



Planning and
Environment

Biodiversity Stewardship Agreement

Made under the *Biodiversity Conservation Act 2016* (NSW)

Biodiversity Stewardship Agreement ID number: [REDACTED]
Property Name: [REDACTED]

Part A. Execution

Executed as a deed

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

27 September 2022
Date

Name of witness
(please print)

Name and title of delegate
(please print)

Address of witness
(please print)

By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000.

Certified as correct for the purposes of the Real Property Act 1900 (NSW) and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Executed by BWF Nominees Pty Ltd ACN 633 105 405 as The Trustee for BWF Trust ABN 60 747 209 343 in accordance with section 127(1) of the Corporations Act 2001 (Cth) acting by:

Signature

Signature

Electronic signature of me, affixed on 16 September

Electronic signature of me, affixed on 16 September 2022

Name of Director
(please print)

Name of Director
(please print)

Certified as correct for the purposes of the Real Property Act 1900 (NSW) and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Executed by BWF Nominees Pty Ltd ACN 633 105 405 in accordance with section 127(1) of the Corporations Act 2001 (Cth) acting by:

Signature

Signature

Name of Director
(please print)

Name of Director
(please print)

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Part B. Parties

The parties to this Deed are:

- The person or entity named in Item B, subject always to clause 31.1(h) (**Owner**)
- The person or entity named in Item C (**Minister**)

Note: This Deed, once Registered, is binding on successors in title and not just the owner named above.

Note: The Minister may delegate any of the Minister's functions (other than the power of delegation) to the Environment Agency Head or any person employed in DPE, or any person, or a person of a class, prescribed by the Biodiversity Conservation Regulation.

Note: Any reference in this Deed to the word "Item" is a reference to the relevant item in the Schedule of Terms at Part E of this Deed.

Part C. Preamble

- A. The parties have agreed to enter into a Biodiversity Stewardship Agreement under Part 5 Division 2 of the Biodiversity Conservation Act for the purpose of establishing a Biodiversity Stewardship Site and contributing to the conservation of Biodiversity Values and Biodiversity in New South Wales.
- B. The Minister has delegated the power to enter into this Deed to the Minister's Representative in accordance with section 14.4 of the Biodiversity Conservation Act.
- C. The Owner owns the Land, which includes the Biodiversity Stewardship Site.
- D. The Owner has agreed to:
- (a) carry out Management Actions (which includes refraining from carrying out certain activities); and
 - (b) meet certain Reporting Obligations,
- in relation to the Biodiversity Stewardship Site, and as a result:
- (c) is entitled to Biodiversity Credits determined in accordance with the Biodiversity Assessment Method; and
 - (d) may be entitled to receive payments from the Fund Manager,
- in accordance with the Law and the terms and conditions set out in this Deed.

Part E. Schedule of Terms

Item A	Agreement Date	
	27 September 2022	
Item B	Owner name	
	Name of Owner at Agreement Date	██████████
	Address for service of notices	████████████████████ ████████████████████
Item C	Minister	
	Name	The Minister responsible for administering the <i>Biodiversity Conservation Act 2016</i> (NSW) which, as at the Agreement Date, is the Minister for the Environment of the State of New South Wales
	Address for service of notices	Biodiversity Conservation Trust Locked Bag 5022 Parramatta New South Wales 2124 Email: info@bct.nsw.gov.au
Item D	Minister's Representative	
	Name	The person or class of persons to whom the Minister delegates from time to time, pursuant to section 14.4 of the Biodiversity Conservation Act, the exercise of any function of the Minister in relation to biodiversity stewardship agreements under Part 5 Division 2 of the Biodiversity Conservation Act.
	Address for service of notices	NSW Department of Planning and Environment 4 Parramatta Square 12 Darcy Street Parramatta NSW 2150 Email: BOS.helpdesk@environment.nsw.gov.au
Item E	Fund Manager	
	Name	The Biodiversity Conservation Trust of New South Wales
	Address for service of notices	Biodiversity Conservation Trust Locked Bag 5022 Parramatta New South Wales 2124 Email: info@bct.nsw.gov.au
Item F	Details of Land and Biodiversity Stewardship Site	
	Land	████████████████████ ██ ████████████████████ ████████████████████ Note: This agreement applies, including if Registered, to the whole of the Land, which may be comprised of areas larger than, and/or additional to, the Biodiversity Stewardship Site. Certain obligations and restrictions may apply to the whole of the Land, whilst others may apply only to the Biodiversity Stewardship Site itself

