

Biodiversity Certification Agreement

Between

The Minister administering the *Biodiversity Conservation Act 2016* (NSW)

And

Poplars Developments Pty Ltd

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Agreement made on

Parties **Minister for the Environment** as the Minister administering the *Biodiversity Conservation Act 2016* (NSW) (**the Minister**)

and

Poplars Developments Pty Ltd (**the Landowner**)

Background

- A. On 1 June 2023, Poplars Developments Pty Ltd made an application for Biodiversity Certification (**Poplars Certification Application**) over land in the Poplars Precinct, within the Queanbeyan-Palerang Regional Council local government area.
- B. This Agreement is being entered into in connection with the Poplars Certification Application.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context indicates otherwise:

Agreement means this Agreement titled 'Biodiversity Certification Agreement' and includes all schedules and annexures.

Avoided Land means the land identified in green in the map in Schedule 1 and the land described in Schedule 2.

BC Act means the *Biodiversity Conservation Act 2016* (NSW).

BC Regulation means the *Biodiversity Conservation Regulation 2017* (NSW).

Biobank Site has the same meaning as in section 127 of the now repealed *Threatened Species Conservation Act 1995* (NSW).

Biodiversity Certification has the same meaning as in section 8.2 of the BC Act.

Biodiversity Credit means a biodiversity credit created under Part 6 Division 4 of the BC Act and includes a reference to an Ecosystem credit and a Species credit.

Biodiversity Management Plan means the plan discussed in Section 5.1.

Biodiversity Stewardship Site has the same meaning as in section 1.6 of the BC Act.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in New South Wales.

Certified Land means the land identified in red identified in Schedule 1 of this Agreement on which Biodiversity Certification has been or may be conferred and is in force under Part 8 of the BC Act.

Clearing has the same meaning as in section 60C of the *Local Land Services Act 2013*.

Department means the NSW Department of Climate Change, Energy, the Environment and Water being the Department principally involved in administering the Act.

Effective Date means the date on which Biodiversity Certification is conferred by the Minister on the Certified Land.

Environment Agency Head has the meaning given 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 include any obligation to pay money, a labour dispute or shortage of materials or labour.

Landowner means the owner of the Avoided Land including any successors in title and is, at the Effective Date, Poplars Development Pty Ltd.

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 appropriate, includes the servants and agents of the Minister.

Party means a Party to this Agreement and includes a person or persons taken to be Parties to this Agreement by operation of section 8.17 of the BC Act.

Poplars Certification Application has the meaning given in Recital A.

Poplars Precinct is the land defined in Schedule 1 as "The Poplars"

Registrar-General has the same meaning as in the *Real Property Act 1900* (NSW).

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) person includes an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a Party, clause, schedule, exhibit, attachment or annexure is a

reference to a Party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) includes in any form is not a word of limitation;
- (j) where a schedule contains obligations of any Party then the obligation so expressed shall be read and construed and shall constitute obligation on the part of the relevant Party, as the case may be, to be performed or observed under this Agreement;
- (k) neither this Agreement nor any part of it is to be construed against a party on the basis that the Party or its lawyers were responsible for its drafting;
- (l) if a Party to this Agreement is subsequently made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

1.3 Agreement to run with the land

In accordance with section 8.17 of the BC Act, when registered by the Registrar-General, this entire Agreement is binding on and is enforceable against the Landowner.

2. Commencement and Term

- (a) This Agreement comes into effect:
 - (i) If executed on or earlier than the Effective Date, on the Effective Date.
 - (ii) If executed after the Effective Date, on the date the Agreement is executed.
- (b) This Agreement has effect indefinitely.

3. Status of this Agreement

The Parties agree that this Agreement is a biodiversity certification agreement within the meaning of Part 8 of the BC Act.

