



A GUIDE TO  
**PRIVATE CONSERVATION**  
IN NSW

## About EDO NSW

EDO NSW is an independent community legal centre specialising in public interest environmental and planning law. Our main office is in Sydney and we have an Outreach Solicitor located in Lismore. Our work involves four main functions:

- legal advice and case work;
- policy and law reform;
- community legal education (outreach); and
- scientific and technical expert assistance.

We run an environmental law advice line providing the community with free initial legal advice and information on a wide range of environmental issues.

Sydney: call (02) 9262 6989

Anywhere else in NSW: call 1800 369 791.

If you would like EDO NSW to visit your area to conduct a free workshop on the topics covered in this booklet, please contact us on 02 9262 6989 or email [education@edonsw.org.au](mailto:education@edonsw.org.au)

**Currency:** the information contained in this booklet is current as at 5 January 2015.

**Disclaimer:** This booklet seeks to provide general information only and is not a substitute for legal advice in individual cases. If you wish to receive legal advice, please call our advice line (contact details above).

### Acknowledgements

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EDO NSW thanks the [Nature Conservation Trust](#), the [NSW Office of Environment and Heritage](#), [Justice Connect](#), the NSW [Local Land Services](#), [Bush Heritage Australia](#), [Tweed Shire Council](#), the Caring for Our Country team, the [Humane Society International \(Australia\)](#), the [Nature Conservancy](#) and the landholders who consulted with us on this project.

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# INTRODUCTION

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The purpose of this publication is to help you understand the different private conservation options available and help you decide which option would be most suitable for your property and circumstances. Every effort has been made to provide information that is accurate in a straightforward way. Sometimes the law can be very complex and there may be legal issues that are specific to your circumstances that may not be covered in this booklet. EDO NSW provides free initial legal advice via its environmental law advice line. To request legal advice on an environmental or planning law issue, please call the numbers on the front page. Your request will be allocated to one of our solicitors who will call you back, usually within a couple of days.

## Why undertake private conservation on your land?

Australia's biodiversity cannot be conserved adequately in the public reserve system. Public reserves such as National Parks account for a tiny fraction of all land in Australia, the vast majority of which is privately owned or leased. Furthermore, many species and ecological communities are either not represented or are underrepresented in the public reserve system. Without conservation on private land, much of Australia's biodiversity may be lost. This is why government and non-government organisations are working towards encouraging landholders to take steps to conserve some or all of the natural features of their properties. A range of private conservation mechanisms have been developed in the hope that more of Australia's biodiversity can be preserved.

## What are the differences between the private conservation options?

Private conservation mechanisms differ in a number of ways. They range in the level of legal commitment required of the landholder and the targeted ecological outcomes. This booklet discusses the legal aspects of the options that are available to landowners in NSW; it does not analyse the ecological outcomes of each option.

The conservation options with a strong legal commitment and protection include:

- Trust Agreements with the Nature Conservation Trust;
- Conservation Agreements with the Office of Environment and Heritage; and
- Conservation Property Vegetation Plans with Local Land Services.

These three options can protect the natural features of your land in perpetuity and can bind future landowners. They restrict activities such as clearing of native vegetation, harming native fauna, commercial grazing and subdivision.

Other options that can legally protect your property include:

- Wildlife Refuges with the Office of Environment and Heritage; and

- BioBanking with the Office of Environment and Heritage.

The conservation options that have no legal commitment and will not restrict the actions of future landowners include:

- Land for Wildlife with the Community Environment Network and the Office of Environment and Heritage;
- Landholder Management Agreements with Local Land Services;
- Wildlife Land Trust with the Humane Society International (Australia).

## How do the different conservation mechanisms relate to each other?

Different conservation mechanisms can be combined together on a single property. Each conservation mechanism serves a different purpose and it may be beneficial for you to implement more than one conservation option. For example, you may use a Conservation Agreement to preserve an endangered ecological community on one part of your property and an Incentive Property Vegetation Plan on another part of your property which may provide necessary funding to allow you to undertake remediation works on part of your land that may be degraded.

## Conservation by organisation

Conservation organisation	Conservation mechanism
Office of Environment and Heritage	Conservation Agreements Wildlife Refuges BioBanking Indigenous Land Use Agreements
Nature Conservation Trust	Trust Agreements
Local Land Services	Property Vegetation Plans Landholder Management Agreements
Community Environment Network	Land for Wildlife
Humane Society International	Wildlife Land Trust
Australian Department of the Environment	Federal Conservation Agreements

## Private Land Conservation Grants Program

If you choose to implement a private conservation mechanism, you may be eligible for funding to carry out conservation works on your land. One of these funding opportunities is the [Private Land Conservation Grants Program](#). This Program offers grants of up to \$5000 for conservation works.<sup>1</sup> The grants are offered as part of a partnership between the [Paddy Pallin Foundation](#), the [Foundation for National Parks and Wildlife](#), the [Humane Society International](#), [Diversicon Environmental](#)

<sup>1</sup> For more information go to:

<http://www.paddypallinfoundation.org.au/home/index.php/current/privatelands>.

[Foundation](#), the [NSW Office of Environment and Heritage](#) and the [Nature Conservation Trust of NSW](#). These grants are available to landholders who have established a legally binding conservation mechanism on their land.

### **Getting legal advice when implementing private conservation**

EDO NSW provides free legal advice for landholders who would like to get more involved in private conservation. For more information contact EDO NSW.

Sydney: 02 9262 6989

Rest of NSW: 1800 626 239

## CHAPTER 1

# TRUST AGREEMENTS

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### Key Features:

1. Conservation covenant
2. Legally binding on you and future landowners
3. Strong and permanent legal protection for the natural features of your land
4. Potential for incentive funding
5. Management advice and strong landholder support
6. Tax exemptions and concessions

### What is a Trust Agreement?

A Trust Agreement is an agreement between yourself and the [Nature Conservation Trust of New South Wales](#)<sup>2</sup> (NCT) that provides legal protection for the natural features of your property. Trust Agreements are a form of conservation covenant. At the time of writing there were 41 registered Trust Agreements protecting 2,444 hectares of high conservation value land across NSW.

The Trust Agreement sets out the legal obligations of both you and the NCT for the protection and conservation the part of your land that you want to conserve (known as the conservation area). Trust Agreements are all generally similar in nature but you are free to negotiate some of the terms of the Agreement.

The Agreement is registered on the certificate of title to your property which means it is attached to the land and will bind the future owners of your land.<sup>3</sup>

All properties with a Trust Agreement will also have a Plan of Management prepared. The Plan of Management sets out the specific natural values of your property as well as the threats, such as weeds. It provides goals and recommendations for the ongoing management of the conservation area. The Plan of Management contains additional detail on the conditions of the Trust Agreement. For example, the Trust Agreement may include a clause that prevents clearing of native vegetation except for the maintenance of infrastructure such as tracks (and other specified activities). The Plan of Management would then include a map to show where the tracks are and define how much land can be cleared for the maintenance of those tracks.

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<sup>2</sup> See: <http://nct.org.au/>

<sup>3</sup> *Nature Conservation Trust Act 2001* (NSW), ss. 30, 37.

The terms of the Plan of Management are negotiated between you and the NCT so you should agree to how the conservation area is to be managed before you sign the Trust Agreement.

## What is the Nature Conservation Trust?

The NCT is a non-government organisation that promotes the conservation of natural and cultural heritage on private land. The NCT is governed by the [Nature Conservation Trust Act 2001 \(NSW\)](#).<sup>4</sup> The NCT is independent from government and the activities of the NCT are directed by the Nature Conservation Trust Board.

## What land is suitable for a Trust Agreement?

In general, the NCT is interested in covenanting land with significant environmental values.

This might include properties with:

1. unusually high biodiversity or that support regional vegetation communities in good condition;
2. ecological communities that are poorly represented in existing public reserve systems;
3. critical habitats or populations of threatened species;
4. ecosystems that play a key role in the interconnected nature of the environment. For example, wildlife corridors, communal roosting and nesting sites or migratory bird habitat; and
5. properties that provide protection from soil erosion or water pollution.

If your land is not suitable for a Trust Agreement it may be suitable for one of the other conservation options discussed in this publication.

## How can I get a Trust Agreement?

There are two ways of having a Trust Agreement registered on a property. If you already own a property with high conservation values, you can [apply](#) to the NCT for a Trust Agreement.<sup>5</sup> Alternatively, the NCT sells properties of high conservation value that you can purchase.<sup>6</sup> These properties come with a Trust Agreement already in place.

