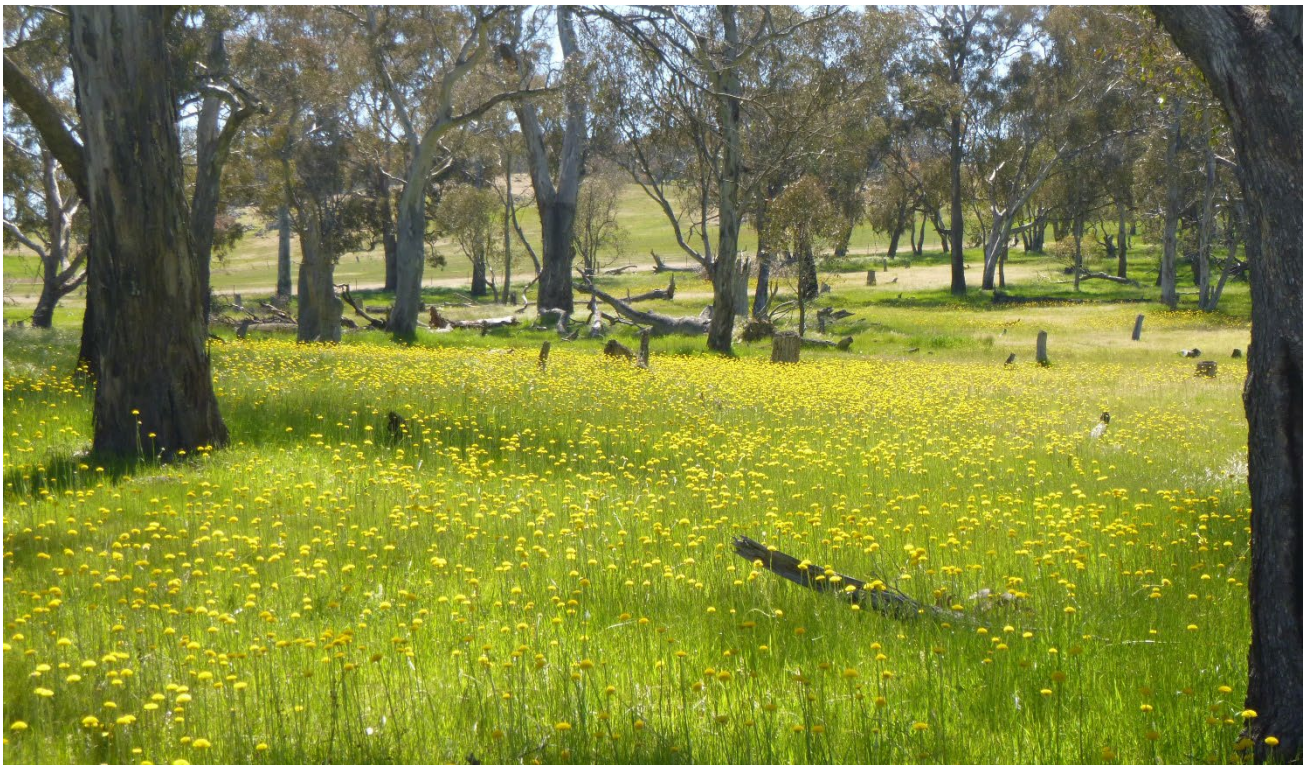


Image: Yass Daisy (*Ammobium craspedioides*) Laura Canackle/DPE

This Biodiversity Stewardship Agreement is made under Part 5 Division 2 of the *Biodiversity Conservation Act 2016* (BC Act), to enter into arrangements for the management of the Site to improve biodiversity values, received management payments for management of the Site and create Biodiversity Credits that can be sold through the NSW Biodiversity Market. The Agreement is to be registered on the land title and is binding on subsequent owners of the land in perpetuity.

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Part A: Parties and Execution

The Parties to this Agreement are the Landowner (listed below and any successors in title) and the Minister responsible for administering the BC Act.

Executed as an Agreement

Executed by the Minister's Representative in the presence of the witness named below:

I certify that the delegate is personally known to me or as to whose identity I am otherwise satisfied signed this dealing in my presence.

.....
Signature of delegate

.....
Signature of witness

.....
Date

.....
Name of witness
(please print)

.....
Name and title of delegate
(please print)

.....
Address of witness
(please print)

Executed by the Landowner in the presence of the witness named below:

Certified correct for the purposes of the Real Property Act 1900 by the registered proprietor

I certify I am an eligible witness and that the registered proprietor signed this dealing in my presence (see note below)*

.....
Signature

.....
Signature of witness

.....
Date

.....
Name of witness
(please print)

.....
Name and Title
(please print)

.....
Address of witness
(please print)

**s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.*

By executing this Agreement, each Party intends to be bound by this Agreement on and from the date that all other Parties have also executed this Agreement.

Part B: Term, Definitions and Interpretation

1. Term of this Agreement

This Agreement applies in perpetuity and when registered with the Registrar-General, is binding on successors in title.

2. Definitions used in this Agreement

Definitions of terms used in this Agreement and the Management Plan are provided in Attachment 1.

Part C: Biodiversity Credits

3. Creation and management of biodiversity credits

- (a) The Biodiversity Credits listed in Attachment 2 are created on the date this Agreement is registered on the title of the Land by the Registrar-General in accordance with section 5.12 of the BC Act.
- (b) Additional Biodiversity Credits may be created under this Agreement by variation to the Agreement.
- (c) Biodiversity Credits may be varied, suspended or cancelled in certain circumstances under the BC Act and if that occurs:
 - (i) no compensation is payable by the Minister in respect of such variation, suspension or cancellation except where compensation is payable under the BC Act or at Law
 - (ii) the retirement, suspension or cancellation of any or all of the Biodiversity Credits does not affect the requirement that the Landowner comply with the Management Plan, including carrying out the Management Actions.
- (d) The Landowner must not allow any mortgage, lease, charge or other security over the Biodiversity Credits, except as authorised by the BC Regulation.

