

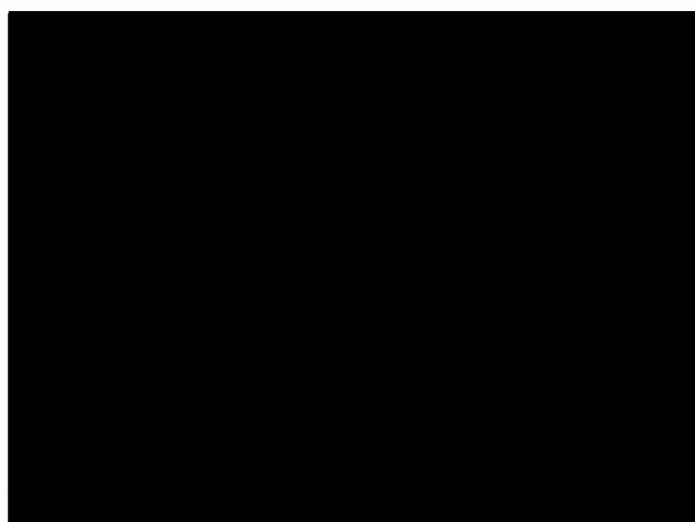
The Minister administering the *Biodiversity Conservation Act 2016* (NSW)

And

Capital Plus 1 Woodbury Ridge Pty Ltd (ACN 650 185 407) and Kenyon Services Pty Ltd (ACN 151 809 406)

Variation of Biodiversity Certification Agreement

Made under Part 8 of the *Biodiversity Conservation Act 2016* (NSW)



Deed of Variation of Biodiversity Certification Agreement made under Division 5 Part 8 of the *Biodiversity Conservation Act 2016* (NSW).

This Deed is made on ~~[insert date]~~ 3rd April 2024

1. Parties

The Minister administering the *Biodiversity Conservation Act 2016* (**Minister**) of 52 Martin Place, Sydney NSW 2000.

and

Capital Plus 1 Woodbury Ridge Pty Ltd (ACN 650 185 407) and Kenyon Services Pty Ltd (ACN 151 809 406) (together, the **Landowner**).

Collectively referred to as “the Parties”.

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

2. Background

- A. On 2 November 2021, an application was made for Biodiversity Certification (**Biodiversity Certification Application**) for land at Woodbury Ridge Sutton within the Yass Valley Council local government area, being Lot 1 DP1272209 (the **Biodiversity Certification Assessment Area**) under Part 8 of the BC Act.
- B. The Landowner is the registered owner of the Biodiversity Certification Assessment Area.
- C. The Biodiversity Certification Application relates to the proposed subdivision of the Biodiversity Certification Assessment Area.
- D. On 1 April 2022, a delegate for the NSW Minister for Environment conferred Biodiversity Certification on the Certified Land.
- E. On 14 December 2023, the Landowner applied for a modification to the Biodiversity Certification to change the Certified Land footprint. The application for modification of the Biodiversity Certification also requires amendment to the Biodiversity Certification Agreement, for Woodbury Ridge Estate, which was executed by the Minister on 1 April (**Principal Agreement**), specifically to:
 1. Amend the definition of Avoided Land,
 2. Clarify the effect of overlapping obligations during the Development Phase and Occupation Phase,
 3. Require the Landowner to seek consent for minor disturbance and maintenance of existing easement sites on the Avoided Land,
 4. Insert a process to vary a Biodiversity Management Plan,
 5. Amend the contact details of the Department and Landowner for Notices, and
 6. Replace maps of the Biodiversity Certification Assessment Area.

- F. The Minister has agreed to modify the Biodiversity Certification and to vary the Principal Agreement as set out in this Deed.
1. the retirement of:
 - i. 32 Ecosystem Credits for impacts to PCT 1093 (or any equivalent PCT classification it may be known by in the future) and associated ecosystem credit species;
 - ii. 102 Ecosystem Credits for impacts to PCT 1330 (or any equivalent PCT classification it may be known by in the future) and associated ecosystem credit species;
 - iii. 84 Species Credits for impacts to superb parrot (*Polytelis swainsonii*) breeding habitat;
 - iv. 11 Species Credits for impacts to silky Swainson-pea (*Swainsona sericea*) habitat; and
 - v. 416 Species Credits for impacts to golden sun moth (*Synemon plana*) habitat.
- G. The retirement of Ecosystem and Species Credits is to be delivered in accordance with an order for Biodiversity Certification.
- H. This Deed implements the findings and recommendations of the BCAR referred to in Background item (F) above.
- I. This Deed will be registered on the title of the Biodiversity Certification Assessment Area. It will apply to the Avoided Land and all Subsequent Lots created by the subdivision of the Biodiversity Certification Assessment Area, including Subsequent Lots for residential occupation and the Proposed Biodiversity Stewardship Sites.