The following steps are the typical process for establishing a Trust Agreement on a property:

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<sup>4</sup> See: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+10+2001+cd+0+N>

<sup>5</sup> See: <http://nct.org.au/supporting-land-owners/legal-protection-for-land/covenanting-programs/>

<sup>6</sup> See: <http://nct.org.au/rural-land-for-sale/>



1. You must apply for a Trust Agreement with the [Nature Conservation Trust](#).<sup>7</sup> After you lodge an application, the NCT will assess your property's suitability for a Trust Agreement. The NCT does not have the resources to provide Trust Agreements for all applicants. If your application is unsuccessful, the NCT may keep your details in case a [covenanting program](#) is established in your area in the future.<sup>8</sup> Contact the NCT to obtain an application.
2. If your application is successful, a meeting will be held between you and the NCT. You will discuss what you want to achieve by establishing a conservation area and management options for the proposed conservation area.
3. NCT staff will conduct biodiversity surveys of your property and establish monitoring points.
4. The NCT will prepare a draft Trust Agreement and draft Plan of Management. You can propose changes to the documents and discuss the terms with the NCT (it is recommended you seek independent legal advice at this stage in the process).
5. Once the documents are agreed to and finalised, a surveyor is engaged to survey the conservation area and prepare a survey diagram.
6. The Trust Agreement and Plan of Management are signed by both parties.
7. The Trust Agreement is lodged with the Department of Finance and Services and registered on the certificate of title to your property.
8. You will be included in the NCT Stewardship Program (outlined below).
9. The Plan of Management will be reviewed within five years.

You must get consent from all landowners and anyone who has a legal interest in your land before you can enter into a Trust Agreement. If you have a family trust, you must get all family members to agree to the Trust Agreement. If you have a mortgage, you must get consent from your mortgage provider.

### Does it cost money?

It depends on your property. The NCT runs a targeted [covenanting program](#) in particular areas of the State.<sup>9</sup> If your property falls within the targeted covenanting program, the NCT may offer to establish a Trust Agreement on your property at no cost. If your property does not fit within a targeted covenanting program, the NCT may charge a fee to establish a Trust Agreement. Please [contact the NCT](#) to enquire about the cost of establishing a Trust Agreement on your property.<sup>10</sup>

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<sup>7</sup> See: <http://nct.org.au/what-we-do/about-nct/contact.html>

<sup>8</sup> See: <http://nct.org.au/supporting-land-owners/legal-protection-for-land/covenanting-programs/>

<sup>9</sup> See: <http://nct.org.au/supporting-land-owners/legal-protection-for-land/covenanting-programs/>

<sup>10</sup> See: <http://nct.org.au/what-we-do/about-nct/contact.html>

## **Do I have to set aside all of my property in the conservation area?**

No, you can choose areas of your property that will be included in the conservation area. It is common to exclude areas occupied by your home and domestic animals. If you own a commercial farm, you may want to only include a specific section of your property in the conservation area and continue commercial farming on the remainder of the property. The Trust Agreement will only apply to the conservation area. It will not affect the other parts of your land.

## **How does a Trust Agreement protect my property?**

A Trust Agreement protects your land in perpetuity by being registered on the certificate of title to your property. The Agreement binds you and future land owners to continue to protect and maintain the biodiversity values of your land.

A clause is included in the Trust Agreement stating that you have agreed to manage the property in accordance with any conditions within the Plan of Management. This clause makes the Plan of Management legally binding on you without the need for the document itself to be registered on the certificate of title to your property.

The NCT is responsible for enforcing the Trust Agreement against you and future landowners.

## **What are the legal consequences of entering into a Trust Agreement?**

A Trust Agreement is a long term commitment under the *Nature Conservation Trust Act 2001* (NSW). Landowners enter an Agreement voluntarily but, once in place, it is a legally binding contract. You must manage the conservation area in accordance with the Trust Agreement and the Plan of Management. It is important that you understand the terms of the Trust Agreement and your obligations under it. You should therefore seek legal advice before signing the Trust Agreement.

When you enter into a Trust Agreement, you have agreed that the Plan of Management reflects the condition of the conservation area. You are obliged to protect the conservation area and prevent it from becoming degraded. The Trust Agreement prevents actions that would degrade the natural values of your land, such as clearing native vegetation. It may also require you to protect the area from stock and make reasonable efforts to control feral animals and remove noxious weeds.

The Trust Agreement will prevent you from carrying out any threatening processes that have an adverse impact on the natural and cultural heritage values of the conservation area. You must not conduct or allow an activity to occur that may threaten the survival or evolutionary development of species, populations or ecological communities. This could include clearing native vegetation, subdividing the conservation area, or harming native animals.

Trust Agreements will usually allow for the maintenance of infrastructure such as tracks, fences and fire breaks.

The Plan of Management is designed to complement existing environmental legislation, and all environmental legislation will continue to apply to the land.

### How are the terms of the Trust Agreement enforced?

If you or future owners of the land breach the Trust Agreement the NCT will work with you to remedy the breach and reach a middle ground. If the breach is serious or deliberate, the NCT may take enforcement action against you in the Land and Environment Court.<sup>11</sup>

If someone causes environmental damage on a property that is protected by a Trust Agreement, the penalties are higher than if the environmental damage was caused on a property that was not protected by a Trust Agreement. Normal environmental protection laws still apply over land that is protected by a Trust Agreement.

The NCT has the power to order rectification works. There may be a clause included in the Trust Agreement that if you have not adequately responded to a rectification order within 30 days the NCT may enter your land and undertake the rectification works on your behalf and then charge you for the cost of those works.

The Land and Environment Court can award damages (money) against you or a future landowner for a breach of the Trust Agreement if the breach arose from an intentional or reckless act.<sup>12</sup>

### What support is available to landholders with Trust Agreements?

You will receive ongoing support<sup>13</sup> from the NCT and be part of a network of other people with Trust Agreements. You may also receive funding to carry out conservation works on your land.

The NCT has developed an ongoing support program called the Stewardship Program<sup>14</sup> for landowners entering into Trust Agreements. The Stewardship Program helps landowners manage their conservation areas and offers the following features:

1. regular contact between landowners and the NCT, including a yearly phone call from the NCT and a site visit at least every five years;
2. land management advice;

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<sup>11</sup> *Nature Conservation Trust Act 2001* (NSW), s. 38(1).

<sup>12</sup> *Nature Conservation Trust Act 2001* (NSW), s. 38(2). The monetary amount is calculated by determining any detriment to the public interest (damage to the environment is detrimental to the public interest) by offsetting any financial benefit gained by the person who committed the breach. See *Nature Conservation Trust Act 2001* (NSW), ss. 38(2) – 38(3).

<sup>13</sup> See: <http://nct.org.au/supporting-land-owners/land-management-support.html>

<sup>14</sup> See: <http://nct.org.au/supporting-land-owners/land-management-support.html>

3. notification of various grants and agencies that may be able to fund conservation works on your property; and
4. notification of conservation and land management workshops.

There are also taxation and rate exemptions discussed later in this chapter.

### **Can I continue farming in the conservation area?**

Most Trust Agreements will exclude stock from the conservation area, although some native ecosystems may benefit from grazing and stock may be allowed to graze in the conservation area in a controlled way. The Plan of Management will advise how grazing is to be conducted. Trade of ecosystem services such as carbon is allowed, as well as non-damaging activities such as environmental recreation.

### **Do I still own my property?**

Yes, you still own your property. The Trust Agreement does not change the ownership of your property at all. The registration of the Trust Agreement on the certificate of title to your land notifies anyone inquiring about the ownership of the land that the part of your land within the conservation area is to be conserved.

### **Can people access my land?**

Your land will still be under your control. By signing the Trust Agreement you agree to grant access to NCT staff after they have given you reasonable notice that they intend to access the conservation area. Your consent to the NCT to enter the conservation area does not extend to the remainder of your property or to any private buildings.

### **How long will it last? Can the Trust Agreement be removed or changed?**

Trust Agreements are intended to last forever.

It is possible to terminate the Trust Agreement, but only in exceptional circumstances and only with the consent of the NCT Board. Exceptional circumstances are considered to occur where the area is no longer needed for, or is no longer capable of being used to achieve any purpose for which the Agreement was entered into (e.g. catastrophic natural events).

There may be alternatives to terminating the Trust Agreement. If you want to conduct an activity that is not provided for or allowed under the Trust Agreement then you may be able get a letter of approval from the NCT to carry out that particular activity. It may also be possible to change the Plan of Management to allow you to carry out the activity. If you want to make a more permanent change, like moving the boundaries of the conservation area, then the Trust Agreement itself must be changed. If you want to make a change to the actual Trust Agreement document,

you will have to pay the costs of amending it and any variation must be made by both parties by signing a further agreement.

The Plan of Management is more flexible than the Trust Agreement and can be reviewed and amended as the management requirements of the conservation area change.

### **What if I want to lease my property?**

If you want to lease land which is subject to a Trust Agreement you must include in the lease a clause that commits the tenant to perform the duties and obligations placed upon you by the Trust Agreement. Prior to entering into the lease you must provide the tenant with a copy of the Trust Agreement and the Plan of Management. You must also notify the NCT that you have leased the land.

