

Biodiversity Certification Agreement

Between

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

And

Riverview Projects (ACT) Pty Limited (ABN 30 165 870 539) of Unit 3, 28 Bougainville Street, Manuka ACT 2603 in its capacity as agent for and on behalf of the West Belconnen Joint Venture Participants (severally but not jointly) in accordance with their respective participating interests in the West Belconnen Joint Venture

Suburban Land Agency (ABN 27 105 505 367)

Gary Barrett Armitage and Edward James Shaw as tenants in common in equal shares

DocuSigned by:
[Redacted]
DC553B6A085B454...

Electronic signature of me, David Maxwell,
affixed by me, or at my direction, on 14 June 2024

DocuSigned by:
[Redacted]
E50E27D552334CB...

Electronic signature of me, Gareth Burdon,
affixed by me, or at my direction, on 13 June 2024

DocuSigned by:
[Redacted]

Electronic signature of me, Thomas Corkhill,
affixed by me, or at my direction, on 15 June 2024

DocuSigned by:
[Redacted]
82F0DE502B85472...

Electronic signature of me, Nick Vitalis,
affixed by me, or at my direction, on 17 June 2024

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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

Riverview Projects (ACT) Pty Limited (ABN 30 165 870 539) of Unit 3, 28 Bougainville Street, Manuka ACT 2603 in its capacity as agent for and on behalf of the West Belconnen Joint Venture Participants (severally but not jointly) in accordance with their respective participating interests in the West Belconnen Joint Venture.

Suburban Land Agency (ABN 27 105 505 367)

Gary Barrett Armitage and Edward James Shaw as tenants in common in equal shares

Background

- A. On 6 September 2023, Riverview Projects (ACT) Pty Ltd made an application for Biodiversity Certification (**Biodiversity Certification Application**) over land in the Ginninderry development Area, within the Yass Valley Council local government area, being the land identified in the map at Schedule 1 (**the Biodiversity Certification Assessment Area**) under Part 8 of the BC Act.
- B. Suburban Land Agency, Reid and Stevens Pty Limited (ABN 54 008 445 494), Gary Barrett Armitage and Edward James Shaw as tenants in common in equal shares and Sylvia Susanne Sciberras are the registered owners of the land that comprises the Biodiversity Certification Assessment Area.
- C. The Biodiversity Certification Application relates to the proposed subdivision of the Biodiversity Certification Assessment Area.
- D. This Agreement is being entered into in connection with the Biodiversity Certification Application. The purpose of this Agreement is to identify and protect the land to be Avoided for the purposes of the Biodiversity Certification Application, being the land identified in the Map at Schedule 1 and described in Schedule 2.
- E. The Avoided Land is to be managed in accordance with the Ginninderry Conservation Corridor Management Plan and the Biodiversity Management Plan.
- F. The Order conferring biodiversity certification identifies the following approved conservation measures:

The retirement of:

- a) 6 Ecosystem Credits for impacts on PCT1093 (or any equivalent PCT classification it may be known in the future) and associated ecosystem credits species,
- b) 37 Pink Tailed Legless Lizard (*Aprasia parapulchella*) habitat, and
- c) 138 Key's Matchstick Grasshopper (*Keyacris scurra*) assumed habitat.

- G. The Order identifies other approved measures on Certified Land including the staging of the retirement of credits, management of the Pink Tailed Legless Lizard and the retention of trees.
- H. The retirement of Ecosystem Credits and Species Credits is to be delivered in accordance with the Order.
- I. The Biodiversity Certification Assessment Report (**BCAR**) that accompanied the Biodiversity Certification Application identifies the following conservation measures on Avoided Land:
 - a) Full retention of vegetation
 - b) Removal of surface rock in identified Pink Tailed Legless Lizard habit within the certified land
 - c) Placement of surface rock within the Avoided Land where necessary and in accordance with the Biodiversity Management Plan
- J. This Agreement implements the measures identified in the BCAR referred to in the Background item (I) above.
- K. This Agreement will be registered on the title of the Avoided Land identified in the map at Schedule 1 and described in Schedule 2 of this Agreement and will have effect indefinitely.

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.