Part D: Management Plan and use of the Site

4. Implementation of the Management Plan

- (a) The Landowner must comply with the Management Plan, including carrying out all Management Actions as set out in Attachment 3.
- (b) The obligation to carry out a Management Action:
 - (i) must be carried out in accordance with the Management Plan including within any specified timeframes or in accordance with any specified conditions,
 - (ii) continues in perpetuity, unless otherwise specified in the Management Plan,
 - (iii) continues until the action has been carried out even if the due date for completion of the action has passed, and
 - (iv) will be satisfied if the action is carried out by a third party. The Landowner will be responsible for any Management Action carried out by a third party, including where the third party does not carry out the Management Action in accordance with the Management Plan.
- (c) The Landowner must ensure that any action prohibited by the Management Plan is not carried out on the Biodiversity Stewardship Site. This applies even if the action has previously been carried out on the Biodiversity Stewardship Site.

5. Review of the Management Plan

- (a) Within 5 years from the Agreement Date and every 5 years following, the Landowner must arrange a formal report of the Management Plan and provide a copy to the Minister in writing.
- (b) A formal review does not vary this Agreement or require any Party to agree to a variation of this Agreement. The Agreement may only be varied in accordance with section 5.11 of the BC Act.
- (c) In this clause 5, a formal review is conducted by an Accredited Person or by an appropriately qualified person approved by the Minister. The findings of a formal review are summarised in a written report, which will:
 - (i) consider the effectiveness of the Management Plan and Management Actions, and
 - (ii) suggest any amendments to the Management Plan that are considered appropriate to ensure the conservation of Biodiversity and Biodiversity Values on the Biodiversity Stewardship Site

6. Use of Biodiversity Stewardship Site and the Land

- (a) The Landowner must not, and must ensure that any of the Landowner's Associates do not do anything, fail to do anything, allow any act or omission by a third party, that may have a negative impact on:
 - (i) Biodiversity Values; or
 - (ii) Biodiversity including any Protected Animals, Native Plants, Threatened Species, Threatened Ecological Communities, and their habitats (including bush rock and fallen timber) in, on, under or in relation to the Site, except to the extent it is specifically permitted by this Agreement (including under the Management Plan or the Law).
- (b) Without limiting clause 6(a), the Landowner must not carry out, or allow to be carried out, any Development in, on, under or in relation to the Site except if permitted by the Law or under this Agreement (including under this clause 6 and the Management Plan).
- (c) The Landowner must not, and must ensure that any of the Landowner's Associates do not, clear vegetation under the Rural Boundary Clearing Code inconsistent with this Agreement.
- (d) The Landowner must obtain the Minister's written consent prior to taking steps to Subdivide the Land, and the Minister must be satisfied that the Subdivision will have no negative impact on Biodiversity or Biodiversity Values in, on or in relation to the Site.
- (e) Nothing in this Agreement authorises a person to harm, damage or desecrate an Aboriginal Object or Aboriginal Place in, on or under the Site.
- (f) Despite any other provision of this Agreement, the Landowner may carry out, or cause or permit to be carried out, unless otherwise excluded in this agreement or in Attachment 3:
 - (i) Recreational activities that do not impact Biodiversity on the Site, including nature-based recreations such as birdwatching and bush walking.
 - (ii) Cultural activities undertaken by the Traditional Owners of the Land covered by this Agreement, excluding commercial activities.
 - (iii) Collection of seeds and/or cuttings from the Site undertaken in accordance with the Florabank Model Code of Practice.
 - (iv) Anything that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or irreparable serious damage to property.
 - (v) Any activity specifically required under a Legal Requirement.

7. Landowner's obligations where Land is used by third parties

- (a) The Landowner's obligations under this Agreement continue when the Land is occupied or used by any third party at the invitation, or with the authorisation, of the Landowner or a Landowner's Associate.
- (b) The Landowner must ensure that:
 - (i) any Occupant and any Landowner's Associate entering or using the Land is aware of the Landowner's obligations under this Agreement; and
 - (ii) any Occupancy Agreement relating to the Land specifically incorporates all relevant requirements of this Agreement and requires that any Occupant will not breach of this Agreement or act in a way that is inconsistent with the Landowner's obligations under the Agreement.

PART E: Management Payments

Total Fund Deposit

The Landowner must deposit the Total Fund Deposit into the Biodiversity Stewardship Payments Fund for this Agreement in the amount of: [*amount] (excluding GST)].

The Total Fund Deposit (or a proportion thereof, if not all Biodiversity Credits generated in connection with the Site are being transferred) must be paid into the Biodiversity Stewardship Payments Fund before the first transfer, or retirement without transfer, of each Biodiversity Credit can be registered.

Payment Schedule

The Minister will make payments to the Landowner in accordance with the following Payment Schedule at Table 1, subject to CPI Increases, and excluding GST.

Table 1: Payment Schedule

Years 1 to 20	
Payment to be made at the beginning of:	Payment Amount (excluding GST)
First Payment Year	\$[* amount for the first year]
Second Payment Year	\$[* amount for the second year]
Third Payment Year	\$[* amount for the third year]
Fourth Payment Year	\$[* amount for the fourth year]
Fifth Payment Year	\$[* amount for the fifth year]
Sixth Payment Year	\$[* amount for the sixth year]
Seventh Payment Year	\$[* amount for the seventh year]
Eighth Payment Year	\$[* amount for the eighth year]
Ninth Payment Year	\$[* amount for the ninth year]
Tenth Payment Year	\$[* amount for the tenth year]
Eleventh Payment Year	\$[* amount for the eleventh year]
Twelfth Payment Year	\$[* amount for the twelfth year]
Thirteenth Payment Year	\$[* amount for the thirteenth year]
Fourteenth Payment Year	\$[* amount for the fourteenth year]
Fifteenth Payment Year	\$[* amount for the fifteenth year]
Sixteenth Payment Year	\$[* amount for the sixteenth year]