### **What if I want to sell my property?**

Selling a property with a Trust Agreement is the same as selling a property without a Trust Agreement. However, you must advise the NCT if you are selling your property.

The Agreement is attached to the land and future owners of your land will be legally required to maintain and protect the conservation area in accordance with the terms of the Trust Agreement and Plan of Management. The NCT will contact the purchaser of your property and assist them in understanding their obligations and the benefits of the Trust Agreement. Future purchasers should obtain independent legal advice before buying land that is subject to a Trust Agreement.

### **Will the Trust Agreement affect the value of my property?**

Possibly. The effect of a Trust Agreement on the value of your land will be very specific to the circumstance of your property.

The Australian Valuation Office values your land by determining the value of the highest and best use of the land from a market perspective. In other words, your land will be valued based on its maximum potential. The maximum potential of your land may include subdivision potential or commercial farming potential, depending on how it is zoned. Sometimes using this highest and best use valuation method has the effect of reducing your land's value when a Trust Agreement is taken into account and in other situations there may be no reduction at all as a result of entering into a Trust Agreement.

For example, in some cases your land may increase in value because the use of superior land management practices may improve the quality of your land. Further, a prospective purchaser may acknowledge the conservation value of the land and be willing to pay a premium for a property with high conservation values. On the other hand, if your land has subdivision potential, the value of the land will be

comparatively high and entering into a Trust Agreement will result in the lost potential to subdivide your property and may result in the reduction in value of your property.

### **I am looking at purchasing a property with a Trust Agreement listed on the title. What does this mean?**

If the property you are considering purchasing has a Trust Agreement listed on title, it means that previous owners have implemented a Trust Agreement over the property. If you proceed with the purchase of the property, you will be bound by the terms of the Trust Agreement. It is important that you and your conveyancer understand the terms of the Trust Agreement before you purchase the property. [Contact the NCT](#) and they will explain your commitment in more detail.<sup>15</sup>

### **How does a Trust Agreement interact with Environmental Planning Instruments?**

An Environmental Planning Instrument (a Local Environmental Plan or a State Environmental Planning Policy) can suspend the operation of a Trust Agreement for the purpose of enabling development to be carried out. This cannot occur without the agreement of the NSW Minister for Environment.<sup>16</sup> Any Environmental Planning Instrument already in force before the Trust Agreement is made will not affect the operation of the Trust Agreement.<sup>17</sup> Any future Environmental Planning Instrument must specifically state that it affects the operation of the Trust Agreement before it can do so.<sup>18</sup>

### **Tax and rates exemptions and concessions**

Taxation issues are complex and the effect they will have on you financially will depend on your personal circumstances. The information below discusses the various tax treatments of Trust Agreements broadly. It is important that you obtain advice from a lawyer or from your accountant about how your property will be treated for taxation purposes. The [Australian Tax Office website](#) also has information to help you understand how the taxation concessions will affect your individual circumstances.<sup>19</sup>

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<sup>15</sup> See: <http://nct.org.au/what-we-do/about-nct/contact.html>

<sup>16</sup> At the time of writing the Minister Administering the *Nature Conservation Trust Act 2001* (NSW) was the Minister for the Environment.

<sup>17</sup> *Nature Conservation Trust Act 2001* (NSW), s. 38A(2).

<sup>18</sup> *Nature Conservation Trust Act 2001* (NSW), s. 38A(2).

<sup>19</sup> Go to: <http://www.ato.gov.au/Non-profit/Gifts-and-fundraising/In-detail/Gifts-and-fundraising/Conservation-covenants/Conservation-covenant-concessions/>

## Income tax and capital gains tax

You may be able to get an income tax deduction if your land reduces in value (that is, produces a capital loss) as a result of entering into a Trust Agreement.<sup>20</sup> There are special tax concessions available to landholders entering into Trust Agreements where a capital loss arises in certain circumstances.

Entering into a Trust Agreement is a capital gains tax event.<sup>21</sup> For concessional capital gains tax treatment, you must have entered into the Trust Agreement within 12 months of acquiring the land; or the land must have reduced in value by more than \$5,000 as a result of entering into the Trust Agreement.<sup>22</sup> The tax deduction may be spread over five financial years.<sup>23</sup> For example, if your land is assessed as having decreased in value by \$20,000, you can spread that deduction over 5 years by reducing your assessable income by \$4000 each year.

The decrease in value of the land must be the result of entering into the Trust Agreement; it cannot be from some other unrelated factor.

To benefit from the taxation concessions, you must have entered into the Trust Agreement for no material benefit. This means that you must not have received money, property or something else of value for entering into the Agreement. The Tax Office has ruled that grants for fencing and weed clearing are not a material benefit and will not affect the concessional treatment of your land or your income tax deduction.<sup>24</sup>

Any capital profit or loss that arises at the time of entering into a Trust Agreement will need to be accounted for on the landholder's tax return.

The landholder has to determine whether entering into the Trust Agreement triggers a capital profit or loss. Landholders are advised to seek the opinion of an expert valuer on the question of whether entering the Trust Agreement has changed the value of the property. This is generally best done prior to entering the Agreement.

## State land tax

Land within the conservation area may be exempt from State Land Tax.<sup>25</sup> The value of your land for the assessment of Land Tax may be reduced according to the proportion of the land that is included in the conservation area.<sup>26</sup> For example, if 60%

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<sup>20</sup> Entering into a Trust Agreement is a Capital Gains Tax Event D4 to allow landholders to access an income tax deduction.

<sup>21</sup> *Income Tax Assessment Act 1997* (Cth), ss. 104-47(1).

<sup>22</sup> *Income Tax Assessment Act 1997* (Cth), ss. 31-5, 116-105.

<sup>23</sup> See: <http://www.ato.gov.au/Non-profit/Gifts-and-fundraising/In-detail/Gifts-and-fundraising/Conservation-covenants/Conservation-covenant-concessions/>

<sup>24</sup> ATO interpretive decision, ATO ID 2002/678, *Income Tax Division 31 – 'material benefit' for entering into a conservation covenant*, 3 July 2002.

<sup>25</sup> *Land Tax Management Act* (NSW) ss. 10(p1), 10(2C).

<sup>26</sup> *Land Tax Management Act 1956* (NSW), s. 10(2C).

of your land is included in the conservation area, your land tax liability may be reduced by 60%.

### **Local council rates**

There is no automatic exemption from your rates if you have a Trust Agreement. However, local shires and councils may choose to grant rates exemptions for the land that falls within the conservation area.<sup>27</sup> If a local council does grant you a rate exemption, your rate liability can be reduced by the proportion of your property that is included in the conservation area. So if 70% of your property is included in the conservation area then your rates can be reduced by 70%. [The NCT](#) can assist you in contacting your local council to make a request for rate exemption.<sup>28</sup>

### **Local Land Services rates**

A Trust Agreement does not entitle you to an exemption from rates payable to Local Land Services (LLS). However, you may be able to have the carrying capacity of your property reassessed to take account of any restrictions imposed by the Trust Agreement. In this case, you would still need to pay the base rate that is applicable to all properties over a certain size but you would not be liable to pay the rates based on the carrying capacity of your land. You should contact your regional LLS branch to find out whether they will consider reducing your rates liability. Please note that such a rates reduction is not an entitlement. Rather, it is at the discretion of the LLS with which you are associated.

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<sup>27</sup> *Nature Conservation Trust Act 2001* (NSW), s. 38B.

<sup>28</sup> See: <http://nct.org.au/what-we-do/about-nct/contact.html>



# CONSERVATION AGREEMENTS

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### Key features:

1. Conservation Covenant
2. Legally binding on you and future landowners
3. Strong and permanent legal protection for the conservation value of your land
4. Management advice and strong landholder support
5. Tax exemptions and concessions

### What is a Conservation Agreement?

A Conservation Agreement is a formal agreement between yourself and the NSW Environment Minister (through the Office of Environment and Heritage) that you can use to protect and conserve your land forever. Conservation Agreements are a type of conservation covenant. As at June 2011, there are 310 Conservation Agreements in place in NSW, protecting 134,046 hectares.<sup>29</sup>

The Conservation Agreement sets out the legal obligations of both you and the NSW Government and covers the part of your land that you want to conserve (known as the conservation area).

The Conservation Agreement is legally binding and is listed on the certificate of title to your property. This means that the Agreement is attached to the land and will bind future owners of your land.

The Conservation Agreement will specify things like the area covered by the Agreement, the conservation values of the land, and the activities that should be undertaken to manage those conservation values.

### What is the Office of Environment and Heritage?

The OEH is a separate office within the Planning and Environment cluster of the NSW Government. OEH is responsible for protecting and conserving the NSW environment and heritage. It also manages NSW national parks and reserves.