	Biodiversity Stewardship Site	The area outlined on the biodiversity stewardship site boundary map in Attachment 1, having an approximate area shown below
	Approximate area of Biodiversity Stewardship Site	██████████
Item G	Aboriginal Objects and Aboriginal Places known to be, or recorded in AHIMS as being, present on Biodiversity Stewardship Site	
(clause 3)	<p>As of 26 March 2021 the Aboriginal Heritage Information Management System register indicates that there are no (0) records of known Aboriginal Objects and/or Aboriginal Places on the Conservation Area.</p> <p>Note: The above is based on the Owner's knowledge, and a search that the Minister's Representative has conducted of the Aboriginal Heritage Information Management System (AHIMS) to determine whether any Aboriginal objects or Aboriginal places are recorded in that system as existing in, on, under or in relation to the Biodiversity Stewardship Site. The fact that AHIMS does not have any recordings in relation to the Biodiversity Stewardship Site does not mean that Aboriginal objects or Aboriginal places do not exist in, on under or in relation to the Biodiversity Stewardship Site (and if Aboriginal objects or Aboriginal places are recorded, this does not mean that additional Aboriginal objects or Aboriginal places do not also exist in, on, under or in relation to the Biodiversity Stewardship Site).</p>	
Item H	Biodiversity Stewardship Site Assessment Report	
	The report prepared by an accredited person pursuant to the Biodiversity Conservation Act, titled "Biodiversity Stewardship Site Assessment Report" submitted with the application to enter a biodiversity stewardship agreement for the Biodiversity Stewardship Site and dated 21 June 2022 a copy of which is set out in a document which is separate to this Deed which has been signed by the parties for identification purposes	
Item I	Permitted Exceptions	
(clause 6)	Action	Management Zone/s
	Any activity or any development specifically permitted or required as part of an Identified Legal Requirement	All zones
	Any activity or any development specifically permitted or required as part of a Management Action	All zones
	Recreational activities that are passive in nature, including nature based recreations such as birdwatching and bush walking	All zones
	Traditional Aboriginal cultural activities, except commercial activities	All zones
	Collection of seeds and/or cuttings from the Biodiversity Stewardship Site undertaken in accordance with the Florabank Model Code of Practice	All zones
Item J	Special conditions	
(clause 1(b))	Nil	

Payment schedule

(clauses 11 and 14)

Item K	Total fund deposit		
	<p>██████████</p> <p>Note: Section 6.21 of the <i>Biodiversity Conservation Act 2016</i> (NSW) requires that the Total Fund Deposit (or a proportion thereof if not all credits generated in connection with the Biodiversity Stewardship 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</p>		
Item L	Payment schedule years 1 - 20		
	Payment timing	Amount (excluding GST)	
	At the beginning of the first Payment Year	██████████	
	At the beginning of the second Payment Year	██████████	
	At the beginning of the third Payment Year	██████████	
	At the beginning of the fourth Payment Year	██████████	
	At the beginning of the fifth Payment Year	██████████	
	At the beginning of the sixth Payment Year	██████████	
	At the beginning of the seventh Payment Year	██████████	
	At the beginning of the eighth Payment Year	██████████	
	At the beginning of the ninth Payment Year	██████████	
	At the beginning of the tenth Payment Year	██████████	
	At the beginning of the eleventh Payment Year	██████████	
	At the beginning of the twelfth Payment Year	██████████	
	At the beginning of the thirteenth Payment Year	██████████	
	At the beginning of the fourteenth Payment Year	██████████	
	At the beginning of the fifteenth Payment Year	██████████	
	At the beginning of the sixteenth Payment Year	██████████	
	At the beginning of the seventeenth Payment Year	██████████	
	At the beginning of the eighteenth Payment Year	██████████	
	At the beginning of the nineteenth Payment Year	██████████	
	At the beginning of the twentieth Payment Year	██████████	
	<p>Note: See definition of "Payment Year" which means that payments start on and from the First Payment Date</p> <p>Note: Amounts above are to be increased by CPI in accordance with clause 11.2(a)</p>		
	<p>OR</p> <p>Not applicable</p>		
Item M	In perpetuity management costs (on and from year 21)		
	Description of Ongoing management action	Frequency of payment	Amount (excluding GST)
	External fence maintenance (11.5 km, @ 1/20th replacement cost)	Every 2 years	██████████
	Retention and maintenance of Internal fences for grazing management (7.4 km @ 1/20th installation cost \$900/km)	Every 3 years	██████████
	Gate maintenance (3 gates)	Every 5 years	██████████

	Management track maintenance (3.8 km @ \$1000 / km/3yr)	Every 3 years	██████
	Replacement Stewardship Signs (9 signs @ \$45 each)	Every 5 years	██████
	Seek approval for burn	Every 6 years	██████
	Ecological burn every 18 years (3 burn units, one unit burnt every 6 years)	Every 6 years	██████
	Maintenance Yr 7 and ongoing (4 person team x 5 days) 20 person days	Annually	██████
	Grassland habitat management - conservation grazing (279.94 ha) @ \$3,000 per session	Every 3 years	██████
	Installation and maintenance of temporary SMART fencing for grazing management	Every 3 years	██████
	Management of habitat and selective retention of naturally regenerating trees (in conjunction with weed management actions)	Every 2 years	██████
	Feral pest animal control (rabbits & foxes- burrow/den fumigation and destruction and baiting as required; goats/deer/pigs - opportunistic shooting)	Annually	██████
	Maintenance of pig traps (2 traps at watering points)	Every 10 years	██████
	Pig trap monitoring (establishment of cameras (x3) and ongoing replacement)	Every 5 years	██████
	Pig control (checking traps, shooting and disposal of animals)	Annually	██████
	Monitoring post ecological burn	Every 6 years	██████
	Monitoring (ferals/weeds/fencing/tracks, etc) post year 20 (50% of monitoring costs and 50% frequency)	Every 2 years	██████
	Monitoring (Baseline Vegetation - every 10 years) post year 20 (50% of monitoring costs)	Every 10 years	██████
	Monitoring (GSM and exclosure plots - every 5 years) post year 20 (50% of monitoring costs)	Every 5 years	██████