4. Registration of this Agreement and Notice to Purchasers

- (a) The Landowner agrees to use its best endeavours, and at its own expense, to lodge or arrange for the lodgement of this Agreement in registrable form with the Registrar-General within ten (10) Business Days of the Effective Date in order to secure the registration of this Agreement on the title to the Avoided Land.
- (b) The Landowner at its own expense and risk, must take all practicable steps and otherwise do anything the Minister reasonably requires, to procure:
 - (i) the execution of any documents necessary to enable registration of the Agreement on the title to the Avoided Land; and
 - (ii) the registration of this Agreement by the Registrar-General in the relevant folios of the register as soon as possible after lodgement of the Agreement for registration under clause 4(a).
- (c) The Landowner, within 21 days of registration of this Agreement on the title to the Biodiversity Certification Assessment Area, must provide the Minister with evidence of registration of this Agreement.
- (d) The Landowner agrees to provide notice of this Agreement to any future purchaser of land in the Biodiversity Certification Assessment Area.

5. Landowner's Obligations

5.1 Biodiversity Management Plan

- (a) Within six (6) months of the Effective Date, the Landowner agrees to prepare and submit to the Department for approval a draft Biodiversity Management Plan to apply to the avoided land. The Biodiversity Plan must, as a minimum, address the following:
 - (i) Identify areas of developable land (certified land) and avoided land and measures to demarcate these land uses on site;
 - (ii) Identification and management of key weed species;
 - (iii) Construction Environmental Management measures to protect overstorey vegetation in the area identified in Schedule 1 as 'Groundstorey Impacts Only Within Land to be Certified';
 - (iv) Roles and responsibilities; and
 - (v) Reporting commitments.
- (b) Take measures to implement the Biodiversity Management Plan upon approval.

5.2 Disturbance to Avoided Land

The Landowner must ensure that there is no disturbance of the Avoided Land, including the removal of any Native Vegetation, fallen timber or habitat, or any earthworks, from the Avoided Land.

5.3 Reasonable steps

The Landowner agrees to take all reasonable steps to ensure that persons who enter or intend to enter the Avoided Land comply with the Landowner's obligations referred to in clause 5.1 and 5.2.

5.4 Clearing

The Parties acknowledge that clauses 5.1 and 5.2 apply, despite any legislation, regulation, rule or code which provides that the Landowner is permitted to clear vegetation on the Avoided Land.

5.5 Biodiversity Credits from Poplars Precinct

- (a) To satisfy the credit retirement obligations in the order for the Poplars Certification Application:
 - (i) the Landowner must first retire the Biodiversity Credits generated within the Poplars Precinct.
 - (ii) if there are no Biodiversity Credits generated within the Poplars Precinct available, the Landowner may use Biodiversity Credits from a Biobank Site or Biodiversity Stewardship Site outside the Poplars Precinct.

6. Approval of the Biodiversity Management Plan

- (a) The Department will, in good faith, make all reasonable attempts to approve the draft Biodiversity Management Plan within one (1) month of the draft Biodiversity Management Plan being submitted to the Department by the Landowner. If the draft Biodiversity Management Plan is not approved, the Department will provide reasons why it is not approved.

7. Permissions, consents and authorisations

- (a) Each Party to this Agreement is responsible for obtaining all necessary licences, consents, authorisations, permits or approvals in order to lawfully comply with and carry out its obligations under this Agreement.
- (b) Each Party to this Agreement agrees that this Agreement may be executed electronically in accordance with the *Electronic Transactions Act 2000 (NSW)*.

8. Force Majeure

- (a) In relation to a Force Majeure Event, 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,
 - (iii) 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, in accordance with clause 13, 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 8(b)(i).