### What land is suitable for a Conservation Agreement?

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<sup>29</sup> Statistics about the Conservation Partners Program:  
[www.environment.nsw.gov.au/cpp/ConservationPartnersStatistics.htm](http://www.environment.nsw.gov.au/cpp/ConservationPartnersStatistics.htm)

The OEH will only enter into a Conservation Agreement over land of high conservation value, such as land that:

1. has a range of natural and cultural attributes;
2. is in a native condition; and
3. is not environmentally degraded.

Conservation Agreements can protect freehold and leasehold land and land that is in private or public ownership.

### How can I get a Conservation Agreement?

The first thing you should do is [contact the OEH](#)<sup>30</sup> to discuss whether your property is suitable for a Conservation Agreement and, if it is, make an application. If the OEH considers that your land will be suitable for a Conservation Agreement then it will visit your property to confirm whether it has the qualities they are looking for.

The process for developing and executing a Conservation Agreement on your property usually takes between 6 and 12 months but can take more or less time depending on the landholder's particular circumstances.

You are encouraged to obtain independent legal advice before entering into a Conservation Agreement. The OEH provides some financial support for you to pay for independent legal advice.

You will also need to get consent from all landowners and entities that have an interest in your land. If you have a mortgage, you will have to gain consent from your mortgage provider and they will co-sign the Agreement.

The following steps outline the typical process for establishing a Conservation Agreement:

1. You must apply for a Conservation Agreement with the [OEH Conservation Partners Program](#).<sup>31</sup> [Contact the OEH](#)<sup>32</sup> and they will send you an application form in the mail.
2. An OEH officer will assess your property to determine if it is suitable for a Conservation Agreement.
3. If your property is suitable and the OEH has agreed to establish a Conservation Agreement, an OEH officer will do a biodiversity survey and identify the boundaries of the conservation area.

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<sup>30</sup> See: <http://www.environment.nsw.gov.au/contact/>

<sup>31</sup> See: <http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>

<sup>32</sup> See: <http://www.environment.nsw.gov.au/contact/>

4. The OEH officer will prepare the Conservation Agreement, including a Management Scheme. You can review the documents and propose changes (you should seek independent legal advice at this stage of the process).
5. Once you and the OEH have agreed to the terms of the Conservation Agreement, all parties will sign the Agreement.
6. The OEH arranges for the Conservation Agreement to be registered on the certificate of title to your property, leaving you to manage the land for conservation.

### **Does it cost money?**

Please [contact the OEH](#)<sup>33</sup> to enquire about the cost of establishing a Conservation Agreement on your property.

### **Do I have to set aside all of my property in the conservation area?**

No, the boundaries of the conservation area will be negotiated between the OEH and yourself. It is normal for some of the property to be excluded for your home and garden or a future development and you may still wish for some of the property to be used for agriculture or a similar use. Some of the property may not be of high conservation value and therefore not suitable for a Conservation Agreement. If so, the OEH will exclude this land from the conservation area. The Conservation Agreement will only apply to the conservation area.

### **How does a Conservation Agreement protect my property?**

A Conservation Agreement protects your land in perpetuity by being registered on the certificate of title to your property. The Agreement binds you and future landowners to continue to protect and maintain the biodiversity values of your land.

The OEH is responsible for enforcing the Conservation Agreement against you and future landowners.

### **What are the legal consequences of entering into a Conservation Agreement?**

A Conservation Agreement is a long term commitment under the *National Parks and Wildlife Act 1974* (NSW). Landowners enter an Agreement voluntarily but, once in place, it is a legally binding contract and the owner must abide by the terms of the Agreement. It is important that you understand the terms of the Conservation Agreement and your obligations under it. You should therefore seek legal advice before signing the Conservation Agreement.

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<sup>33</sup> See: <http://www.environment.nsw.gov.au/contact/>

Your obligations will be set out in the Conservation Agreement. The OEH uses a standard template for Conservation Agreements which is tailored to each property. The Conservation Agreement is designed to ensure that the natural features, fauna and flora of the land and any cultural heritage are conserved.

Undertaking activities that may damage the land, such as intensive farming or the clearing of native vegetation will not be allowed. Subdivision is also not allowed. You may have to remove noxious weeds and trap feral animals, as is already required by other legislation.<sup>34</sup>

By signing the Conservation Agreement, you agree to manage the land in accordance with the Conservation Agreement. It is important that you agree with the management strategies contained in the Conservation Agreement. If you do not agree with the management strategies, you should suggest changes. The Conservation Agreement will contain a description of the conservation values of your land and you should agree that the description contained in the Conservation Agreement reflects the true condition of the conservation area.

Native animals within a conservation area cannot be harmed and hunting with animals or weapons is prohibited within a conservation area without the required licence.<sup>35</sup> Native plants cannot be picked within a conservation area.<sup>36</sup>

Penalties include fines and terms of imprisonment.<sup>37</sup>

### **How are the terms of the Conservation Agreement enforced?**

If there is an unexpected degradation of the conservation values in the conservation area, the landowner should contact the OEH so that both parties can work towards fixing the problem.

If there is a breach of the Conservation Agreement by either the owner or a third party, the OEH will contact the parties in writing to try to resolve the problem. If the issue persists, the OEH can take enforcement action in the Land and Environment Court to stop a breach of a Conservation Agreement.<sup>38</sup> The Land and Environment Court can award damages against a landowner who intentionally or recklessly breaches a Conservation Agreement.<sup>39</sup>

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<sup>34</sup> *Rural Lands Protection Act 1998* (NSW) and *Noxious Weeds Act 1993* (NSW). For more information on your rights and responsibilities to control pests and noxious weeds see the EDO publication *Rural Landholder's Guide to Environmental Law in NSW*, available at: <http://www.edo.org.au/edonsw/site/publications.php>.

<sup>35</sup> *National Parks and Wildlife Act 1974* (NSW), s. 70.

<sup>36</sup> *National Parks and Wildlife Act 1974* (NSW), s. 71.

<sup>37</sup> See: *National Parks and Wildlife Act 1974* (NSW), Parts 7 and 8.

<sup>38</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G (1).

<sup>39</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G (2).

## **What support is available for landholders with Conservation Agreements?**

By entering into a Conservation Agreement, you will be part of the [OEH Conservation Partners Program](#).<sup>40</sup> The Program provides property signage, subscription to the 'Bush Matters' newsletter and a network of likeminded people. There are also taxation and rate exemptions discussed later in this chapter.

After you enter into a Conservation Agreement, the OEH may offer you funding to help meet the costs of fencing the conservation area, weed clearing and feral animal control. Properties that have Conservation Agreements may be eligible for other grant programs to meet the costs of carrying out specific conservation works. For example, you may be able to get funding for conservation works from your regional Local Land Services branch.

## **Can I continue farming in the conservation area?**

In general, agriculture will not be permitted within the conservation area. In some circumstances, agricultural activities such as grazing can continue on land within the conservation area if that is consistent with maintaining the conservation value of the land. For example, some native grasslands benefit from rotational grazing.

## **Do I still own my property?**

Yes, you still own your property. The Conservation Agreement does not change the ownership of your property at all. The registration of the Conservation Agreement on the certificate of title to your land notifies anyone inquiring about the ownership of the land that the part of your land within the conservation area is to be conserved.

## **Can people access my land?**

Your land will still be under your control. By signing the Conservation Agreement you agree to grant access to OEH staff after they have given you reasonable notice that they intend to access the conservation area. Your consent to the OEH to enter the conservation area does not extend to the remainder of your property or to any private buildings.

## **How long will it last? Can the Conservation Agreement be removed or changed?**

Conservation Agreements are intended to last forever.

It is possible to terminate the Conservation Agreement, but only in exceptional circumstances and only with the consent of the NSW Minister for the Environment. The Minister may terminate the Agreement in exceptional circumstances, but only

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<sup>40</sup> See: <http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>

after giving written notice to the landowner and considering the landowner's submissions. Exceptional circumstances are considered to occur where the area is no longer needed for, or is no longer capable of being used to achieve any purpose for which the agreement was entered into (e.g. catastrophic natural events).<sup>41</sup> To date this has not occurred.<sup>42</sup>

### **What if I want to lease my property?**

If you lease your property, you must include in the terms of the lease that the tenant will comply with the Conservation Agreement. You must inform the OEH within 28 days.

### **What if I want to sell my property?**

Selling a property with a Conservation Agreement is the same as selling a property without a Conservation Agreement. You must advise the OEH if you are selling your property.

The registering of the Conservation Agreement on the title to your property means that the Agreement is attached to the land and will bind future owners of your land. This means that future owners of your land will be legally required to maintain and protect the conservation area in accordance with the terms set out in the Conservation Agreement. The OEH will contact the purchaser of your property and assist them in understanding their obligations and the benefits of the Conservation Agreement. Future purchasers should obtain independent legal advice before buying land that is subject to a Conservation Agreement.