	Monitoring (Superb Parrot - every 5 years) post year 20 (50% of monitoring costs)	Every 5 years	██████
	Annual reporting fee	Annually	██████
	Preparation of annual report	Annually	██████
	Periodic review of management plan	Every 5 years	██████
	Agreement/Management Plan variation fee	Every 5 years	██████
	Council rates (pro-rata for BSA area)	Annually	██████
	LLS rates (pro rata for BSA area)	Annually	██████
	Insurance premiums (Public liability, fences, equipment)	Annually	██████
	Business management expenses (Admin, accounting)	Annually	██████
Item N	Owner's GST status		
	Registered for GST?	Yes	████████████████████
	<p>Note: If the Owner is carrying on an 'enterprise', and the Owner's annual income from that enterprise meets or exceeds the threshold (which, as at the Agreement Date, is \$75,000 (or \$150,000 for a non-profit organisation)) then, in accordance with the Law as at the Agreement Date, the Owner is required to register for GST.</p> <p>'Enterprise' has a broad definition, and includes activities that are in the form of a business, or in the form of a concern in the nature of trade. Establishing or operating a Biodiversity Stewardship Agreement may be considered an enterprise (or part of an enterprise) and the Owner's annual income under this Deed and for Management Actions would normally be taken into account in determining whether or not the Owner's annual income meets the GST threshold.</p> <p>If you are not carrying on an enterprise, GST will normally not apply to you – but capital gains tax and income tax may still apply. In this case, tick "No" and do not indicate an ABN above. If you do not meet the monetary threshold, but you are carrying on an enterprise, you are still entitled to register for GST if you wish and you may indicate a registered ABN above.</p> <p>Please note that the Minister cannot register an Owner for GST or provide tax advice, and the Owner should obtain and rely on independent advice sourced by the Owner (eg the Owner's accountant) as to the appropriate GST status and position</p>		

Part F. Conditions

1. Definitions and interpretation

- (a) Defined terms used in this Deed are capitalised and the meaning of such terms is set out in the Dictionary in Attachment 5. Provisions relating to interpretation of this Deed are set out in clause 31.1. Definitions and interpretation applying only to Attachment 4 are set out within Attachment 4.
- (b) The Special Conditions take precedence over any Standard Provisions, and the provisions in any Attachment, but only to the extent of any inconsistency.

2. Commencement and term

This Deed:

- (a) is entered into for the purpose of establishing a Biodiversity Stewardship Site under Division 2 of Part 5 of the Biodiversity Conservation Act; and
- (b) commences on the Agreement Date and, subject to the terms of this Deed and the Law, applies in perpetuity and if registered with the Registrar-General is binding on successors in title.

3. Aboriginal Objects and Aboriginal Places

The parties acknowledge that nothing in this Deed authorises (including, by way of a consent, permit, approval or authorisation of any kind for the purposes of Part 6 of the NPW Act) any person to harm, damage or desecrate an Aboriginal Object or Aboriginal Place in, on or under the Biodiversity Stewardship Site, including any objects or places described in Item G.

4. General restrictions on use of Biodiversity Stewardship Site and the Land

- (a) The Owner must not, and must ensure that any Owner Associates do not:
 - (i) do anything;
 - (ii) omit to do anything;
 - (iii) allow any act or omission by a third party, that may have a negative impact on:
 - (iv) Biodiversity Values, or
 - (v) Biodiversity, including any Protected Animals, Native Plants, Threatened Species, Threatened Ecological Communities, and their habitatsin, on, under or in relation to the Biodiversity Stewardship Site, except to the extent specifically permitted by this Deed (including under clause 6 and the Management Plan) or the Law.

Note: "habitats" will generally include bush rock and fallen timber.

- (b) Without limiting clause 4(a), the Owner must not:
 - (i) carry out, or allow to be carried out, any Development in, on, under or in relation to the Biodiversity Stewardship Site except to the extent specifically permitted by this Deed (including under clause 6 and the Management Plan) or the Law; or
 - (ii) Subdivide the Biodiversity Stewardship Site.

Note: Native vegetation may only be cleared on a Biodiversity Stewardship Site if it is a Permitted Exception and to the extent and in the manner permitted by this Deed. See Item I.

- (c) The Owner may Subdivide the Land (but not that part of the Land comprising the Biodiversity Stewardship Site) if the Minister is satisfied that the Subdivision will have no negative impact on the Biodiversity or Biodiversity Values in, on or in relation to the Biodiversity Stewardship

Site. The Owner must obtain the Minister's written consent prior to taking any steps to Subdivide the Land.