9. Dispute resolution

- (a) Where there is a dispute, difference or claim (**dispute**), the Party raising the dispute must notify the other Parties of the nature of the dispute, including the factual and legal basis of the dispute.
- (b) Within 14 days of the notice, the Parties, or nominated senior representatives of the Parties, must confer to attempt to resolve the dispute, and if the dispute cannot be resolved within 21 days of the written notice, the parties will refer the matter to mediation.
- (c) The Parties will agree on a mediator, the terms of appointment of the mediator and the terms of the mediation in writing within 28 days of the referral of the matter to mediation under clause 11(b). If they cannot agree on those matters, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (d) If the matter has not been resolved within 28 days of the appointment of the mediator, the mediation process will be at an end and any party may commence court proceedings in respect of the dispute.
- (e) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (f) The Parties are to share equally the costs of the President (if any), the

mediator and the mediation.

10. Releases and indemnities

- (a) Each Party agrees to carry out their obligations under this Agreement at their own risk.
- (b) Each Party, other than the Minister (severally, not jointly), agrees to release and indemnify the Minister from any claim, liability or loss arising from, and costs incurred in connection with a breach of the respective obligations of the Party under this Agreement except to the extent caused or contributed to by the Minister's negligent act or default under this Agreement.
- (c) The indemnity in sub-clause (b) above is a continuing obligation, independent of the other obligations of the Party under this Agreement and continues after the Agreement ends.

11. Costs

- (a) Each Party bears its own costs in connection with the preparation and execution of this Agreement.

12. General provisions

12.1 Prior representations

No Party can rely on an earlier document, anything said or done by another Party, or by an authorised officer, agent or employee of that Party, before the Agreement was executed.

12.2 Further acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

12.3 Governing law and jurisdiction

This Agreement is governed by the laws of the State of New South Wales and the Parties agree to submit to the jurisdiction of the courts of that State.

12.4 No fetter

- (a) Without prejudice to or limiting the express obligations that each Party has agreed to perform under this Agreement, this Agreement is not intended to operate to fetter, in any unlawful manner:
 - (i) the sovereignty of the Parliament of the State of New South Wales to make any law;
 - (ii) the power of the Executive Government of the State of New South Wales to make any statutory rule; or

- (iii) the exercise of any statutory power or discretion of any Minister of the State.
- (b) Nothing in this Agreement is to be construed as requiring any Party to do anything that would cause it to be in breach of any of its obligations at law, and without limitation and nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

12.5 No joint venture, etc.

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or to pledge any other Party's credit.

12.6 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under this Agreement.

12.7 Severability

- (a) If any part of this Agreement 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.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

12.8 Variation

No variation of this Agreement will be of any force or effect unless it is in writing and signed by all the Parties.

12.9 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

12.10 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.

13. Publication

Each Party acknowledges that a copy of this Agreement is to be published on a NSW government website maintained by the Environment Agency Head in accordance with clause 8.5 of the *Biodiversity Conservation Regulation 2017*.

14. Notices

14.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing delivered, posted or sent by electronic service address to that Party at its addresses set out below.

The Minister

Address: Environment and Heritage Group
Department of Climate Change, Energy,
the Environment and Water
Locked Bag 5022
PARRAMATTA NSW 2124

Attention:

Telephone:

Email address:

The Landowner

Address:

[REDACTED]
[REDACTED]
[REDACTED]

Attention:

[REDACTED]

Telephone:

[REDACTED]

Email address:

[REDACTED]