### **Will the Conservation Agreement affect the value of my property?**

It is possible that entering into a Conservation Agreement will affect the value of your land. The effect of a Conservation Agreement on the value of your land will be very specific to the circumstance of your property.

The Australian Valuation Office values your land by determining the value of the highest and best use of the land from a market perspective. In other words, your land will be valued based on its maximum potential. The maximum potential of your land may include subdivision potential or commercial farming potential, depending on how it is zoned. Sometimes using this highest and best use valuation method has the effect of reducing your land's value when a Conservation Agreement is taken into account and in other situations there may be no reduction at all as a result of entering into a Conservation Agreement.

For example, in some cases your land may increase in value because the use of superior land management practices may improve the quality of your land. Further, a

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<sup>41</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69D.

<sup>42</sup> At the time of writing the Minister for Environment was the Minister administering the *National Parks and Wildlife Act 1974* (NSW).

prospective purchaser may acknowledge the conservation value of the land and be willing to pay a premium for a property with high conservation values. On the other hand, if your land has subdivision potential, the value of the land will be comparatively high and entering into a Conservation Agreement will result in the lost potential to subdivide your property and may result in the reduction in value of your property.

### **I am looking at purchasing a property with a Conservation Agreement listed on the title. What does this mean?**

If the property you are considering purchasing has a Conservation Agreement listed on the title of the property it means that previous owners have implemented a Conservation Agreement over the property. If you proceed with the purchase of the property, you will be bound by the terms of the Conservation Agreement. It is important that you and your conveyancer understand the terms of the Conservation Agreement before you purchase the property. [Contact the OEH](#)<sup>43</sup> and they will explain your commitment in more detail.

### **How does a Conservation Agreement interact with Environmental Planning Instruments?**

An Environmental Planning Instrument (a Local Environmental Plan or a State Environmental Planning Policy) can suspend the operation of the Conservation Agreement for the purpose of enabling development to be carried out. This cannot occur without the agreement of the NSW Minister for Environment.<sup>44</sup> Any Environmental Planning Instrument already in force before the Conservation Agreement is made will not affect the operation of the Conservation Agreement.<sup>45</sup> Any future Environmental Planning Instrument must specifically state that it affects the operation of the Conservation Agreement before it can do so.<sup>46</sup>

### **Can a Conservation Agreement protect my land against a proposal by a statutory authority?**

A statutory authority, for example the Roads and Maritime Services, can only carry out a development within a conservation area protected by a Conservation Agreement with the written consent of the Minister for Environment.<sup>47</sup> The Minister for Environment cannot consent to the development proposal unless the Minister is convinced there is either no practical alternative, or the development is for an essential public purpose, or for a purpose of special State significance.<sup>48</sup> If the

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<sup>43</sup> See: <http://www.environment.nsw.gov.au/contact/>

<sup>44</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 28.

<sup>45</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69KA (2).

<sup>46</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69KA (2).

<sup>47</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69I (1)(b). At the time of writing the Minister for Environment was the Minister administering the *National Parks and Wildlife Act 1974* (NSW).

<sup>48</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69I (2)(b).

Minister for Environment does consent to the development you will not be entitled to compensation for a variation or termination of the Conservation Agreement.<sup>49</sup> However, the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) will still apply to your land if it is designated for acquisition. At the time of writing, no Conservation Agreements had been terminated by the Minister for Environment due to the proposal of a statutory authority.

## Tax and rates exemptions and concessions

Taxation issues are complex and the effect they will have on you financially will depend on your personal circumstances. The information below discusses the various tax treatments of Conservation Agreements broadly. It is important that you obtain expert financial and legal advice about how your property will be treated for taxation purposes. The [Australian Tax Office website](#) also has information to help you understand how the taxation concessions will affect your individual circumstances.<sup>50</sup>

### Income tax and capital gains tax

You may qualify for an income tax deduction if your land reduces in value (that is, produces a capital loss) as a result of entering into a Conservation Agreement.<sup>51</sup> There are special tax concessions available to landholders entering into Conservation Agreements where a capital loss arises in certain circumstances.

Entering into a Conservation Agreement is a capital gains tax event.<sup>52</sup> For concessional capital gains tax treatment, you must have entered into the Conservation Agreement within 12 months of acquiring the land; or the land must have reduced in value by more than \$5,000 as a result of entering into the Conservation Agreement.<sup>53</sup> The tax deduction may be spread over five financial years.<sup>54</sup> For example, if your land is assessed as having decreased in value by \$20,000, you can spread that deduction over 5 years by reducing your assessable income by \$4,000 each year.

The decrease in value of the land must be the result of entering into the Conservation Agreement; it cannot be from some other unrelated factor.

To benefit from the taxation concessions, you must have entered into the Conservation Agreement for no material benefit. This means that you must not have received money, property or something else of value for entering into the Agreement.

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<sup>49</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69I (6).

<sup>50</sup> Go to: <http://www.ato.gov.au/Non-profit/Gifts-and-fundraising/In-detail/Gifts-and-fundraising/Conservation-covenants/Conservation-covenant-concessions/>

<sup>51</sup> Entering into a Trust Agreement is a Capital Gains Tax Event D4 to allow landholders to access an income tax deduction.

<sup>52</sup> *Income Tax Assessment Act 1997* (Cth), ss. 104-47(1).

<sup>53</sup> *Income Tax Assessment Act 1997* (Cth), ss. 31-5, 116-105.

<sup>54</sup> See: <http://www.ato.gov.au/Non-profit/Gifts-and-fundraising/In-detail/Gifts-and-fundraising/Conservation-covenants/Conservation-covenant-concessions/>



The Tax Office has ruled that grants for fencing and weed clearing are not a material benefit and will not affect the concessional treatment of your land or your income tax deduction.<sup>55</sup>

Any capital profit or loss that arises at the time of entering into a Conservation Agreement will need to be accounted for on the landholder's personal tax return.

The landholder has to determine whether entering into the Trust Agreement triggers a capital profit or loss. Landholders are advised to seek the opinion of an expert valuer on the question of whether entering the Trust Agreement has changed the value of the property. This is generally best done prior to entering the Agreement.

### **State land tax**

Land within the conservation area may be exempt from State Land Tax.<sup>56</sup> The value of your land for the assessment of Land Tax may be reduced according to the proportion of the land that is included in the conservation area.<sup>57</sup> For example, if 60% of your land is included in the conservation area, your land tax liability may be reduced by 60%.

### **Local council rates**

Local councils can provide a rate exemption for land included in the conservation area to landowners with Conservation Agreements.<sup>58</sup> Your rate liability will be reduced by the proportion of your property included in the conservation area. So if 70% of your property is included in the conservation area then your rates will be reduced by 70%.

### **Local Land Services rates**

A Conservation Agreement does not entitle you to an exemption from rates payable to Local Land Services (LLS). However, you may be able to have the carrying capacity of your property reassessed to take account of any restrictions imposed by the Conservation Agreement. In this case, you would still need to pay the base rate applicable to all properties over a certain size but you would not be liable to pay the rates based on the carrying capacity of your land. You should contact your regional LLS branch to find out whether they will consider reducing your rates liability. Please note such a rates reduction is not an entitlement. Rather, it is at the discretion of the LLS with which you are associated.

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<sup>55</sup> ATO interpretive decision, ATO ID 2002/678, *Income Tax Division 31 – 'material benefit' for entering into a conservation covenant*, 3 July 2002.

<sup>56</sup> *Land Tax Management Act* (NSW) ss. 10(p1), 10(2C).

<sup>57</sup> *Land Tax Management Act 1956* (NSW), s. 10(2C).

<sup>58</sup> *Local Government Act 1993* (NSW), s. 555.

# FEDERAL CONSERVATION AGREEMENTS

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### Key features:

1. Only available in very limited circumstances
2. Flexible

### What is a Federal Conservation Agreement?

A Federal Conservation Agreement is a legally binding agreement between yourself and the Commonwealth Minister for the Environment (through the Australian Department of the Environment).<sup>59</sup>

Federal Conservation Agreements seek to enhance the conservation of biodiversity and heritage. They tend to relate to ‘matters of national environmental significance’, such as nationally listed threatened species and ecological communities, migratory species protected under international agreements, wetlands of international importance (Ramsar wetlands), national heritage places and world heritage areas. There are only two Federal Conservation Agreements currently in place in NSW.<sup>60</sup>

### What is the Australian Department of the Environment?

The Australian Department of the Environment is the Commonwealth Government agency that develops and implements new policies, programs and legislation to protect and conserve Australia’s environment and heritage.<sup>61</sup>

The Department of the Environment is responsible for administering the *Environment Protection and Biodiversity Conservation Act 1999* (The EPBC Act). The EPBC Act is Australia’s central environmental legislation. It provides a legal framework to protect and manage matters of national environmental significance.<sup>62</sup>

### What land is suitable for a Federal Conservation Agreement?

Federal Conservation Agreements provide for activities that promote the protection and conservation of.<sup>63</sup>

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<sup>59</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 14.