5. Management Plan

5.1 Generally

The Owner must comply with the Management Plan, including carrying out all Management Actions.

Note: the Minister may direct that payments be made to assist with the costs of carrying out the Management Actions - see clause 11.

5.2 Time for compliance with a Management Action

- (a) An obligation to carry out a Management Action:
 - (i) commences on a date set out in, or determined in accordance with, the Management Plan;
 - (ii) must be carried out within the time frames specified in the Management Plan (where time frames are specified);
 - (iii) must be carried out in accordance with the conditions specified in the Management Plan (where conditions are specified); and
 - (iv) continues in perpetuity, unless otherwise specified in the Management Plan.
- (b) Despite clause 5.2(a)(ii) the obligation to carry out a Management Action continues until the Management Action has been carried out even if the due date for completion of the Management Action has passed.

5.3 Third parties may carry out Management Action

The Owner's obligation to carry out a Management Action will be satisfied if the Management Action is carried out by a third party, however the Owner's obligations are not released and the Owner is still responsible where the Owner contracts or otherwise allocates responsibility for complying with the Owner's obligations to another person.

5.4 Obligation to refrain

- (a) An obligation to carry out a Management Action may include an obligation to refrain from an action or activity from a certain date or event, and where that is the case that obligation applies, whether or not that action or activity had been done on the Biodiversity Stewardship Site prior to that date or event.
- (b) Where a Management Action requires the Owner to refrain from an action or activity, the Owner must not carry out that action or activity and must not cause, authorise or permit any other person to carry out that action or activity.

6. Exceptions

Despite any other provision of this Deed, the Owner:

- (a) may carry out, or cause or permit to be carried out, any Permitted Exception in compliance with this Deed; and
- (b) in an emergency, or where there is an imminent risk of:
 - (i) serious personal injury; or
 - (ii) irreparable serious damage to property,may do anything that is reasonably necessary to remove or reduce such risk; and
- (c) is not required to comply with any part of a Management Plan to the extent that to do so would be inconsistent with any Identified Legal Requirement.

Permitted Exceptions are the activities described in the table in Item I. Identified Legal Requirements are set out in the Dictionary (Attachment 5). The Owner still need to comply with all Laws in carrying out any Permitted Exception or Identified Legal Requirement (see clause 17)

7. Reporting, record keeping and notification requirements

7.1 Standard reporting obligation

The Owner must comply with the Reporting Obligations.

7.2 Incident reporting

The Owner must notify the Minister as soon as possible after becoming aware of any one or more of the following:

- (a) any sudden or significant decline in the Biodiversity Values, or Biodiversity, on the Biodiversity Stewardship Site,
- (b) any threat to any of the Biodiversity Values, or Biodiversity, on the Biodiversity Stewardship Site, or
- (c) any breach of this Deed, or any document which is expressed to be ancillary to this Deed, and such notice must include all of the following information:
 - (d) the nature, location and time of the incident;
 - (e) the impact, or anticipated impact, of the incident on Biodiversity and Biodiversity Values on the Biodiversity Stewardship Site;
 - (f) the measures that have been taken or will be taken in response to the incident;
 - (g) any provision of this Deed which may have been breached;
 - (h) the extent of any damage caused by, or anticipated to result from, the incident; and
 - (i) the measures which have been taken, or are proposed to be taken, by the Owner to prevent a recurrence of, and minimise the damage arising from or in connection with, the incident.

Note: this includes an obligation to notify of any matter that is caused by or arises from actions of the Owner, actions of third parties and natural actions (e.g. floods or drought).

8. Owner's obligations where Land is used by third parties

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

9. Change of Owner or Occupant of Land

9.1 Notification

- (a) The Owner must notify the Minister in writing:
 - (i) if the Owner forms any intent to Sell, as soon as possible after such intent arises;
 - (ii) where part or all of the Land is listed for Sale, within 7 days after the date of such listing;
 - (iii) of any change of ownership of part or all of the Land, within 7 days after such change;
 - (iv) of any change of an Occupant of part or all of the Land, within 28 days after such change.
- (b) A notice under clause 9.1(a)(iii) or 9.1(a)(iv) must include the name and address and other relevant contact details of the New Owner or Occupant.

9.2 Obligation to provide copy of Deed to any New Owner

The Owner must provide a copy of:

- (a) this Deed; and
 - (b) all records required to be kept pursuant to the Reporting Obligations,
- to any New Owner before completion of the Sale.

9.3 Right to withhold payments for site splitting

The Minister may withhold payments due under this Deed if ownership of the Land has been split, and this Deed has not been varied to allocate obligations, and entitlement to payment, as between the new Owners.

Note: site splitting can occur where part of the Land is sold or where different parts of the Land are gifted to 2 or more beneficiaries, including under a will, with the effect that legal ownership of different parts of the Land is separated. The Owner should contact the Minister before taking any steps to gift or sell anything less than the whole of the Land to others to ensure that payments are not affected.