3. Operative Provisions

1. Definitions and Interpretation

- 1.1. Terms which are capitalised in this Deed have the meaning given to those terms in the Principal Agreement, unless separately defined in this Deed.
- 1.2. Clause 1.2 of the Principal Agreement applies to the interpretation of this Deed.

2. Commencement

- 2.1. This Deed commences and has force and effect on and from the date when the Parties have:
 - 2.1.1. both executed the same copy of this Deed; or
 - 2.1.2. each executed separate counterparts of this Deed and exchanged the counterparts,

(Effective Date)
- 2.2. The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3. Variation

- 3.1. The Parties agree that from the Effective Date, the Principal Agreement is varied as follows:

Definition of Avoided Land

- 3.1.1. Clause 1.1 (Definitions) is amended to replace the definition of Avoided Land with:
“**Avoided Land** means the land shown in cross-hatching and referred to as ‘avoided land’ in the legends on the maps in Schedule 1 of this Agreement.

Development Phase

- 3.1.2. Clause 5.6 (Effect of Overlapping Obligations) is replaced with:

Clauses 5.3, 5.4, 5.5 and 5.8 are effective until such time that the Occupation Phase commences for a Subsequent Lot. Upon commencement of the Occupation Phase for a Subsequent Lot, these obligations become the obligations of the Subsequent Lot Landowner.

- 3.1.3. The following clause is inserted after clause 5.7:

5.8 Maintaining Existing Easements and Consent for Minor Disturbance

Despite clause 5.3, the Landowner may disturb, or permit a third party to disturb, the Avoided Land if:

- (a) The disturbance (including clearing) is to maintain the site of an existing easement as identified in Map 1D, and
- (i) is not likely to significantly affect threatened species or ecological communities in accordance with s 7.2 of the BC Act,
 - (ii) does not exceed the Biodiversity Offsets Scheme Threshold, and
 - (iii) and complies with the procedural requirements at clause 5.8(c), or
- (b) For any other works, the disturbance is minor in nature and:
- (iv) is not likely to significantly affect threatened species or ecological communities in accordance with s 7.2 of the BC Act,
 - (v) does not exceed the Biodiversity Offsets Scheme threshold under Part 7 of the BC Act, and
 - (vi) complies with the procedural requirements at clause 5.8(c),
- (c) For clauses 5.8(a) and (b), the Landowner must –
- (i) give written notice of the disturbance to the Minister in accordance with clause 16 of the Principal Agreement,
 - (ii) receive written consent from the Minister to undertake the disturbance, which shall not be unreasonably withheld, and
 - (iii) comply with the conditions of any consent granted by the Minister pursuant to paragraph (c)(ii) in making the disturbance.

Occupation Phase

- 3.1.4. Clause 6.1 is amended by deleting the word 'and' after paragraph (b), replacing the full stop at the end of paragraph (c) with ';' and inserting after paragraph (c):

(d) Comply with the requirements under the approved Biodiversity Management Plan when undertaking works for an effluent management zone in a Subsequent Lot or on a Proposed Biodiversity Stewardship Site, and

- 3.1.5. The following clause is inserted after clause 6.2:

6.3 Disturbance for Effluent Management Zone works

- (a) Despite clause 5.3 and 5.8, a Subsequent Lot Landowner may disturb, or permit a third party to disturb, the Avoided Land as a result of any works for an effluent management zone undertaken in accordance with the approved Biodiversity Management Plan

Variation of Agreement and Biodiversity Management Plan

- 3.1.6. Clause 14.8 is amended by numbering the existing text as '(a)' and replacing the full stop at the end of the current text with a semi colon, and then by inserting the following text:

- (b) If an amended Biodiversity Management Plan is required to be prepared following a variation of the Agreement under clause 14.8(a), the Landowner agrees within one (1) month of the date of execution of the agreement effecting the variation, to prepare and submit to the Department for approval an amended draft Biodiversity Management Plan to apply to the Avoided Land.
- (c) The Department will, in good faith, make all reasonable attempts to approve a draft amended Biodiversity Management Plan within one (1) month of the draft amended Biodiversity Management Plan being submitted to the Department by the Landowner. If the draft amended Biodiversity Management Plan is not approved, the Department will provide reasons why it is not approved.
- (d) If the draft amended Biodiversity Management Plan is not approved, the Landowner will amend it to address the reasons provided by the Minister and resubmit to the Department. Paragraph (c) will then apply to the resubmitted draft Biodiversity Management Plan.

Notices

- 3.1.7. Clause 16.1 is replaced as follows:

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 Science Division, South East Branch
Department of Climate Change, Energy, the Environment and Water
Locked Bag 5022 PARRAMATTA NSW 2124

Attention: Mr Michael Saxon
Director, South East Branch

Telephone:

Email address: rog.southeast@environment.nsw.gov.au

The Landowner

Address: [REDACTED]
[REDACTED]

Attention: Andrew Cook

Telephone: [REDACTED]

Email address: [REDACTED]

Maps

3.1.8. The maps in Schedule 1 are replaced with the Maps 1A, 1B, 1C and 1D attached to this Deed.

4. New Party

- 4.1. The Parties agree that the Landowner's rights and obligations under the Principal Agreement will commence from the Effective Date.
- 4.2. On and from the Effective Date the Landowner is responsible for all obligations under the Principal Agreement (as amended by this Deed), subject to the terms of the Principal Agreement (as amended by this Deed).
- 4.3. On and from the Effective Date all references in the Principal Agreement to the Landowner will be taken to be references to the Landowner as amended by this Deed.

5. Land Ownership

- 5.1. The Landowner represents and warrants they are the sole owners of the Land.

6. Registration of this Deed

- 6.1. After execution of this Deed, the Minister will use best endeavors to notify the Registrar-General of the variation of the Principal Agreement and register this Deed in accordance with section 8.17 of the BC Act.
- 6.2. The Landowner agrees to reimburse the Minister for the registration fee of this Deed (and any applicable GST) with the Registrar-General as determined by the NSW Land Registry Service (or any other name it may be known by in the

future) for the relevant financial year. The Landowner must pay the Minister, within 21 days of being invoiced by the Minister.

- 6.3. The Landowner will do all things (including executing all documents) necessary or desirable to give effect to registration of this Deed by the Minister.

7. No other change

- 7.1. The Parties agree the Principal Agreement will continue in full force and effect as varied by this Deed (and any previous variations). Nothing in this Deed will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed.

8. Landowner to obtain all necessary consents and comply with all laws

- 8.1. The Landowner warrants that:

- 8.1.1. from the date of execution of this Deed, the Landowner has obtained the written consent of all persons whose consent is required for the entry into and registration of this Deed; and
- 8.1.2. if any further consents are required on or after the date of execution of this Deed, the Landowner 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 registration of this Deed, whether required by this Deed or by law.

9. Costs

- 9.1. Subject to clause 6 (Registration of this Deed), each Party will bear its own costs in relation to the negotiation, preparation, execution and carrying into effect of this Deed.