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

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

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

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

Biodiversity Certification Assessment Area means the area identified as such in the map in Schedule 1 of this Agreement and identified in the Biodiversity Certification Assessment Report.

Biodiversity Certification Application has the meaning given in Background A.

Biodiversity Management Plan means the Plan approved under clause 5.1 of this Agreement that applies to the Avoided Land.

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 the map at Schedule 1 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.

Ginninderry Conservation Corridor Management Plan means the Plan identified by the link at Schedule 3.

Landowner means the owner of the Avoided Land including any successors in title and is, at the Effective Date, Suburban Land Agency (ABN 27 105 505 367), and Gary Barrett Armitage and Edward James Shaw as tenants in common in equal shares.

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.

Order means an order made by the Minister (or delegate) to confer Biodiversity Certification on the Certified Land in accordance with section 8.2 of the Act.

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.

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

West Belconnen Joint Venture means the unincorporated joint venture of that name between the West Belconnen Joint Venture Participants.

West Belconnen Joint Venture Participants means:

- (a) the Australian Capital Territory Government, holding a 60% participating interest in the West Belconnen Joint Venture; and
- (b) Riverview Developments (ACT) Pty Limited ABN 34 165 870 557, holding a 40% participating interest in the West Belconnen Joint Venture,

and their respective successors and permitted assigns.

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 indefinitely.

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 Landowners must at their own expense and risk, take all practicable steps and otherwise do anything the Minister reasonably requires, to procure the execution of any documents necessary to enable registration of the Agreement on the title to the Avoided Land.
- (b) Riverview Projects Pty Limited 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.
- (c) Riverview Projects Pty Limited must at their own expense and risk, take all practicable steps and otherwise do anything the Minister reasonably requires, to procure 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).
- (d) Riverview Projects Pty Limited, 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.
- (e) The Landowners agree to provide notice of this Agreement to any future purchaser of land in the Biodiversity Certification Assessment Area.

5. Parties Obligations

5.1 Biodiversity Management Plan

- (a) Riverview Projects (ACT) Pty Limited agree to:
 - (i) Prepare a draft Biodiversity Management Plan to apply to the Avoided Land to relocate loose rocks that form the habitat of the Pink Tailed Legless Lizard from the Certified Land to the Avoided Land ,
 - (ii) submit a draft Biodiversity Management Plan to the Department for approval within six (6) months of Biodiversity Certification; and

- A. The Department will, in good faith, make all reasonable attempts to approve the draft Biodiversity Management Plan within three (3) months of the draft Biodiversity Management Plan being submitted to the Department by Riverview Projects (ACT) Pty Limited. If the draft Biodiversity Management Plan is not approved, the Department will provide reasons why it is not approved.
- (b) The Parties agree to:
 - (i) take measures to implement the Biodiversity Management Plan approved by the Department immediately.
 - (ii) manage the Avoided Land in accordance with the Biodiversity Management Plan and the Ginninderry Conservation Corridor Management Plan.
- (c) In the event of any inconsistency between the Ginninderry Conservation Corridor Management Plan and the Biodiversity Management Plan, the Biodiversity Management Plan prevails.

5.2 Disturbance to Avoided Land

Except for clause 5.1(a), the Landowner must ensure that there is no disturbance of the Avoided Land, including the removal from the Avoided Land of any Native Vegetation, fallen timber, rocks or habitat, or any earthworks within 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 Parties obligations referred to in clauses 5.1 and 5.2.

5.4 Clearing

Each Party acknowledges that clauses 5.1, 5.2 and 5.3 apply, despite any legislation, regulation, rule or code which provides that the Landowner is permitted to clear vegetation on the Avoided Land.

6. Enforcement

- (a) The Parties acknowledge 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 13.16 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.

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 15, 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. GST

- (a) The Parties acknowledge and agree that for any taxable supply made by one Party to another Party under this Agreement the Party which has received the supply will on receipt of a tax invoice from the supplier make a payment to the supplier that covers both the value of the supply and the GST liability of the Party that has made the supply.
- (b) This clause will not merge on completion or termination of this Agreement.
- (c) Words used in this clause that are defined in the GST Law have the meaning given in that legislation. GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

11. 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.