Under clause 5.7 of the Biodiversity Conservation Regulations as at the Agreement Date the Minister may only agree to a variation, including for site splitting, if it is satisfied that the variation will not have a negative impact on the Biodiversity Values protected by the agreement (or that any negative impact will be offset by other measures required to be taken by the Owner). Clause 22 of this Deed sets out how a variation may be agreed.

10. Owner to permit access for Research and Monitoring

- (a) The Owner 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 Owner and any Notified Occupant of the Authorised Entrant's intention to enter the Biodiversity Stewardship Site and the nature of the Research or Monitoring to be conducted.

Note: Clause 11.3(c) allows the withholding of payments if the Owner restricts access.

- (b) Unless otherwise agreed between the parties, reasonable notice for the purpose of clause 10(a) will be at least:
 - (i) 5 Business Days for Monitoring; and
 - (ii) 5 Business Days for Research.
- (c) The requirements in clauses 10(a) and 10(b) do not affect or limit the powers of Authorised Officers to enter premises in accordance with Part 12 of the Biodiversity Conservation Act.

Note: Part 12 of the Biodiversity Conservation Act grants authorised officers rights to enter premises (not limited to biodiversity stewardship sites) for various reasons including determining whether there has been compliance with or a contravention of the Biodiversity Conservation Act, determining whether there has been compliance with a biodiversity stewardship agreement and for obtaining information or records for purposes connected with the administration of the Biodiversity Conservation Act.

11. Management payments and annual contributions

11.1 Direction to pay

- (a) Subject to clauses 11.1(b) and 11.3(a), the Minister will direct the Fund Manager to make payments:
 - (i) equal to the Payment Amount on or after each corresponding date (or the date that the relevant event occurs) in the Payment Table, increased in accordance with clause 11.2;
 - (ii) from the Relevant Account; and
 - (iii) to the Owner's Nominated Bank Account.
- (b) The Minister may only make the direction referred to in clause 11.1(a):
 - (i) after the First Payment Date;
 - (ii) if the Relevant Account has sufficient funds to cover the Management Payment;

- (iii) if the Owner has submitted the Annual Report for the most recent Reporting Period in accordance with this Deed; and
- (iv) if the Minister has reviewed the Annual Report for the most recent Reporting Period and is satisfied:
 - (A) with the content of the Annual Report; and
 - (B) that the Owner has complied with the Owner's obligations under this Deed during the most recent Reporting Period.

11.2 CPI increase

- (a) The parties acknowledge that the amounts specified in the Payment Tables are present values as at the Agreement Date and are exclusive of GST (for GST registered Owners) and that each amount is to be increased to the amount which is "PA" in the formula below:

$$PA = \frac{A \times B}{C}$$

Where:

- (i) A is the dollar value (\$) of the amount as set out in the Payment Table prior to indexation by CPI
- (ii) B is the CPI for the June Quarter published immediately prior to the date that payment is due to be made
- (iii) C is the CPI for the June Quarter published immediately prior to the Agreement Date provided that, each amount in the Payment Tables will remain unchanged if applying the formula above would result in the amount decreasing.

11.3 Withholding, reduction and additional payments

- (a) The Minister may direct that Management Payments should not be made, or should be reduced or delayed, for a specified period of time or until further notice:
 - (i) if the Relevant Account has an Operational Deficit greater than the Operational Deficit Threshold;
 - (ii) whilst the Owner owes the Minister any amount in respect of any breach or negligence by the Owner under this Deed or at Law, including any amount payable under clause 21.2(a) or 26, in which case the Minister may set off the amounts owed by the Owner against the Management Payments;
 - (iii) where this Deed has been terminated; or
 - (iv) where clause 23 applies.

Note: Withholding or lowering payments when funds in the account are below the Operational Deficit Threshold may help to preserve the long-term financial viability of the account for the Owner.

- (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 11.3(a), then the Minister may (but is not required to), by written agreement with the Owner, suspend or vary any of the Owner's obligations to carry out Management Actions under this Deed for the same period of time or some other period.

Note: The Minister must not agree to any variation or suspension under clause 11.3(b) unless the Minister is satisfied that the suspension or variation does not have a negative impact on the Biodiversity Values protected by the Deed or that other measures required by the Minister have been taken by the Owner to offset any such negative impact.

- (c) If the Owner does not comply with this Deed, including clause 10(a) in relation to access for Monitoring, the Fund Manager may withhold any payment due to the Owner under clause 11.1(a) until such time as the Owner complies with this Deed.
- (d) The Owner acknowledges that the Minister may, in addition to the Management Payments, direct additional payments to be paid from the Biodiversity Stewardship Payments Fund to the Owner, but only to the extent permitted by the Biodiversity Conservation Act.

11.4 Annual Contribution

- (a) The Owner 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 Owner.
- (b) Despite clause 11.4(a), if the Minister does not, or is not able to, deduct and retain the Annual Contribution in accordance with clause 11.4(a), the Owner must pay the Annual Contribution in accordance with the Owner's obligations under the Biodiversity Conservation Act.
- (c) The Minister will, where relevant following a Management Payment, issue the Owner with an invoice confirming that the Annual Contribution has been deducted from the relevant Management Payment.