<sup>60</sup> One is with private landholders at Myrtle Creek, Bungawalbyn and the other is with the NSW Government and relates to land at Edmondson Park. See:

<http://www.environment.gov.au/epbc/about/conservation-agreements.html#list>

<sup>61</sup> See: <http://www.environment.gov.au/>

<sup>62</sup> See: <http://www.environment.gov.au/epbc/what-is-protected>

<sup>63</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 305. See: <http://www.environment.nsw.gov.au/cpp/ConservationAgreements.htm>

- biodiversity;
- the world heritage values of World Heritage properties;
- the national heritage values of National Heritage places;
- the Commonwealth heritage values of Commonwealth Heritage places;
- the ecological character of a declared Ramsar wetland;
- the environment, in respect of the impact of a nuclear action;
- the environment in a Commonwealth marine area;
- a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; and
- the environment on Commonwealth land.

### How can I get a Federal Conservation Agreement?

There is no set application process or program for the management and implementation of Federal Conservation Agreements. [Contact the Department of the Environment](#) for more information on Federal Conservation Agreements.<sup>64</sup>

### Do I have to set aside all of my property in the conservation area?

Not necessarily. The Agreement will identify the area of land that will be set aside in the conservation area.<sup>65</sup>

### How does a Federal Conservation Agreement protect my property?

Federal Conservation Agreements are put into place to ensure that specified features of particular land are protected. They are legally binding on the Commonwealth, all other parties to the Agreement and any parties that gain an interest in any part of the conservation area after the agreement is entered into.

Federal Conservation Agreements have, in some cases, been used to reinforce the conditions of projects approved by the Federal Government,<sup>66</sup> or to enforce compliance with conditions. For example, a Federal Conservation Agreement can be imposed on someone who has breached the EPBC Act by undertaking a controlled activity without an approval, or breached the conditions of an approval. In such cases, the Environment Minister can require the person to enter a Federal Conservation Agreement that includes remediation or mitigation measures. The Agreement may also require landowners to make financial contributions to organisations involved in relevant remediation or conservation work.

Federal Conservation Agreements can also be used as a way to implement a management plan for the protection of a nationally listed threatened or migratory species.

<sup>64</sup> See: <http://www.environment.gov.au/about-us/contact-us>

<sup>65</sup> See: <http://www.environment.gov.au/topics/environment-protection/environment-assessments/conservation-agreements>

<sup>66</sup> Under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

## What are the legal consequences of entering into a Federal Conservation Agreement?

The Agreement is legally binding on all parties to the Agreement and can be enforced just like a contract.<sup>67</sup>

The Agreement will specify duties and deadlines that must be met. Generally, you must refrain from, or control, activities that may adversely affect the specific values covered by the Agreement.

The Agreement can, amongst other things, require the owner of a place to:

- carry out activities that promote the protection and conservation of biodiversity;
- permit access to the conservation area by specified persons;
- contribute towards the costs incurred under the Agreement;
- spend any money paid to them under the Agreement in a specified manner; and
- forfeit any money paid to them under the Agreement if they contravene the Agreement.

## How are the terms of the Conservation Agreement enforced?

Any party to the Conservation Agreement can seek an injunction in the Federal Court to prevent another party unlawfully contravening the Agreement.<sup>68</sup> An injunction may include an order that the person who has committed the breach repair or mitigate any damage to the environment.<sup>69</sup>

A party to a Conservation Agreement who suffers loss or damage as a result of another parties' breach of the Agreement may apply to the Federal Court for compensation.<sup>70</sup> However, if the Minister changes or cancels the Agreement on valid grounds, compensation may not be payable.<sup>71</sup>

## What support is available for landholders with Federal Conservation Agreements?

Federal Conservation Agreements may provide for financial, technical or other assistance to a person bound by the Agreement.<sup>72</sup>

Grants may be available to help remediate and restore waterways, remove invasive weeds and restore animal habitats.

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<sup>67</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 307.

<sup>68</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 476.

<sup>69</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 476(3).

<sup>70</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 500.

<sup>71</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 308(8).

<sup>72</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 306(1)(e).

Tax deductions may also be available for some Agreements; however EDO NSW advises you to seek professional accounting advice on this matter.

### **Can I continue farming in the conservation area?**

You may be able to continue farming in the conservation area if the farming activities do not breach the Federal Conservation Agreement.

### **Do I still own my property?**

Yes, you still own your property. The Federal Conservation Agreement does not change the ownership of your property at all.

### **Can people access my land?**

A Federal Conservation Agreement can require you to permit access to specific people.<sup>73</sup>

### **How long will it last? Can the Federal Conservation Agreement be removed or changed?**

Federal Conservation Agreements can last for variable periods of time. They are not necessarily intended to last forever. The Agreement is binding on the person with whom the Minister entered into the Agreement, and anyone who subsequently owns the land.<sup>74</sup> However, the Agreement can be terminated or changed by agreement between the Minister and the person bound by the Agreement.<sup>75</sup>

The Environment Minister can terminate or vary the Agreement by making an order and serving a copy of the order to each house of Parliament within 20 sitting days after publication of the order.<sup>76</sup> This is most likely to happen in cases where the Minister is satisfied that the Agreement cannot achieve its purpose.<sup>77</sup>

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<sup>73</sup> See: <http://www.environment.gov.au/epbc/about/conservation-agreements.html>

<sup>74</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 307.

<sup>75</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 308.

<sup>76</sup> See Division 7.6 of the Regulations.

<sup>77</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s 308.

# PROPERTY VEGETATION PLANS

### Key features:

1. Legally binding on you and future landowners
2. Flexible options
3. Incentive funding
4. Strong landholder support
5. Legal protection for the natural features of your land
6. No tax incentives or local government rate reduction

### What is a Property Vegetation Plan?

A Property Vegetation Plan (PVP) is a voluntary but legally binding agreement between you and your [Local Land Services](#) (LLS)<sup>78</sup> that describes how the native vegetation on your property is to be managed. There are several different types of PVPs. In this chapter, we will look at two PVPs that are used to restore degraded land and for conservation purposes:

- Conservation PVPs; and
- Incentive PVPs.

Conservation and Incentive PVPs set out how the vegetation on a particular property is to be managed for conservation, and details of any incentives that are to be provided. These PVPs must include:<sup>79</sup>

- a description of the land (including topographical maps or remotely-sensed images), the period of time the PVP is to have effect, and the address and particular titles to the land to which the PVP applies;
- details relating to proposals for the protection and management of native vegetation;
- details of any financial incentives that have been or will be provided; and
- details of the extent (if any) to which provisions of the PVP exclude clearing for routine agricultural management or other activities from being permitted.

PVPs authorising the clearing of native vegetation are discussed in Chapter 9 on Offsetting.

<sup>78</sup> Please visit: <http://www.lls.nsw.gov.au/>

<sup>79</sup> *Native Vegetation Regulation 2013* (NSW), cl. 9(1).

There are also continuing use PVPs which are designed to:<sup>80</sup>

- identify native vegetation as regrowth, including dates which identify the commencement of native vegetation regrowth;
- identify routine agricultural management activities that will be undertaken;
- identify existing cultivation, grazing or rotational farming practises.

All PVPs are made under the *Native Vegetation Act 2003* (NSW).

## What are Local Land Services?

LLSs are statutory bodies that provide information, advice and assistance on native vegetation management to landholders. LLSs replaced the former Catchment Management Authorities in 2014.

There are 11 LLS regions in NSW and each is managed by a local board.<sup>81</sup> LLSs have staff with practical experience in natural resource management and sustainable farming who are available to meet with landowners and provide practical advice on natural resource management issues, including vegetation management.

## What is the difference between Conservation PVPs and Incentive PVPs?

A Conservation PVP is a PVP that includes a proposal to manage native vegetation for conservation purposes, and excludes the possibility of clearing the native vegetation. An Incentive PVP is like a Conservation PVP, but it also provides for incentive funding, usually through a competitive tendering process.

## What land is suitable for a Conservation or Incentive PVP?

Most land will be suitable for Conservation PVPs but the land needs to be subject to the *Native Vegetation Act 2003*. Certain local government areas and zonings are excluded from the operation of the Act.<sup>82</sup>

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<sup>80</sup> *Native Vegetation Regulation 2013* (NSW) cl. 9(4).