Seventeenth Payment Year	\$[* amount for the seventeenth year]
Eighteenth Payment Year	\$[* amount for the eighteenth year]
Nineteenth Payment Year	\$[* amount for the nineteenth year]
Twentieth Payment Year	\$[* amount for the twentieth year]
Ongoing (year 21 and beyond)	
Description	Frequency
	Amount

10. Management Payments and Annual Contributions

10.1 Direction to make Management Payments

- (a) The Minister will direct the Fund Manager to make payments to the Biodiversity Stewardship Payments Fund:
- (i) equal to the Payment Amount on or after each date (or the date that the relevant event occurs) set out in the Payment Schedule in Table 1;
 - (ii) from the Relevant Account to the Nominated Bank Account;
 - (iii) the Minister may only make the direction to make Management Payments:
 - (A) in accordance with the Payment Schedule;
 - (B) if the Relevant Account within the Biodiversity Stewardship Payments Fund has sufficient funds in it to cover the Management Payment; and
 - (C) if the Landowner has submitted, and the Minister has reviewed, the Annual Report for the most recent Reporting Period and is satisfied, with the content of the Annual Report and that the Landowner has complied with the Landowner's obligations under this Agreement during the most recent Reporting Period.

10.2 Withholding, reduction and additional payments

- (a) The Minister may direct the Fund Manager to reduce, delay or not make Management Payments for a specified period of time or until further notice:
- (i) if the Relevant Account in the Biodiversity Stewardship Payments Fund drops below the Operational Deficit Threshold (to help to preserve the long-term financial viability of the Relevant Account for the Landowner);
 - (ii) if the Landowner does not comply with this Agreement, until such time the Landowner complies with the Agreement;
 - (iii) whilst the Landowner owes the Minister any amount because of any breach or negligence by the Landowner under this Agreement or at Law, including any amount payable under clause 12.2(a) or 19.2, in which case the Minister may set off the amounts owed by the Landowner against the Management Payments;
 - (iv) where this Agreement has been terminated; or
 - (v) where clause 14 of this Agreement applies.
- (b) If the Minister directs that Management Payments be reduced or not be made for a specified period of time or until further notice in accordance with clause 10.2(a), then the Minister may (but is not required to), by written agreement with the Landowner, suspend or vary any of the Landowner's obligations to carry out Management Actions under this Agreement for the same period of time or some other period.
- (c) The Landowner acknowledges the Minister may, in addition to the Management Payments, direct additional payments to be paid from the Biodiversity Stewardship Payments Fund to the Landowner, but only to the extent permitted by the BC Act.

10.3 Annual Contribution

- (a) The Landowner authorises the Minister to deduct and retain the Annual Contribution for the relevant Payment Year (and any outstanding Annual Contributions from any previous Payment Year) from each Management Payment made to the Landowner, consistent with section 6.38, unless the Annual Contribution is waived under section 6.38(7) of the BC Act.
- (b) Despite clause 10.3(a), if the Minister does not, or is not able to, deduct and retain the Annual Contribution in accordance with clause 10.3(a), the Landowner must pay the Annual Contribution in accordance with the obligation under the BC Act.
- (c) The Minister will, where relevant following a Management Payment, issue the Landowner with an invoice confirming that the Annual Contribution has been deducted from the relevant Management Payment.

10.4 Nominated Bank Account details

- (a) Before receiving any payments under this Agreement, the Landowner must give the Fund Manager written notice under clause 21:
 - (i) providing the details of the Nominated Bank Account into which the Landowner wishes to receive payments under this Agreement; and
 - (ii) including evidence of the written consent of all Landowners of the Site to the use of the Nominated Bank Account.
- (b) The Landowner may, from time to time, change the details of the Nominated Bank Account by giving the Fund Manager at least 5 Business Days written notice which must include the information in clause 10(4)(a)(i) and (ii) and be given in accordance with clause 21.
- (c) The Fund Manager is not:
 - (i) required to start making any payments to the Nominated Bank Account until at least 5 Business Days after the date the Landowner provides notice under clause 10.4(a);
 - (ii) required to start making payments to any new bank account until at least 5 Business Days after the date that the Landowner provides notice under clause 10.4(b);
 - (iii) liable to the Landowner for the loss of payments caused by failure of the bank or financial institution related to the Nominated Bank Account; or
 - (iv) required to re-pay any amount that it paid to the Nominated Bank Account if the Landowner's bank account details have not been updated as required by clause 10.4(b).

11. Goods and Services Tax

11.1 GST-related definitions

- (a) Definitions used in clause 11 are defined in the GST Act including "GST", "Input Tax Credit", "Recipient", "Supply", "Tax Invoice", "Recipient Created Tax Invoice" and "Taxable Supply" have the meanings given in the GST Act and "Supplier" means the party who made the Taxable Supply.

11.2 Landowner may recover GST for Management Actions

- (a) Where a Supplier makes a Taxable Supply to a Recipient, the Recipient must pay to the Supplier an additional amount equal to the GST payable by the Supplier (unless the consideration for that Taxable Supply is expressed to include GST). The additional amount must be paid when any consideration for the Taxable Supply is first paid or provided. The Supplier must provide to the Recipient a Tax Invoice at the time of payment, except where clause 11.3 applies.
- (b) If this Agreement:
 - (i) requires a Party to pay for, reimburse, set off or contribute to any expense, loss or outgoing incurred by any other Party; and

- (ii) the other Party is entitled to an Input Tax Credit in respect of such payment, reimbursement or contribution,

then the amount required to be paid, reimbursed, set off or contributed is reduced by the amount of any applicable Input Tax Credit. The reduction is to be made before the calculation of any additional amount payable under clause 11.2(a).