Note: under section 6.38(7) of the Biodiversity Conservation Act the Minister may waive the annual contribution in certain circumstances.

11.5 Bank account details

- (a) The Owner must, before it is entitled to receive any payments under this Deed, give the Fund Manager written notice:
 - (i) specifying the details of the Owner's bank account into which the Owner wishes to receive payments under this Deed, including the:
 - (A) account name;
 - (B) name of the bank;
 - (C) BSB; and
 - (D) account number; and
 - (ii) evidence of the written consent of all Owners of the Biodiversity Stewardship Site to such bank account details.
- (b) The Owner may, from time to time, change the details of its bank account by giving the Fund Manager at least 5 Business Days written notice (which notice must contain the same details and consents referred to in clauses 11.5(a)(i) and 11.5(a)(ii)).

Note: The Owner must serve notice of its bank account details in accordance with clause 30. The Owner may only nominate another bank account that is also in the Owner's name. It is not possible to nominate a third party bank account.

- (c) For the avoidance of doubt, the Fund Manager is not:
 - (i) required to start making any payments under this Deed until at least 5 Business Days after the date that the Owner provides a proper notice under clause 11.5(a);
 - (ii) required to start making payments to any alternative or new bank account until at least 5 Business Days after the date that the Owner provides a proper notice under clause 11.5(b);
 - (iii) liable to the Owner for any loss of any payments through failure of the financial institution in which the payments have been deposited; or
 - (iv) required to re-pay any amount that it paid to the Nominated Bank Account if the Owner's bank account details have not been properly updated in accordance with clause 11.5(b).

12. Acknowledgment of Support

- (a) The Owner must acknowledge NSW Government's support in accordance with the Funding Acknowledgement Guidelines as notified by the Minister including acknowledgement of NSW Government support on signage and in any other public communications.
- (b) The Owner must, unless the Minister agrees otherwise, use the NSW Government's Waratah logo in conjunction with all acknowledgements of NSW Government support in accordance with the Funding Acknowledgement Guidelines.

13. Publicity

- (a) The Owner must provide the Minister with at least 15 Business Days' notice of any proposed announcements, launches or public events relating to the biodiversity stewardship agreement for the Biodiversity Stewardship Site, and provide an opportunity for a representative of the NSW Government to attend and speak at any launch or public event.
- (b) The NSW Government may issue public communications on the provision of funding to the Owner and progress on completing the Management Actions. Where practicable to do so, the Minister will give the Owner advance notice of such communications and their content.

14. GST

14.1 Owner may recover GST

- (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 14.2 applies.

Note: Definitions used in this clause are defined in the Dictionary under "GST Act".

- (b) If this Deed:
 - (i) requires a party to pay for, reimburse, set off or contribute to any expense, loss or outgoing suffered or 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 14.1(a).

14.2 Minister may issue recipient created Tax Invoices

- (a) The parties acknowledge that, if the Owner is registered for GST, recipient created tax invoices will be issued from the Biodiversity Stewardship Payments Fund [REDACTED] to the Owner on payment of the Management Payments.
- (b) The recipient created tax invoices will be for the supply by the Owner of the Owner's obligation to carry out the Management Actions under this Deed.
- (c) The recipient created tax invoices will be issued on payment of the Management Payments.
- (d) Under this recipient created tax invoice agreement, the Owner guarantees that the Owner will not issue any Tax Invoice for the Supplies.
- (e) The Owner must notify the Fund Manager immediately if the Owner ceases to be registered for GST.
- (f) The Biodiversity Stewardship Payments Fund is registered for GST and the Minister will notify the Owner promptly if the Biodiversity Stewardship Payments Fund ceases to be registered.

15. Biodiversity credits

- (a) The parties agree that each of the Biodiversity Credits listed in Attachment 2 are created by this Deed either:
 - (i) on the Registration Date; or.
 - (ii) on the date determined in accordance with, or on the happening of the event, as specified in relation to that credit in Attachment 2.

- (b) Once a Biodiversity Credit is created, then unless otherwise required by this Deed or any other arrangement, the Owner may retain or sell the Biodiversity Credit at the Owner's discretion.

Note: The sale price of each Biodiversity Credit will be negotiated between the Owner and the buyer and will be affected by supply and demand for the relevant class of Biodiversity Credit. When a credit is sold, the amount paid for the purchase price for the credit must be paid into the Biodiversity Stewardship Payments Fund until the full Total Fund Deposit for the Biodiversity Stewardship Site has been paid into the Biodiversity Stewardship Payments Fund. There is no certainty that the Owner will be able to sell the Biodiversity Credits for their market value as at the date of the Biodiversity Stewardship Assessment Report or entry into the Agreement.

- (c) To avoid doubt, the retirement, suspension or cancellation of any or all of the Biodiversity Credit does not affect the Owner's obligations to comply with the Management Plan, including carrying out the Management Actions.
- (d) The Owner acknowledges that:
- (i) Biodiversity Credits may be varied, suspended or cancelled in certain circumstances under the Biodiversity Conservation Act; and
 - (ii) no compensation is payable by the Minister in respect of such variation, suspension or cancellation except where compensation is payable under the Biodiversity Conservation Act or at Law.
- (e) The Owner warrants that it will not allow any mortgage, lease, charge or other security over the Biodiversity Credits, except as authorised by the Regulations.