<sup>81</sup> The 11 LLSs are: Central Tablelands, North West, Central West, Northern Tablelands, Greater Sydney, Riverina, Hunter, South East, Murray, Western and North Coast. See <http://www.lls.nsw.gov.au/home>

<sup>82</sup> The following LGAs are excluded from the operation of the *Native Vegetation Act 2003*. Ashfield, Auburn, Bankstown, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Kuring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland Shire, Sydney City, The Hills Shire, Warringah, Waverley, Willoughby, Woollahra.

The following zones are excluded from the operation of the *Native Vegetation Act 2003*: a zone designated “residential” (but not “rural-residential”), “village”, “township”, “industrial” or “business” under an environmental planning instrument or, having regard to the purpose of the zone, having the substantial character of a zone so designated.

Incentive PVPs are only available where the PVP proposal meets LLS funding priorities and are usually not available where:

- the conservation works are a condition of consent or approval;
- the conservation works are inconsistent with Strategic Plans; or
- the land is covered by a mining lease.

Conservation PVPs can be a good option for landholders who want a legally binding mechanism to conserve their property but don't qualify for the other binding options such as Trust Agreements and Conservation Agreements. Incentive PVPs can provide resources to allow landholders to restore their properties to a point where other conservation options may become available.

### **How do I get a Conservation or Incentive PVP?**

PVPs are negotiated between you and your local LLS.

The first step in getting a PVP is to contact your LLS to discuss your options, what you want to achieve, what the LLS are looking for, the application process and how you want to implement a PVP.

An LLS officer will arrange an on-site visit to discuss your proposal and help prepare the plan.

With regards to Incentive PVPs, it is important to note that the money is allocated according to priorities identified in the LLS Regional Plan for your region. If the works you want to undertake do not align with the LLS priorities, then they may not be able to fund your works. Also, you will most likely have to compete with other landholders for limited funds through a tendering process. Not all LLSs use Incentive PVPs so it is important to contact your local LLS office to see what arrangements they have in place.

The time it takes to prepare a PVP depends upon the type of PVP you're applying for, the size and nature of the site and the complexity of any negotiated management actions. Your LLS can estimate the time required once you contact it to discuss your plans. You will need to provide your LLS with ownership and property details of the land, along with details of your proposal.

Once agreed by the landholder, approved by the LLS and signed by both parties, a PVP is a legally binding. It will then be registered on the title to your property.

### **Does it cost money?**

There are no costs to a landholder to prepare a PVP.



## Does the PVP apply to my entire property?

No, you can choose the area of your property that you want the PVP to apply to. The PVP will include maps that show the parts of your property that it applies to. It is common for PVPs to be placed over parts of a property that contain remnant native vegetation, which allows farming and other activities to continue over cleared areas.

## How does the PVP protect my property?

Conservation and Incentive PVPs make it illegal to damage or clear the vegetation you have agreed to protect under the PVP.

The PVP protects your land by being registered on the certificate of title to your property. The PVP binds you and future landowners to manage the land in accordance with the PVP.

The LLS is responsible for enforcing the PVP against you and future landowners.

## What are the legal consequences of entering a PVP?

A PVP is a long term commitment under the *Native Vegetation Act 2003*. Landholders enter into a PVP voluntarily, but once in place, it is a legally binding document and the landowner must abide by the terms of the PVP.

It is important that you understand what you are agreeing to and advisable to seek legal advice prior to entering a PVP.

You must comply with the terms of a PVP, which will set out the management actions that you are required to take and any activities that you will be prevented from undertaking.

Management actions may include fencing off the protected area from stock, controlling invasive weeds and planting native vegetation.

## How are the terms of the PVP enforced?

If you or future owners of the land breach the PVP, a range of enforcement action can be taken. A breach of a PVP constitutes a breach of the *Native Vegetation Act 2003*.<sup>83</sup> Breaches can be dealt with via civil and criminal proceedings.

Any person can bring proceedings in the Land and Environment Court to remedy or restrain a breach of the Act.<sup>84</sup> This means that the LLS or OEHL (or even your neighbour or another individual) could take you to Court. The Court may make such orders as it thinks fit to remedy or restrain the breach, including an order requiring

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<sup>83</sup> *Native Vegetation Act 2003* (NSW), s. 33.

<sup>84</sup> *Native Vegetation Act 2003* (NSW), s. 41.

you to fix any damage you have caused in breaching the PVP and/or an order to require you to comply with the PVP in future.

You might also be charged with an offence and brought before the Land and Environment Court or the Local Court in relation to any breach of the Act and the Court can impose a monetary penalty on you.<sup>85</sup> Alternatively, an authorised officer can issue a penalty notice to you for certain offences.<sup>86</sup>

In addition, the Secretary of OEH has the power to require the production of documents, issue stop-work orders and order that remedial work be carried out in certain circumstances.<sup>87</sup>

### **What support is available to landholders with PVPs?**

Landholders with PVPs may be eligible for funding to assist with conservation initiatives such as revegetation plans and soil erosion control. Landholders should contact their local LLS to determine their eligibility to receive funding.<sup>88</sup>

Incentive PVPs are made on the premise of funding being provided to undertake the management actions specified in the PVP proposal.

### **Can I continue farming?**

LLSs have a strong focus on sustainable farming and PVPs can be tailored to be compatible with farming. It is possible to have several different types of PVP over the one property.

### **Do I still own my property?**

Yes, you still own your property. PVPs do not change the ownership of your property at all. The registration of the PVP on the certificate of title to your land notifies anyone inquiring about the ownership of the land that part of your land is covered by a PVP and carries management obligations and certain restrictions.

### **Can people access my land?**

Your land will continue to be under your control. Authorised officers (usually LLS or OEH staff) can enter your land, conduct investigations and require you to provide reasonable assistance and access to documents and records to determine whether the PVP is being complied with.

It is an offence to obstruct such an officer or fail or refuse to comply with a request for assistance.<sup>89</sup>

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<sup>85</sup> *Native Vegetation Act 2003* (NSW), s. 42.

<sup>86</sup> *Native Vegetation Act 2003* (NSW), s. 43.

<sup>87</sup> *Native Vegetation Act 2003* (NSW), Part 5, Division 3.

<sup>88</sup> See: <http://www.lls.nsw.gov.au/contact-us>.

## How long will it last? Can the PVP be removed or changed?

A PVP can be for a fixed term or can operate in perpetuity, depending on what you have negotiated with the LLS. For example, you may have sought funding under an Incentive PVP to remove a particular invasive weed. The PVP may be for 15 years, leaving you the opportunity to seek additional funding after the fifteen years to either continue controlling an invasive weed or focus on another management issue. With regards to Incentive PVPs, the term of the PVP is likely to be directly related to the level of funding provided – so the more funding, the longer the term.

A PVP can be varied with the consent of the LLS.<sup>90</sup> A PVP can also be terminated if the landholder has breached the PVP.<sup>91</sup> It is likely that enforcement action would be taken in the event of the PVP being breached so severely it must be terminated.

## What if I want to lease my property?

PVPs do not prohibit you from leasing your property. However, as PVPs run with the land,<sup>92</sup> your lessee will be required to manage the land in accordance with the provisions of the PVP.

## What if I want to sell my property?

Future landowners will be bound by the PVP.<sup>93</sup> A notice that a PVP is registered on your land will appear on the s. 149 certificate<sup>94</sup> and the certificate of title to your land.<sup>95</sup>

Financial incentive payments are only payable to the landholder who agreed to the PVP. If you sell your property, subsequent owners will still be bound by the terms of the PVP but they will need to apply to the LLS for funding which may not be granted.

## Tax and rates exemptions and concessions

There are no tax exemptions or concessions, and no local government rate reductions available for entering into a PVP.

## How do PVPs interact with other conservation options?

PVPs are generally compatible with other conservation options.

You are unlikely to receive additional incentive funding for conservation actions you are already required to carry out under another conservation option. This does not

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<sup>89</sup> *Native Vegetation Act 2003* (NSW), s. 35

<sup>90</sup> *Native Vegetation Act 2003* (NSW), s. 30(2)(a).

<sup>91</sup> *Native Vegetation Act 2003* (NSW), s. 30(2)(b). This must occur in accordance with the procedure set out in cl. 11 of the *Native Vegetation Regulation 2005* (NSW).

<sup>92</sup> *Native Vegetation Act 2003* (NSW), s. 30.

<sup>93</sup> *Native Vegetation Act 2003* (NSW), s. 30(4).

<sup>94</sup> Also known as a planning certificate.

<sup>95</sup> *Native Vegetation Act 2003* (NSW), s. 30.

necessarily prevent you from gaining incentive funding, but you will probably have to demonstrate that the conservation works you propose will be *additional* to those you are required to do under your existing conservation option.