12. Costs

- (a) Subject to clause 4 (Registration of this Agreement) and 10 (GST), each Party bears its own costs in connection with the preparation and execution of this Agreement.

13. General provisions

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 Variation

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

13.9 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.

13.10 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.

14. 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*.

The Environment Agency Head will restrict access to all personal information contained in this Agreement in accordance with the *Privacy and Personal Information Protection Act 1998*.

15. Notices

15.1 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: Biodiversity, Conservation and Science
Department of Climate Change, Energy, the Environment
and Water
Locked Bag 5022
PARRAMATTA NSW 2124

Attention: Michael Saxon
Director South East Branch

Telephone: [REDACTED]

Email address: [REDACTED]

The Landowners

Riverview Group (ACT) Pty Limited

Address: [REDACTED]
Attention: David Maxwell
Telephone: [REDACTED]
Email address: [REDACTED]

Suburban Land Agency

Address: [REDACTED]
Attention: Gareth Burdon
Telephone: [REDACTED]
Email address: [REDACTED]

Gary Barrett Armitage and Edward James Shaw

Address: [REDACTED]
Attention: Gary Barrett Armitage
Telephone: [REDACTED]
Email address: [REDACTED]
Attention: Edward James Shaw
Telephone: [REDACTED]
Email address: [REDACTED]

15.2 Change in details

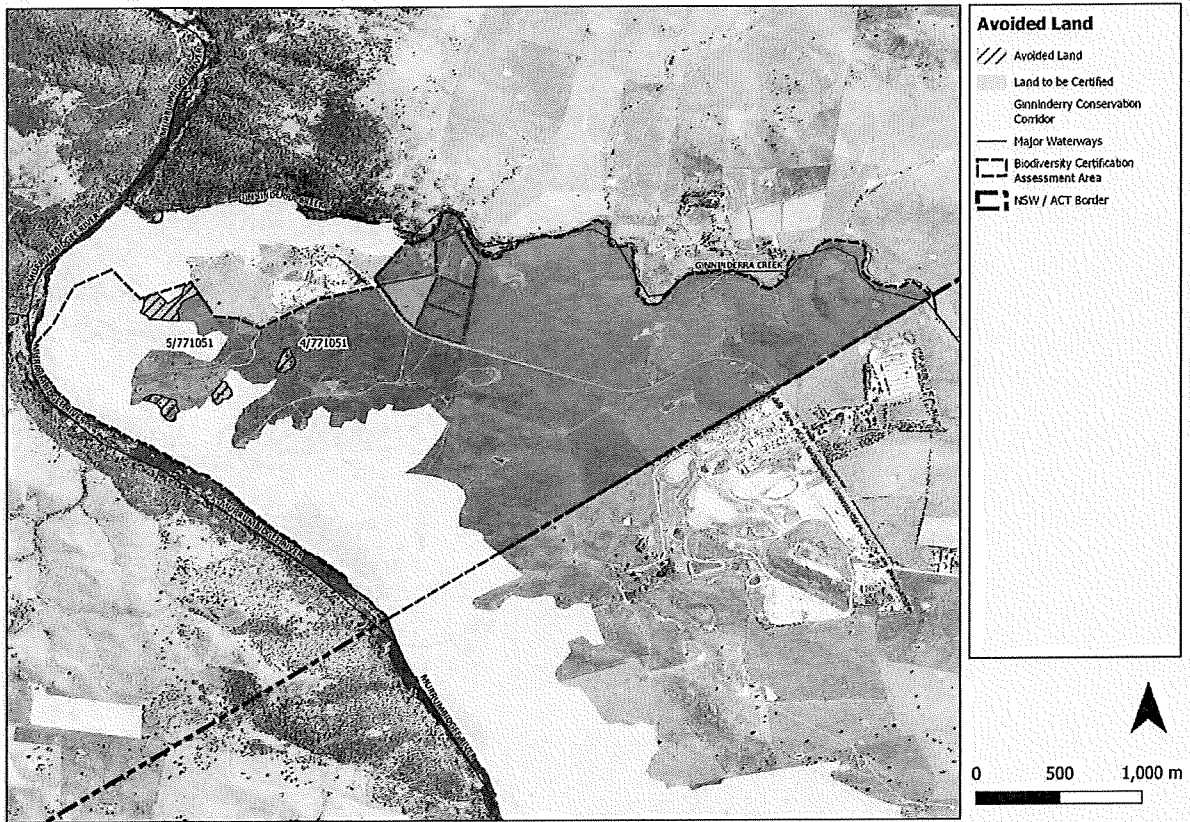
The name or title of the nominated officer or the address for the Parties referred to in clause 15.1 above may be updated from time to time by written notice being sent to the other Parties by the Party (which in the case of the Minister may include an officer of the Department) advising of the new officer (or title of an office) and address to which such documents, information or notification may be sent.