16. Owner's warranties as to ownership and Biodiversity

The Owner warrants that, as at the Agreement Date:

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

17. Owner to obtain all necessary consents and comply with all Laws

- (a) The Owner warrants that:
- (i) as at the Agreement Date, the Owner has obtained the written consent of all persons whose consent is required to the entry into this Deed and Registration; and
 - (ii) if any further consents are required on or after the Agreement Date, the Owner will promptly obtain the written consent of all such persons including where consent is required for the continuation, variation or termination of this Deed or any Registration of such dealings,
- whether required by this Deed or by Law.
- (b) The Owner must obtain all licences, consents, authorisations, permits and approvals necessary for, and comply with all Laws in relation to carrying out the Owner's obligations under, or activities permitted under, this Deed, including any Permitted Exceptions and the Management Actions (if any).

18. Land Titles Registration

- (a) The Minister will:
- (i) Register this Deed, as soon as practicable after the Agreement Date, subject to the Owner's compliance with clauses 15 and 18(b) where applicable; and
 - (ii) register any Site Sketch Plan, which plan is to be prepared by the Owner, as part of this Deed.
- (b) If the Owner requires that the Land or Conservation Area be described by reference to a separate deposited plan, then unless otherwise agreed, the Owner 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 Owner agrees to do all things reasonably required by the Minister to facilitate Registration, including signing relevant dealing forms and any abstracts.

Note: The costs of preparing and registering this Deed, and the cost of registration fees are addressed in clause 26.

19. Right to caveat

The Owner agrees that the Minister may register a caveat or priority notice against the Land to protect its interests under the Biodiversity Conservation Act and this Deed.

Note: The Minister will generally not lodge a caveat or priority notice once this Deed has been properly Registered.

20. Review

- (a) The Owner must procure a Formal Review of the Management Plan and provide a copy of such Formal Review to the Minister within the 6 month period commencing on each Review Date.
- (b) Nothing in this clause 20 requires either party to agree to a variation to any part of the Deed proposed by another party as a result of a Formal Review.

21. Indemnity and release

21.1 Release

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

- (a) the Owner carrying out its obligations under this Deed or acting on financial, technical or other advice provided under or in connection with the Deed;
- (b) a Protected Person exercising a right or carrying out an obligation under this Deed or the Law, including in relation to the variation or termination of this Deed;
- (c) the provision by a Protected Person of financial advice, technical advice or other assistance under, or in connection with the implementation of this Deed or the failure to provide such advice or assistance,

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

21.2 Indemnity

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

22. Variation and termination

- (a) This Deed may only be varied or terminated in writing and in accordance with the Biodiversity Conservation Act.
- (b) The Owner waives any right to request voluntary termination in accordance with sections 5.10(5) and (6) of the Biodiversity Conservation Act.
- (c) This clause 22 does not affect the ability of the Minister and the Owner to terminate this Deed by consent in accordance with section 5.10(2)(a) of the Biodiversity Conservation Act (including where the circumstances described in subsection 5.10(6) of the Biodiversity Conservation Act apply).

- (d) The Owner acknowledges that no compensation is payable by the Minister or the Minister's Representative to the Owner in respect of variation or termination of this Deed except where compensation is payable under the Biodiversity Conservation Act or at Law.

23. Force majeure

- (a) The Owner is:
- (i) not required to comply with its obligations under this Deed; and
 - (ii) is not liable for any loss or liability suffered or incurred by the Minister as a result of the Owner's inability to comply with its obligations,
- to the extent that the Owner is prevented from complying, or its ability to comply is delayed, due to a Force Majeure Event. This applies for so long as the Force Majeure Event continues to prevent the Owner from complying.
- (b) If the Owner's ability to comply with its obligations under this Deed 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 its obligations and comply again with its obligations as soon as reasonably possible, and
 - (iii) keep the Minister informed of the expected duration of the effect of the Force Majeure Event and the steps it takes to comply with clause 23(b)(ii).

Note: see also clause 7.2 which requires the Owner to give the Minister notice of certain events affecting the Biodiversity Stewardship Site.

24. Dispute resolution

- (a) If a party believes that a Dispute has arisen, then, subject to clause 24(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 24.
- (b) If a Dispute Notice is given then the Owner 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 24 prevents:
- (i) any party from seeking urgent interlocutory relief in relation to a breach of this Deed; or
 - (ii) the Minister exercising the Minister's rights under the Biodiversity Conservation Act.
- (d) Section 5.17 of the Biodiversity Conservation Act prevails over the terms of this Dispute Resolution Process to the extent of any inconsistency.

Note: This clause is not intended to limit the rights of the Minister to commence civil proceedings under Part 13, Division 2 of the Biodiversity Conservation Act and does not apply where the Owner is in breach of its obligations under this Deed.