11.3 Minister may issue to the Landholder Recipient Created Tax Invoices

- (a) The Parties acknowledge that, if the Landowner is registered for GST, Recipient Created Tax Invoices will be issued (by the BCT on behalf of the Landholder) from the Biodiversity Stewardship Payments Fund (ABN 37 151 321 702) to the Landowner on payment of the Management Payments.
- (b) The Recipient Created Tax Invoices will be for the Taxable Supply of Management Actions carried out by the Landholder under this Agreement.
- (c) The Landowner guarantees it will not issue any Tax Invoice for the Taxable Supply.
- (d) The Landowner must notify the Fund Manager immediately if the Landowner ceases to be registered for GST.
- (e) The Biodiversity Stewardship Payments Fund is registered for GST and the Minister will notify the Landowner promptly if the Biodiversity Stewardship Payments Fund ceases to be registered.

PART F: Administration of this Agreement

12. Indemnity and release

12.1 Release

The Landowner agrees Designated Persons are not responsible for, and releases each of the Designated Persons from, any Claims arising from, in connection with, or as a consequence of:

- (a) the Landowner carrying out requirements under this Agreement or acting on financial, technical or other advice provided under or in connection with the Agreement;
- (b) a Designated Person exercising a right or carrying out a requirement under this Agreement or the Law, including in relation to the variation or termination of this Agreement;
- (c) the provision by a Designated Person of financial advice, technical advice or other assistance under, or in connection with the implementation of this Agreement or the failure to provide such advice or assistance,

except to the extent caused or contributed to by the negligence or default of the Designated Persons.

12.2 Indemnity

- (a) The Landowner indemnifies the Designated Persons against all Claims that the Designated Persons may sustain or incur arising from, in connection with, or as a consequence of the Landowner's, Occupant's or the Landowner's Associates negligence or default under this Agreement.
- (b) Unless this Agreement expressly provides otherwise:
 - (i) each indemnity in this Agreement survives the expiry, termination or surrender of this Agreement; and
 - (ii) a Party may recover a payment under an indemnity in this Agreement before it makes the payment in respect of which the indemnity is given.

13. Variation and termination

- (a) This Agreement may only be varied or terminated in writing and in accordance with the BC Act.

- (b) The Landowner waives any right to request voluntary termination in accordance with sections 5.10(5) and (6) of the BC Act.
- (c) This clause 13 does not affect the ability of the Minister and the Landowner to terminate this Agreement by consent in accordance with section 5.10(2)(a) of the BC Act (including where the circumstances described in subsection 5.10(6) of the BC Act apply).
- (d) The Landowner acknowledges that no compensation is payable by the Minister or the Minister's Representative to the Landowner in respect of variation or termination of this Agreement except where compensation is payable under the BC Act or at Law.

14. Force Majeure Event

- (a) In relation to Force Majeure Events covered by this clause, the Landowner is:
 - (i) not required to comply with its obligations under this Agreement; and
 - (ii) is not liable for any loss or liability suffered or incurred by the Minister as a result of the Landowners' inability to comply with its obligations,

to the extent that the Landowner is prevented from complying, or its ability to comply is delayed, due to a Force Majeure Event. This applies so long as the Force Majeure Event continues to prevent the Landowner from complying.
- (b) If the Landowner's ability to comply with its obligations under this Agreement is affected by a Force Majeure Event it must:
 - (i) promptly notify the Minister as soon as it becomes aware that it is (or is likely to be) so affected, giving reasonable details of the Force Majeure Event and the obligations that will be affected;
 - (ii) take all reasonable steps to prevent, limit and minimise the effect of the Force Majeure Event on the Landowner's obligations and comply again with its obligations as soon as reasonably possible, and
 - (iii) keep the Minister informed of the expected duration of the Force Majeure Event and the steps taken to comply with clause 14(b)(ii).
- (c) The provisions of this clause are in addition to Part 1 of Attachment 4 which requires the Landowner to give the Minister notice of certain events affecting the Site.

15. Dispute resolution

- (a) If a Party believes that a Dispute has arisen, then, subject to clause 15(c), that Party may not commence court proceedings unless it has first given the other Party a Dispute Notice and attempted to resolve the Dispute in accordance with this clause 15.
- (b) If a Dispute Notice is given, then the Landowner and the Minister must each appoint a representative to use all reasonable endeavours to:
 - (i) promptly (and in any event within 28 days after receiving the Dispute Notice meet (in person or using electronic or telecommunications technology); and
 - (ii) at such meeting, act in good faith to attempt to resolve the Dispute described in the Dispute Notice.
- (c) Nothing in this clause 15 prevents:
 - (i) any Party from seeking urgent interlocutory relief in relation to a breach of this Agreement; or
 - (ii) the Minister exercising the Minister's rights under the BC Act.
- (d) Section 5.17 of the BC Act prevails over the terms of this Dispute Resolution Process to the extent of any inconsistency.
- (e) Nothing in this clause limits the rights of the Minister to commence civil proceedings under Part 13, Division 2 of the BC Act and it does not apply where the Landowner is in breach of the requirements of this Agreement.

16. Reporting Requirements

- (a) The Landowner must comply with the Reporting Requirements in Attachment 4.

17. Disclosure of the Agreement and information

- (a) The Landowner consents to the Disclosure Information being made publicly available as part of the register of private land conservation agreements maintained by the Environment Agency Head as required by the BC Act and acknowledges that that Disclosure Information may be made available to the public on a government website.

18. Landowner to permit access to the Site for Research and Monitoring

- (a) The Landowner must do all reasonable things to allow any Authorised Entrant to safely and reasonably access the Biodiversity Stewardship Site at any time to carry out Research or Monitoring but only where the Minister, Minister's Representative or the Authorised Entrant has given reasonable notice to both the Landowner and any Occupant of:
 - (i) the Authorised Entrant's intention to enter the Biodiversity Stewardship Site, and
 - (ii) the nature of the Research and Monitoring to be conducted.
- (b) Clause 10.2(a) allows the withholding of Management Payments if the Landowner restricts access to the Site.
- (c) Unless otherwise agreed between the Parties, reasonable notice for the purpose of clause 18(a) will be at least 5 Business Days for Monitoring and Research.
- (d) The requirements in this clause do not affect or limit the powers of Authorised Officers to enter premises in accordance with Part 12 of the BC Act.