10. General

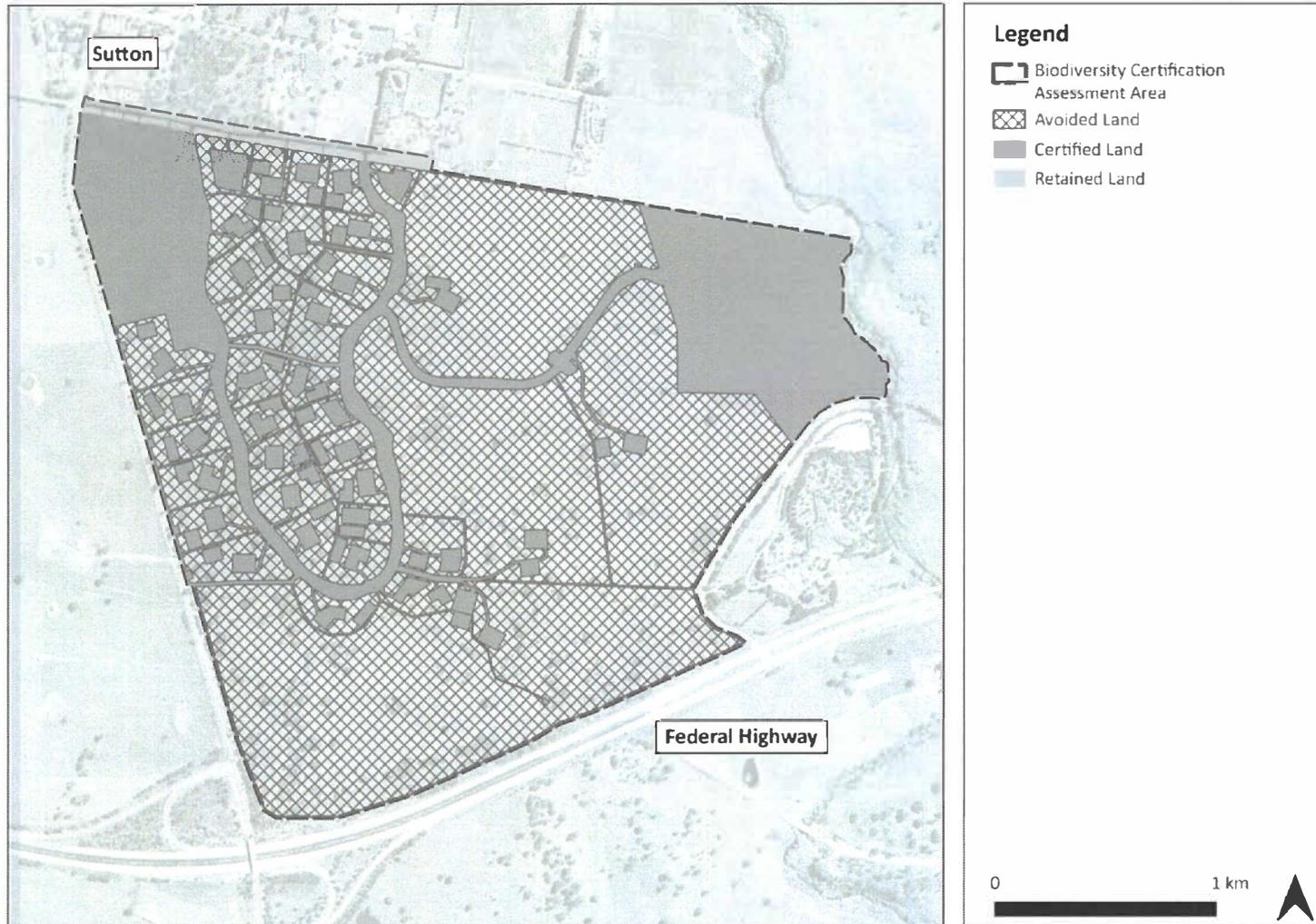
- 10.1. This Deed contains the entire agreement between the Parties in relation to the variations and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed are of no effect.
- 10.2. Nothing in this Deed in any way restricts or otherwise affects the Minister's discretion to exercise their statutory powers.
- 10.3. This Deed is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.