15.3 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 Biodiversity Certification Assessment Area including Avoided Land



Schedule 2: Description of Avoided Land

| Lots within deposited plans | | |
|-----------------------------|-----|--------------------|
| DP Number | Lot | Part or Entire Lot |
| 771051 | 5 | part |
| 771051 | 4 | part |

Schedule 3: Ginninderry Conservation Corridor Management Plan

The Ginninderry Conservation Corridor Management Plan can be found here:

<https://ginninderry.com/wp-content/uploads/2021/08/ginninderry-conservation-corridor-management-plan.pdf>

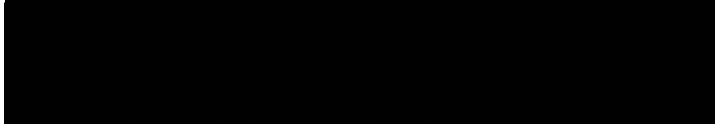
Executed as an agreement under section 8.16 of the BC Act

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)

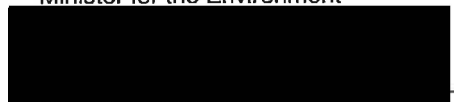
INGRID EMERY
EXECUTIVE
DIRECTOR
REGIONAL
DELIVERY



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



Name of Witness in full (written in block letters)



Signature of Witness

Executed by Riverview Projects (ACT) Pty Limited (ABN 30 165 870 539) in accordance with s127 of the *Corporations Act 2001* (Cth)

DocuSigned by:



Thomas Corkhill
Director/Secretary

Electronic signature of me, Thomas Corkhill, affixed by me, or at my direction, on 16 June 2024

DocuSigned by:



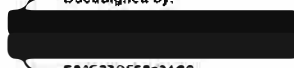
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David Maxwell
Director

Electronic signature of me, David Maxwell, affixed by me, or at my direction, on 14 June 2024

Executed by Suburban Land Agency (ABN 27 105 505 367) by a delegate authorised to execute this Agreement in the presence of:

DocuSigned by:



E91E27D552331CA
Name: Gareth Burdon
Authorised Delegate

Electronic signature of me, Gareth Burdon, affixed by me, or at my direction, on 13 June 2024

DocuSigned by:



82F0DE502B85472...

Signature of Witness



Address of Witness

Electronic signature of me, Nick Vithalis, affixed by me, or at my direction, on 17 June 2024

Executed by **Gary Barrett Armitage and Edward James Shaw** as tenant in common in equal shares:



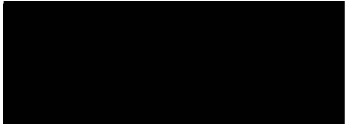
Witness



Name of Witness



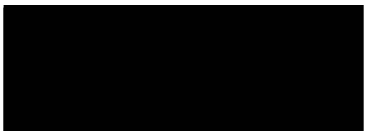
Gary B



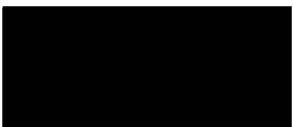
Electronic signature of me, David Maxwell, affixed by me, or at my direction, on 14 June 2024



Electronic signature of me, Thomas Corkhill, affixed by me, or at my direction, on 16 June 2024



Electronic signature of me, Gareth Burdon, affixed by me, or at my direction, on 13 June 2024



Electronic signature of me, Nick Vithalis, affixed by me, or at my direction, on 17 June 2024