19. Registration, costs and surveys

19.1 Land Titles Registration

- (a) In accordance with section 5.12 of the BC Act, the Minister must:
 - (i) register this Agreement on the title of the Land, as soon as practicable after the Agreement Date, subject to the Landowner's compliance with clauses 3 and 19.1(b) where applicable; and
 - (ii) register any Site Map in Attachment 5, which is to be prepared by the Landowner, as part of this Agreement.
- (b) If the Landowner requires that the Land or Site be described by reference to a separate deposited plan, then unless otherwise agreed, the Landowner must pay the costs of such separate deposited plan including surveying costs and any additional costs associated with registration of such deposited plan.
- (c) The Landowner agrees to do all things reasonably required by the Minister to facilitate registration of the Agreement on the title of the Land, including signing relevant dealing forms and any abstracts.

19.2 Costs

- (a) Each Party must pay its own costs and disbursements in relation to:
 - (i) the preparation, negotiation and finalisation of this Agreement.
 - (ii) everything it must do under this Agreement unless otherwise specified in this Agreement.
- (b) The Landowner must pay the Minister's costs in relation to any variation to this Agreement proposed by the Landowner, including in connection with Site Splitting, unless otherwise agreed.
- (c) Subject to clause 19.2(d), the Minister must pay any fees for registering this Agreement.
- (d) The Landowner must pay in the case of a variation of this Agreement, the registration fee and the Minister's costs associated with the registration of the variation.

20. No fettering of discretion

- (a) The Minister has absolute and unfettered discretion to give or withhold an approval or consent to be given under this Agreement, and any such approval or consent may be subject to any conditions determined by the Minister (except as otherwise set out in this Agreement and subject to any law). The Minister is not obliged to give reasons for withholding approval or consent.
- (b) Nothing in this Agreement is to be construed as requiring the Minister, the Environment Agency Head or the Minister's Representative to do anything that would cause any of those persons to be in breach of any of their obligations at Law, and without limitation nothing in this Agreement is to be constructed as limiting or fettering the exercise of any statutory discretion or duty.

21. Notices

21.1 Notice Addresses

The registered owner of the Land on the Agreement Date and any new Landowner or Occupant upon change in ownership of the Land, must provide a Notice Address to the Minister and Fund Manager in accordance with this clause 21.

Minister or Minister's Representative
Biodiversity Conservation Trust
Locked Bag 5022
Parramatta
New South Wales 2124
Email: info@bct.nsw.gov.au

Fund Manager
Biodiversity Conservation Trust
Locked Bag 5022
Parramatta
New South Wales 2124
Email: info@bct.nsw.gov.au

21.2 Giving notices

- (a) A notice under this Agreement is only given if it is in writing and is delivered, posted or emailed (as appropriate) to the relevant Notice Address.
- (b) The Landowner must give a notice or any other information or document to the Minister by giving it to the Minister's Representative at the Notice Address, unless the Minister or Minister's Representative has advised it is required to be given specifically to the Minister.
- (c) A Party may change their Notice Address by giving the other Parties at least 5 Business Days written notice of the changed details.

21.3 Time notice is given

A notice or other information or document is to be treated as given or made in accordance with the following rules:

- (a) if it is delivered in person, when it is left at the relevant physical address of the recipient;
- (b) if it is sent by post within Australia, on the earlier of the following:
 - (i) the date it is actually delivered;
 - (ii) the date confirmed to be the delivery date pursuant to the tracking service; and
 - (iii) where it is sent by:
 - (A) express post service, 2 Business Days after being posted; or
 - (B) any form of post, other than express post, 4 Business Days after being posted;
- (c) if it is sent by email, as soon as it is sent provided that:

- (i) the sender does not receive a message indicating that there has been an error in the transmission; and
- (ii) the sender also sends the notice by way of an alternative method of service (but clauses 21.3(a) and 21.3(b) will not apply to the alternative method).

22. Change of Landowner or Occupant of Land

22.1 Notification

- (a) The Landowner must notify the Minister in writing:
 - (i) where part or all of the Land is listed for sale, within 7 days after the date of such listing;
 - (ii) of any change of ownership of part or all of the Land, within 7 days after such change;
 - (iii) of any change of an Occupant of part or all of the Land, within 28 days after such change.
- (b) A notice under clause 22.1(a)(ii) or 22.1(a)(iii) must include the name, address and other relevant contact details of the new Landowner or Occupant.

22.2 Obligation to provide copy of the Agreement to any new Landowner

The Landowner must provide a copy of:

- (a) this Agreement; and
- (b) all records required to be kept pursuant to the Reporting Requirements in Attachment 4 to any new Landowner before completion of the sale of the Land.

22.3 Minister's right to withhold Management Payments when Site Splitting occurs

The Minister may withhold Management Payments for a period of up to 3 months under this Agreement where ownership of the Land has been split between different successors in title, and the Agreement has not been varied to allocate obligations and entitlement to payment, between the new Landowners. Following variation, the Minister will pay the withheld amounts to the successors in title.

23. Landowner's warranties as to ownership and Biodiversity

The Landowner warrants that, as at the Agreement Date:

- (a) the Landowner is the owner of the Land and no other person is the owner of the Land;
- (b) the Landowner is not aware of any challenge to the Landowner's ownership of the Land, and
- (c) there has been no sudden or significant decline in the Biodiversity and Biodiversity Values on the Site since the Assessment Date.