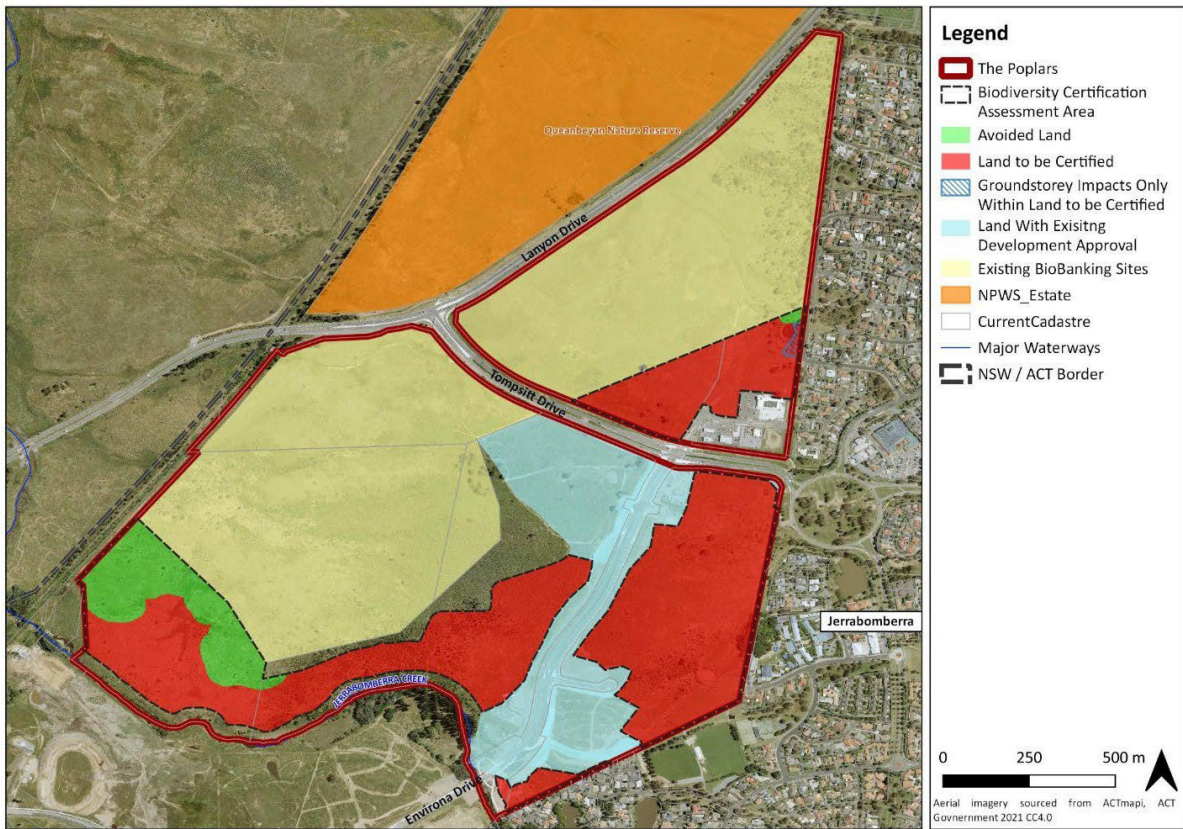
14.2 Change in details

The name or title of the nominated officer or the address for the Parties referred to in clause 14.1 above may be updated from time to time by written notice being sent to the other Parties by the Party (which in the case of the Minister may include an officer of the Department) advising of the new officer (or title of an office) and address to which such documents, information or notification may be sent.

14.3 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (A) if it is sent by post, two (2) Business Days after it is posted (unless the contrary is proved); or
 - (B) If it is sent by electronic service address, by transmitting an electronic copy of the document to that address
- (b) If any notice, consent, information, application or request is delivered or sent by electronic service address, on a day that is not a Business Day or after 5pm on any Business Day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 1: Map of the Avoided Land



Schedule 2: Description of the Avoided Land

Lots within deposited plans		
DP Number	Lot	Part or Entire Lot
1246134	6	Part
1126721	1	Part

Executed as an agreement under section 8.16 of the BC Act

Executed on behalf of the Honourable Penny Sharpe, MP Minister for the Environment for the "State of New South Wales as the Minister administering the *Biodiversity Conservation Act 2016* (NSW)




Brendan Bruce, Deputy Secretary
Biodiversity, Conservation & Science Group

Delegate for the Hon. Penny Sharpe, MP.
Minister for the Environment

Name of Witness in full (written in block letters)

Signature of Witness


Biodiversity, Conservation & Science Group



Executed by Poplars Developments Pty Ltd in accordance with s127 of the *Corporations Act 2001* (Cth)



.....
Director Signature



Name



.....
Director Signature



Name



.....
Witness Signature...



..... Name