11. Disclosure of Deed and information

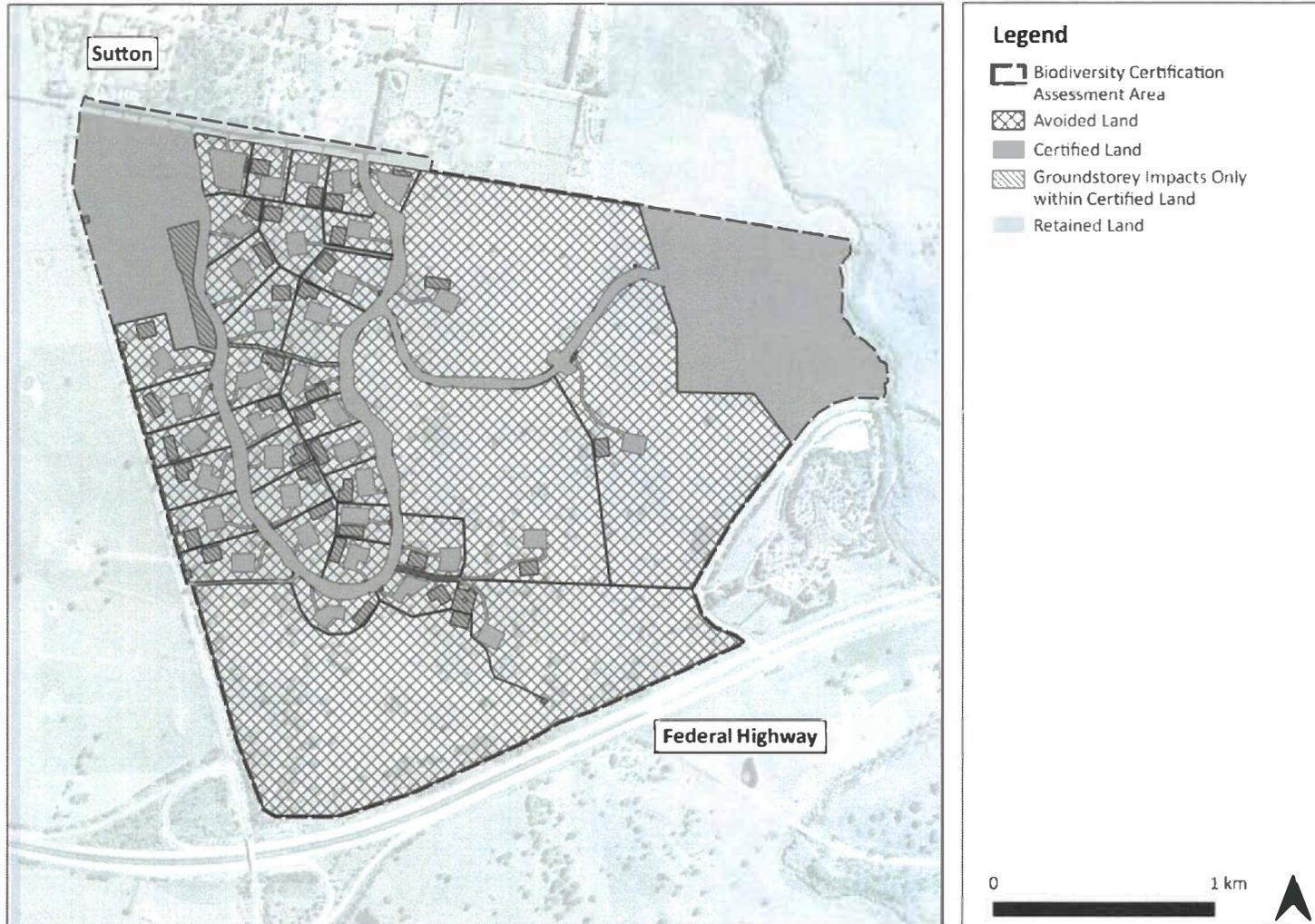
- 11.1. In this clause, "Disclosure Information" means the information contained in this Deed (including a copy of this Deed and details of the land to which this Deed relates) and the information contained in the Principal Agreement (including a copy of the Principal Agreement and a copy of the plan of management prepared under the Principal Agreement).
- 11.2. The Landowner consents to the Disclosure Information being made publicly available as part of the register of private land conservation agreements under the *Biodiversity Conservation Act 2016* and acknowledges that the Disclosure Information may be made available to the public on the government website maintained in accordance with the *Biodiversity Conservation Act 2016*.