24. Landowner to obtain all necessary consents and comply with all Laws

- (a) The Landowner warrants that:
 - (i) as at the Agreement Date, the Landowner has obtained the written consent of all persons whose consent is required to enter into this Agreement and register the Agreement on the title of the Land in accordance with s 5.12 of the BC Act; and
 - (ii) if any further consents are required on or after the Agreement Date, the Landowner will promptly obtain the written consent of such persons including where consent is required for the continuation, variation or termination of this Agreement or the registration of such dealings on the title of the Land, whether required by this Agreement or by Law.
- (b) The Landowner must obtain all licences, consents, authorisations, permits and approvals necessary for, and comply with all Laws in relation to carrying out the Landowner's

obligations under, or activities permitted under, this Agreement, and any agreed Management Actions (Attachment 3).

25. Other conditions

25.1 Minister's right to caveat

The Landowner agrees that the Minister may register a caveat or priority notice against the Land to protect its interests under the BC Act and this Agreement.

25.2 Joint and several liability

If the Landowner comprises more than one person, each of them is liable individually under this Agreement and each of them is also liable jointly with any one or more of the others who comprise the Landowner.

25.3 Nature of obligations

Each obligation imposed on a Party by this Agreement in favour of another is a separate obligation. Unless otherwise specified in this Agreement, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

25.4 Consent and approvals

Where anything depends on the consent or approval of a Party, then, unless this Agreement says otherwise, that consent or approval may be given or withheld in the absolute discretion of that Party, and, if given, may be given subject to conditions.

25.5 Waiver

The fact that the Minister fails to do, or delays in doing, something the Minister is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the Landowner.

25.6 Severability

If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

25.7 Enforcement

- (a) The Landowner acknowledges that the Minister has rights under the BC Act and at Law in the event of a default by the Landowner under this Agreement, including rectification rights.
- (b) In accordance with section 13.15 of the BC Act, and without limiting other remedies available to the Minister, the Minister or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Agreement.

25.8 Governing law

This Agreement is governed by and must be construed in accordance with the laws in force in New South Wales. The Parties submit to the exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of or relating to this Agreement.

25.9 Whole agreement

This Agreement, including any attachments to it, comprises the whole of the agreement between the Parties in respect of the subject matter of this Agreement.

25.10 No warranties or representations

The Landowner acknowledges that, except as expressly stated in this Agreement, the Landowner has not relied on any representation, warranty or undertaking of any kind made by or on behalf of the Minister in relation to the subject matter of this Agreement.

25.11 Further acts

Each Party must, at its own expense, promptly execute all documents and do, or use reasonable endeavours to cause a third party to do, all things that another Party from time to time may reasonably request in order to give effect to, perfect or complete this Agreement and all transactions contemplated by it.

25.12 Non merger

A term or condition of, or act done in connection with, this Agreement does not operate as a merger of any of the rights or remedies of the Parties under this Agreement and those rights and remedies continue unchanged.

25.13 Good faith

Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this Agreement.

25.14 No right of set-off

The Landowner has no right of set-off against a payment due to the Minister, unless this Agreement expressly provides for such a right.

26. Special conditions

26.1 Nil unless otherwise specified.

Attachment 1: Interpretation and definitions

Interpretation

In the interpretation of this Agreement, the *Interpretation Act 1987* (NSW) applies as if this Agreement were an “instrument” for the purposes of that legislation as well as each of the following rules, unless the context otherwise requires:

- (a) headings and notes are inserted for convenience only and do not affect the interpretation of this Agreement;
- (b) any reference to an action, or carrying out an action, in this Agreement includes a reference to doing anything or refraining from doing anything;
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable are payable in Australian dollars;
- (d) any body (including an institute, association or Authority) that ceases to exist or whose powers or functions are transferred, refers to the body that replaces it or substantially inherits its powers or functions;
- (e) a reference in this Agreement to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (f) a reference to a clause, part, schedule, annexure or attachment is a reference to a clause, part, schedule, annexure or attachment of or to this Agreement;
- (g) a reference to any Party to this Agreement includes that Party’s successors and permitted assigns;
- (h) a reference to the word 'include' or 'including' is to be construed without limitation and any examples included in this Agreement to illustrate the effect of a provision are not to be construed to limit the extent of the matters that may be captured;
- (i) a reference to this Agreement includes the agreement recorded in this Agreement; and
- (j) any schedules, annexures and attachments form part of this Agreement.

Definitions

Aboriginal Object has the same meaning as in the *National Parks and Wildlife Act 1974*.

Aboriginal Place has the same meaning as in the *National Parks and Wildlife Act 1974*.

Accredited Person has the same meaning as in section 1.6 of the BC Act.

Agreement means this Agreement between the Parties.

Agreement Date means the date on which the last Party executes this Agreement.

Annual Contribution means the annual contribution payable in relation to the Biodiversity Stewardship Site in accordance with clause 6.27 of the BC Regulation.

Annual Report means an annual report prepared by the Landowner in the form set out in the Annual Reporting Template as published by the BCT, including any attachments.

Assessment Date means the date on which the assessment the Site Assessment Report was completed.

Authorised Entrant means:

- (a) an officer of the Department or BCT with a role that relates to the administration of this Agreement.
- (b) any other person that an officer of the Department or the BCT requests the Landowner to allow onto the Land to carry out Research and/or Monitoring where the Landowner has consented to this request (consent should not be unreasonably withheld or delayed).

Authorised Officers means a person who is appointed as an authorised officer under Part 12 of the BC Act.

Authority means any federal, state or local government authority, body or department having jurisdiction in relation to the Land, the Site or this Agreement and includes any governmental or semi-governmental or local governmental authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality.

BC Act means the *Biodiversity Conservation Act 2016*.

BC Regulation means the *Biodiversity Conservation Regulation 2017*.

Biodiversity has the same meaning as in section 1.5 of the BC Act.

Biodiversity Conservation Trust (BCT) means the NSW Biodiversity Conservation Trust.