25. Disclosure of Deed and information

The Owner 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 and acknowledges that that Disclosure Information may be made available to the public on the government website maintained by the Environment Agency Head.

26. Costs

26.1 Legal costs

- (a) Each party must pay its own costs and disbursements in relation to:
 - (i) the preparation, negotiation and finalisation of this Deed.
 - (ii) everything it must do under this Deed unless otherwise specified in this Deed.
- (b) Unless otherwise agreed, the Owner must pay the Minister's costs, including legal costs, of preparing any variation to this Deed that is proposed by the Owner, including in connection with Site Splitting.

26.2 Registration and survey costs

- (a) Subject to clause 26.2(b), the Minister must pay any fees for registering this Deed.
- (b) The Owner must pay in the case of a variation of this Deed, the registration fee and the Minister's costs associated with the registration of the variation.

27. Delegation of Minister's powers

- (a) The Owner acknowledges that the Minister may delegate his or her functions in this agreement in accordance with s 14.4 of the Biodiversity Conservation Act.
- (b) If the Minister delegates a new person, or class of persons, to be the new Minister's Representative during the term of this Agreement then that new Minister's Representative must, as soon as reasonably practicable after such delegation, notify the Owner of the new Minister's Representative and, if necessary, update the Notice Address of the Minister's Representative in accordance with clause 30.1(c).

Note: as at the Agreement Date, under the Biodiversity Conservation Regulations the Minister may delegate the Minister's powers under the Biodiversity Conservation Act to (among others) the NSW BCT, a member or a committee of the Board of the NSW BCT, or an employee of the NSW BCT.

28. Discretion and no fetter

- (a) Except as otherwise set out in this Deed, and subject to any Law, the Minister may give or withhold an approval or consent to be given under this Deed, and any such approval or consent may be subject to any conditions determined by the Minister, in the Minister's absolute and unfettered discretion. The Minister is not obliged to give its reasons for withholding approval or consent, or giving approval or consent subject to conditions
- (b) Nothing in this Deed 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 Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

29. Default and Minister's rectification rights

The Owner acknowledges that the Minister has rights under the Biodiversity Conservation Act and at Law in the event of a default by the Owner under this Deed, including rectification rights.

30. Notices

30.1 Giving notices

- (a) A notice under this Deed is only given if it is in writing and is delivered, posted or emailed (as appropriate) to the Notice Address.
- (b) The Owner 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.

30.2 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 30.2(a) and 30.2(b) will not apply to the alternative method).

Note: see clause 9 in relation to Owner obligation to give notice to the Minister on change of ownership.

31. General

31.1 Interpretation

In the interpretation of this Deed, the *Interpretation Act 1987* (NSW) applies as if this Deed 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 Deed;
- (b) any reference to an action, or carrying out an action, in this Deed includes a reference to doing anything or refraining from doing anything;
- (c) a reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed 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 Deed 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 Deed;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it;
- (h) a reference to any party to this Deed includes that party's successors and permitted assigns;
- (i) a reference to the word 'include' or 'including' is to be construed without limitation and any examples included in this Deed to illustrate the effect of a provision are not to be construed to limit the extent of the matters that may be captured;
- (j) a reference to this Deed includes the agreement recorded in this Deed; and
- (k) any schedules, annexures and attachments form part of this Deed.

31.2 When this Deed becomes binding

By executing this Deed, a party intends to be bound by this Deed on and from the date that all other parties have also executed this Deed and for such last execution to constitute delivery of this Deed to each other party.

31.3 Joint and several liability

If the Owner (including any Owner who becomes the "Owner" for the purposes of this Deed after the Agreement Date) comprises more than one person, each of them is liable individually under this Deed and each of them is also liable jointly with any one or more of the others who comprise the Owner.

31.4 Nature of obligations

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

31.5 Consent and approvals

Where anything depends on the consent or approval of a party, then, unless this Deed 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.

31.6 Waiver

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

31.7 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 Deed, but the rest of this Deed is not affected.

31.8 Enforceability

The parties agree that, to the extent that the benefits of this Deed extend to persons who are not parties to this Deed, this Deed will operate as a deed poll.

Note: By operating as a "deed poll" a person is entitled to enforce that person's right to a benefit under this Deed despite the person not being a party to it (eg the Environment Agency Head in its capacity as an Authorised Entrant).

31.9 Governing law

This Deed 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 and the Commonwealth of Australia in respect of all matters arising out of or relating to this Deed, its performance or subject matter.

31.10 Whole agreement

This Deed comprises the whole of the agreement between the parties in respect of the subject matter of this Deed.

31.11 No warranties or representations

The Owner acknowledges that, except as expressly stated in this Deed, the Owner 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 Deed.

31.12 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 Deed and all transactions contemplated by it.

31.13 Non merger

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

31.14 No right of set-off

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

Note: "no right of set-off" means the Owner must make payments required under this Deed to the Minister without deducting amounts that the Owner believes the Minister owes the Owner. Any amounts that the Minister owes to the Owner under this Deed must be dealt with separately and must not be deducted.