Schedule 1

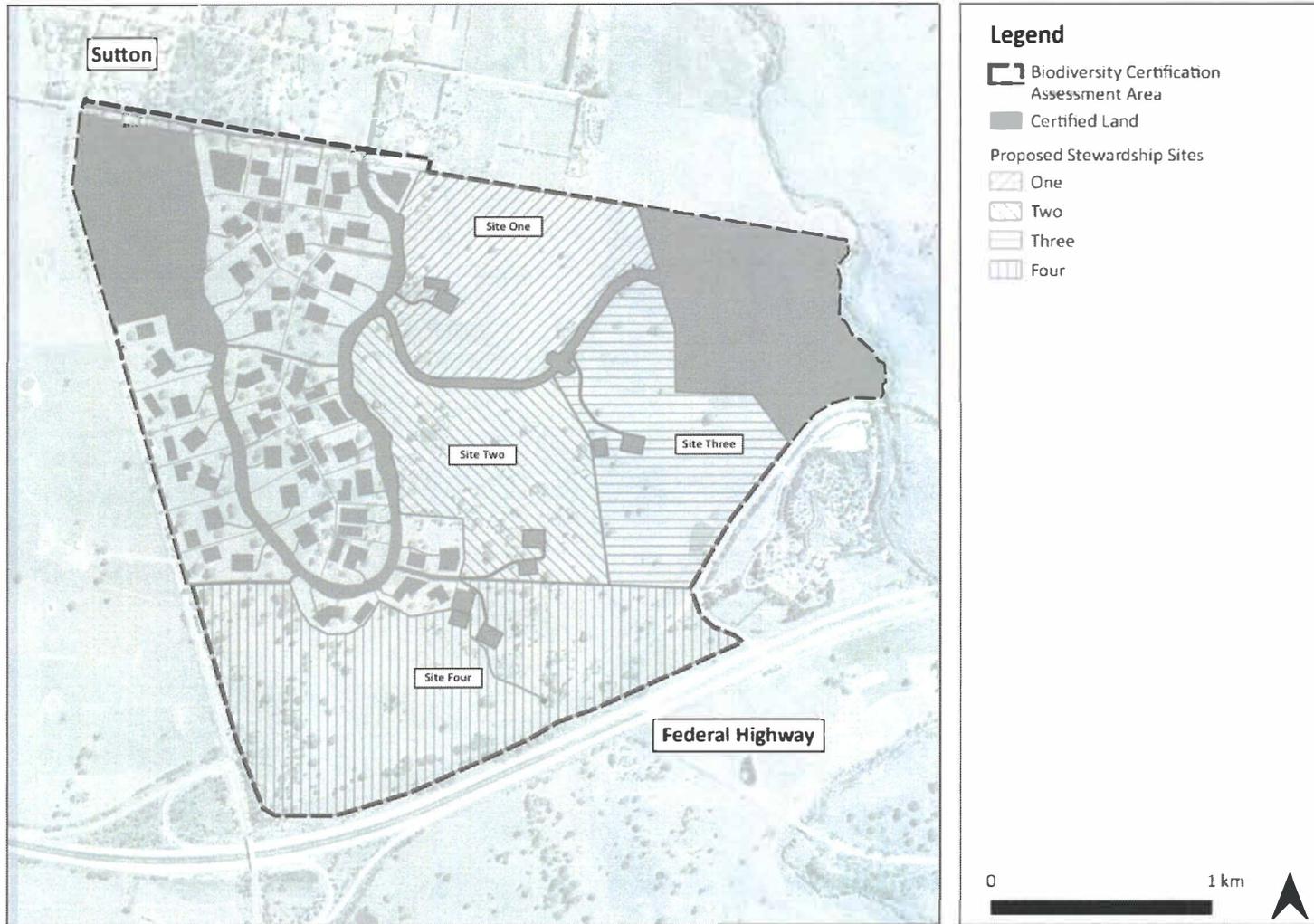
Map 1A



Map 1B



Map 1C



Map 1D



Executed as a Deed

Signed, sealed and delivered for and on behalf of the Minister administering the *Biodiversity Conservation Act 2016* by an authorised delegate in the presence of the witness named below:

Executed by the Minister

I certify that an authorised officer of the Minister who is personally known to me or as to whose identity I am otherwise satisfied signed this dealing in my presence.


.....
Signature of delegate

3 April 2024
.....
Date

Michael Saxon, Director South East
Biodiversity Conservation Division
.....
Name and title of delegate (please print)

Nat O'Rourke
.....
Signature of witness


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

11 Farrer Place, Queanbeyan NSW 2620
.....
Address of witness
(please print)

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

Capital Plus 1 Woodbury Ridge Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

.....
Signature of Secretary/Director

.....
Date

.....
Name of Secretary/Director
(please print)


.....
Signature of Director

7 March 2024
.....
Date


.....
Name of Director
(please print)

Kenyon Services Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



Signature of Secretary/Director

7/3/2024

Date

DAVID ARTHUR KENYON

Name of Secretary/Director
(please print)



Signature of Director

LOUISE HELEN HODGMAN
NAME OF ~~Date~~ DIRECTOR

7/3/2024

Name of Director
(please print)

DATE