Biodiversity Credits means biodiversity credits as defined in section 1.6 of the BC Act and created by and in accordance with this Agreement.

Biodiversity Stewardship Payments Fund means the fund established by Division 7 of Part 6 of the BC Act.

Biodiversity Stewardship Site (Site) means the biodiversity stewardship site created by this Agreement in accordance with Division 2 of Part 5 of the BC Act and depicted in the Site Map at Attachment 5.

Biodiversity Values has the same meaning as in section 1.5 of the BC Act.

Business Days means any day other than a Saturday, Sunday or public holiday in New South Wales.

Claim means any claim, damage, demand, liability, Cost, loss, suit, proceeding (whether actual or potential), right of action and claim for compensation.

Cost means any cost, expense, charge, payment, outgoing, loss or other expenditure of any nature whether direct, indirect or consequential and whether accrued or paid and includes legal costs and expenses on whichever is the higher of a full indemnity basis or solicitor and own client basis

CPI Increase Each amount is to be increased to the amount which is “PA” in the formula below:

$$PA = \frac{A \times B}{C} \text{ where:}$$

A is the dollar value (\$) of the amount as set out in the Table 1 prior to indexation by CPI;

B is the CPI for the June Quarter published immediately prior to the date that the Payment Amount is due to be made; and

C is the CPI for the June Quarter published immediately prior to the Agreement Date.

provided that, each Payment Amount in Table 1 will remain unchanged if applying the formula above would result in the amount decreasing.

Department means the NSW Department of Planning and Environment and any name it may be known by in the future.

Designated Persons means each and all of the following, the Minister, the Minister’s Representative, the Environment Agency Head, the Secretary of the Department, the employees or officers of the Department, the BCT, the members and committees of the board of the BCT, employees and officers of the BCT, any other person acting under the delegation, direction or control of the Minister, the Minister’s Representative, the Environment Agency Head or the NSW BCT for any purpose and the Crown in right of the State of New South Wales.

Development has the same meaning as in section 1.6 of the BC Act.

Disclosure Information means the information contained in this Agreement, including a copy of the Agreement and details of the location of the Land, and Management Actions and Management Payments under this Agreement.

Dispute means a dispute, difference or claim in connection with this Agreement (but excluding any dispute, difference or claim in connection with clause 25.7).

- (a) Dispute Notice means a notice setting out:
- (b) the nature, or subject matter, of the Dispute, including a summary of any efforts made to resolve other than in accordance with the Dispute Resolution Process
- (c) the identity of any other person centrally involved in the Dispute
- (d) the intent to invoke the Dispute Resolution Process
- (e) (if practicable) the outcomes which the notifying party wishes to achieve.

Dispute Resolution Process means the process set out in clauses 15(a) and (b).

Environment Agency Head has the same meaning as in section 1.6 of the BC Act.

Force Majeure Event means an event that is beyond the reasonable control of the Landowner, including any natural disaster, fire, flood, accident, war, riot, act of terrorism, biohazard, a serious epidemic, or a change in legislation, but only to the extent that such events were beyond the Landowner’s reasonable control. A force majeure event does not however include any obligation to pay money, a labour dispute or shortage of materials or labour.

Fund Manager means the public authority, body or person appointed from time to time under Part 6 of the BC Act in respect of the Biodiversity Stewardship Payments Fund.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the whole of the land, which, which may be comprised of areas larger than, and/or additional to, the Biodiversity Stewardship Site.

Landowner the person described as the Landowner at the beginning of this Agreement, including any successor in title and any person who is an “owner” within the meaning of section 1.6 of the BC Act.

Landowner’s Associates means any representative, contractor, consultant, agent, lessee, licensee or invitee of the Landowner.

Law means the common law, any requirement of any rule, statute, proclamation, regulation, ordinance or by-law, present or future, and whether state, federal or otherwise and the requirements of any Authority.

Legal Requirement means a:

- (a) control order under section 62 of the *Biosecurity Act 2015*
- (b) requirement to assist an authorised officer under section 103 of the *Biosecurity Act 2015*
- (c) biosecurity direction under section 128 of the *Biosecurity Act 2015*
- (d) weed control notice issued under and prior to the repeal of the *Noxious Weeds Act 1993*
- (e) pest control order under section 130 of the *Local Land Services Act 2013*
- (f) eradication order under section 144 of the *Local Land Services Act 2013*
- (g) requirement for destruction of pests under section 152 of the *Local Land Services Act 2013*
- (h) requirement to assist an authorised officer under section 179 of the *Local Land Services Act 2013*
- (i) direction under section 37A of the *State Emergency and Rescue Management Act 1989* in relation to a state of emergency or a direction under section 22A of that Act
- (j) notified steps under section 63 of the *Rural Fires Act 1997*
- (k) direction under section 45 of the *Rural Fires Act 1997* for prevention, control or suppression of bush fire
- (l) bush fire hazard reduction notice under section 66 of the *Rural Fires Act 1997*
- (m) an emergency fire fighting act within the meaning of the *Rural Fires Act 1997*
- (n) emergency bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997*
- (o) managed bushfire hazard reduction work carried out in accordance with a current bushfire hazard reduction certificate that applies to the work or the provisions of any bushfire code applying to the land specified in the certificate under the *Rural Fires Act 1997*.

Management Action means an obligation to act or an obligation to refrain from doing something set out in Attachment 3.

Management Payment means a payment to be made to the Landowner in accordance with clause 10.1(a).

Management Zone means an area of a given zone within the Biodiversity Stewardship Site subject to the same regime of management identified as a management zone in Attachments 3 or 5.

Minister means the Minister of the State of New South Wales administering the BC Act and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Minister.

Minister’s Representative means the person nominated or delegated by the Minister to be his or her representative from time to time and who, as at the Agreement Date, is the person set out in clause 21.2.

Monitoring means observing and making records (in any form) of any one or more of the following:-

- (a) the status of and changes to Biodiversity and Biodiversity Values
- (b) the success of the Management Plan in improving Biodiversity
- (c) compliance by the Landowner with this Agreement and the BC Act.

Native Plants has the same meaning as in section 5 of the *National Parks and Wildlife Act 1974*.

Nominated Bank Account means the bank account nominated by the Landowner in writing which relevant payments under this Agreement will be deposited into in accordance with clause 10.4(a) or as updated from time to time in accordance with clause 10.4(b).

Notice Address(es) means the addresses set out in clause 21 and provided by the Landowner to the Minister from time to time.

Occupancy Agreement means any lease or licence or other agreement which permits entry to or occupancy of any part of the Land (including the Site).

Occupant means any person who occupies any part of the Land pursuant to any lease or licence or other agreement which permits entry to or occupancy of any part of the Land, including the Biodiversity Stewardship Site (but does not include a Landowner).

Operational Deficit has the same meaning as in clause 6.16 of the BC Regulation.

Operational Deficit Threshold has the same meaning as in clause 6.17 of the BC Regulation.

Payment Amount means each amount set out in Table 1 for a Payment Year.

Payment Year means each 12 month period commencing at the beginning of each year set out in Table 1.

Payment Schedule means the payment schedule set out in Table 1.

Party (Parties) means the parties to this Agreement as set out in Part A.

Protected Animal has the same meaning as in section 1.6 of the BC Act.

Relevant Account means the Biodiversity Stewardship Site account within the Biodiversity Stewardship Payments Fund kept by the Fund Manager in accordance with the BC Regulation.

Reporting Period means on and from the First Payment Date:

- (a) the 12 month period commencing on the First Payment Date; and
- (b) each subsequent 12 month period commencing on each anniversary of the First Payment Date.

Reporting Requirements means the reporting requirements set out in Attachment 4.

Research means the investigation into and study of facts relating to Biodiversity and Biodiversity Values, and the conservation of Biodiversity and Biodiversity Values.

Site Assessment Report means the Biodiversity Stewardship Site Assessment Report prepared by an Accredited Person pursuant to section 6.11 of the BC Act in relation to the application to enter into this Agreement.

Site Map means the map/s of the Biodiversity Stewardship site in Attachment 5.

Site Splitting means a gifting or transfer of part of the Land, including a Subdivision in preparation for such a gift or transfer.

Subdivide to physically or legally (or both) split or separate the Land into portions or to make an application to an Authority for such a split or separation.

Threatened Ecological Communities has the same meaning as in section 1.6 of the BC Act.

Threatened Species has the same meaning as in section 1.6 of the BC Act.

Total Fund Deposit has the same meaning as in section 6.21(7) of the BC Act and for this Site is the amount specified in clause 8(a).

Attachment 2: Biodiversity Credits

Ecosystem credits

Credit ID	Credit name	Offset trading group	Number of credits	
			With hollows	Without hollows

Species credits

Credit ID	Credit name	Number of credits

Attachment 3: Management Plan

Attachment 4: Reporting Requirements

Part 1 – Incident reporting

1. The Landowner must notify the Minister as soon as possible after becoming aware of any matter that is caused by or arises from actions of the Landowner, including:
 - (a) any threat to, or sudden or significant decline, in the Biodiversity Values, or Biodiversity, on the Biodiversity Stewardship Site,
 - (k) any breach of this Agreement, or any document that is part of this Agreement,
 - (l) Such notice must include the following information:
 - (i) the nature, location and time of the incident;
 - (ii) the impact, or anticipated impact, on Biodiversity and Biodiversity Values
 - (iii) the measures that have been taken or will be taken in response to the incident;
 - (iv) any provision of this Agreement which may have been breached;
 - (v) the extent of any damage caused by, or anticipated to result from, the incident; and
 - (vi) the measures which have been, or are proposed to be taken, by the Landowner to prevent a recurrence of and minimise the damage arising from the incident.

Part 2 – Records

1. The Landowner must create the following records:
 - (a) for a Management Action (other than a Management Action requiring the Landowner to refrain from an activity), details of the date and location/s the Management Action was carried out and a description of such Management Actions that were undertaken;
 - (b) diaries recording actions undertaken in accordance with the Management Plan;
 - (c) details of the date, time, location and nature of an inspection required by this Agreement, the name of the person who conducted the inspection and observations from the inspection; and
 - (d) the results of monitoring, inspections or surveys required to be conducted.
2. The Landowner must retain a copy of each Annual Report and all records under this Agreement:
 - (a) in a legible form, or form that can be reduced to a legible form (including photographs), and
 - (b) for at least 10 years after the event to which they relate took place, unless specified otherwise.
4. The Landowner must produce any records required to be kept by this Agreement to the Minister, the Minister's Representative or any Authorised Officer on request by the Minister, the Minister's Representative or an Authorised Officer.

Part 3 – Annual Reports

1. The Landowner must complete and submit an Annual Report to the Minister for approval within 14 days after the end of each Reporting Period.
2. An Annual Report must be submitted by registered post, or by such other means as is agreed with the Minister in relation to a particular Reporting Period.
3. The Annual Report relating to the Reporting Period commencing on the First Payment Date must report on the period between the end of the previous Reporting Period and the First Payment Date.

If there is a change in ownership of a Site during a Reporting Period, each Landowner of the Site during the Reporting Period must submit an Annual Report in accordance with the Reporting Requirements under Part 2 and 3 in the period for which they were the "Landowner". Any Landowner who ceases to be the Landowner of the Site during a Reporting Period must submit the Annual Report for the period during which they were the Landowner, within 30 days after they cease to be a Landowner of the Site.

Attachment 5: Biodiversity Stewardship Site Map

Maps should be provided as a soft copy in the format prescribed in Appendix 11 of the BAM 2020, and should show the Site boundaries including cadastre with Lot and DP numbers.