# LANDHOLDER MANAGEMENT AGREEMENTS

### Key features:

1. Short term
2. Incentive funding

### What are Landholder Management Agreements?

A Landholder Management Agreement (LMA) is a contract between you and an organisation to carry out a particular activity. The Agreement defines the investment, on-ground activities, obligations and responsibilities of the landholder and the partner organisation. You will receive funding to carry out the activity required by the Agreement. A LMA is legally enforceable against you personally under contract law, but the Agreements are not binding on future landowners.

The terms of the LMA will be set out in the written contract. It is important that you understand what the LMA says and that you agree to all the terms. If you do not agree with one of the terms but you sign the LMA without changing the term you will legally have to comply with that term.

Often, cash does not directly change hands; rather, the organisation will pay for a particular conservation activity to be undertaken. For example, you may receive a one-off \$10,000 grant for fencing off a riparian zone and installing a water trough in your paddocks to keep stock away from a river. The organisation will be invoiced for the cost of the fencing, whether it is done by you or by a contractor.

### Who provides Landholder Management Agreements?

Common providers of LMAs are Local Land Services (LLSs), local councils or a private conservation group. A LLS may use a LMA where a Property Vegetation Plan is not suitable.<sup>96</sup>

### How can I get a Landholder Management Agreement?

LMAs will normally be offered in conjunction with a particular funding program. Funding programs are advertised by your LLS or local council. If you have some particular conservation works you would like to carry out, you could approach the funding providers with a proposal.

Contact your regional [Local Land Services](#)<sup>97</sup> for more information.

<sup>96</sup> See Chapters 4 and 10 for more information on Property Vegetation Plans.

## CHAPTER 6

# WILDLIFE REFUGES

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### Key features:

1. Legally binding on you and future landholders while in place
2. Can be revoked at any time by either party
3. Generally covers the whole property
5. Easy to implement

### What is a Wildlife Refuge?

A Wildlife Refuge is a voluntary dedication of your land for the protection of the habitat of wildlife and the wildlife itself.<sup>98</sup> They are made under the *National Parks and Wildlife Act 1974*.

The purposes of a wildlife refuge can include:

- recovery of local wildlife species;
- restoration of natural environments;
- study of wildlife and natural environments; and/or
- creating simulated natural environments.

Wildlife Refuges are a popular private conservation mechanism, with 662 Wildlife Refuges in place as of September 2014 covering 1,935,100 hectares.<sup>99</sup> Wildlife Refuges are made by landholders with the assistance of the NSW Office of Environment and Heritage (OEH).

### What is the Office of Environment and Heritage?

The OEH is a separate office within the Planning and Environment cluster of the NSW Government. The OEH is responsible for protecting and conserving the NSW environment and heritage. It also manages NSW national parks and reserves.

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<sup>97</sup> See: <http://www.lls.nsw.gov.au/> or phone 1300 795 299

<sup>98</sup> *National Parks and Wildlife Act 1974* (NSW), s68.

<sup>99</sup> See: <http://www.environment.nsw.gov.au/cpp/ConservationPartnersStatistics.htm>

## What land is suitable for a Wildlife Refuge?

Wildlife Refuges are suitable for land containing native plants, animals and their habitats as well as Aboriginal cultural heritage and historic heritage. Wildlife refuges may contain remnant native vegetation as well as habitat provided by wildlife corridors, windbreaks, woodlots or farm dams.

## How can I establish a Wildlife Refuge?

Landholders identify land to be covered by a Wildlife Refuge and, with assistance from OEH staff, a property report is prepared outlining a scheme of operations. These are tailored for each property. The NSW Governor then declares the land as a Wildlife Refuge by proclamation in the [NSW Government Gazette](#).<sup>100</sup>

The time needed to set up a Wildlife Refuge will depend on how much information you have about the conservation values of your land and how high the demand is for Wildlife Refuge declarations in your area.

The following steps outline the typical process for establishing a Wildlife Refuge:

1. You must apply for a Wildlife Refuge with the [OEH Conservation Partners Program](#).<sup>101</sup> [Contact the OEH](#)<sup>102</sup> and they will send you an application form in the mail.
2. An OEH officer will assess your property to determine if it is suitable for a Wildlife Refuge.
3. If your property is suitable and the OEH has agreed to establish a Wildlife Refuge, an OEH officer will do a biodiversity survey and identify the boundaries of the Wildlife Refuge.
4. The OEH officer will prepare a scheme of operations and property management objectives in conjunction with you.
5. The Environment Minister and the Governor of NSW will sign these documents and a proclamation of the Wildlife Refuge will be published in the NSW Government Gazette.
6. The Secretary of the OEH will forward a copy of the proclamation to the [Valuer-General](#) as soon as practicable after the proclamation is published in the Gazette.
7. Copies of the scheme of operations and other documents will be sent to you after the proclamation is published in the Gazette.

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<sup>100</sup> See: <http://www.nsw.gov.au/gazette>

<sup>101</sup> See: <http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>

<sup>102</sup> See: <http://www.environment.nsw.gov.au/contact/>

8. The OEH arranges for the Wildlife Refuge to be registered on the certificate of title to your property, leaving you to manage the land for conservation.

### **Does it cost money?**

No. Wildlife Refuge declaration is free.<sup>103</sup>

### **Do I have to set aside all of my property in the refuge area?**

No. Wildlife refuge declarations enable landholders to nominate part or all of a property to be managed for its wildlife values.

### **How does a Wildlife Refuge protect my property?**

Wildlife Refuge status is noted on the certificate of title to your land and will stay in place until it is formally revoked. You will be required to manage the refuge in accordance with the agreed management scheme for your property until such time as the Wildlife Refuge status is revoked.

Additional protection can be achieved by placing a restrictive covenant over the land which is subject to the Wildlife Refuge.<sup>104</sup> A restrictive covenant is a notice registered on the certificate of title to your land that restricts the uses of your land. Placing a restrictive covenant over your land can prevent future owners from damaging the wildlife habitat on your property. This is an optional extra that will provide additional legal protection for the conservation of your land.

Native animals within a Wildlife Refuge cannot be harmed and hunting with animals or weapons is prohibited within a Wildlife Refuge without the required licence.<sup>105</sup> Native plants cannot be picked within a Wildlife Refuge. Native plants that are not threatened species cannot be picked within a Wildlife Refuge by anyone other than the owner or lessee, or someone authorised by the owner or lessee.<sup>106</sup>

Penalties include fines and terms of imprisonment.<sup>107</sup>

You will receive signage to display on your property to notify that the area is a refuge for wildlife.

### **What are the legal consequences of having a Wildlife Refuge?**

A Wildlife Refuge is binding on you and future landholders while it is in place but it can be revoked at the landholder's request.

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<sup>103</sup> See: <http://www.environment.nsw.gov.au/cpp/wildliferefuges.htm>

<sup>104</sup> *Conveyancing Act 1919* (NSW), s. 88E.

<sup>105</sup> *National Parks and Wildlife Act 1974* (NSW), s. 70.

<sup>106</sup> *National Parks and Wildlife Act 1974* (NSW), s. 71.

<sup>107</sup> See: *National Parks and Wildlife Act 1974* (NSW), Parts 7 and 8.



In establishing the Wildlife Refuge, the OEH will identify zones of management and work with you to create a management scheme for your property. You will be required to manage the refuge in accordance with the scheme.

### **What support is available to landholders with Wildlife Refuges?**

When you implement a Wildlife Refuge you join the [Conservation Partners Program](#) with the OEH.<sup>108</sup> The Program provides property signage, subscription to the '[Bush Matters](#)'<sup>109</sup> newsletter and the opportunity to join a network of likeminded people.

The OEH provides some support and advice on property management and planning. The [Bush Matters](#) newsletter provides access to information and education sessions, and helps keep you up to date on the latest in ecological property management news.<sup>110</sup>

### **Can I continue farming in the Wildlife Refuge?**

Yes. Landholders can continue to undertake agricultural activities within the refuge.

The status of your land as a Wildlife Refuge is also compatible with other uses of your land; for example, you can continue to carry out an eco-tourism operation.

### **Do I still own my property?**

Yes, you still own your property. Wildlife Refuge status does not change the ownership of your property at all.

### **Can people access my land?**

Your land will still be under your control. Wildlife Refuge status does not authorise anyone to enter your property.

### **How long will it last? Can the Wildlife Refuge status be removed or changed?**

Wildlife Refuge status is legally binding while in place but it can be revoked at any time.<sup>111</sup> The vast majority of Wildlife Refuges are not revoked and many have remained in place for decades.

The dedication of land as a Wildlife Refuge is revoked, varied or amended by proclamation of the Governor published in the Gazette.<sup>112</sup>

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<sup>108</sup> See: <http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>

<sup>109</sup> See: <http://www.environment.nsw.gov.au/cpp/bushmatters.htm>

<sup>110</sup> See: <http://www.environment.nsw.gov.au/cpp/bushmatters.htm>

<sup>111</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 68(3)(b), 68(6).

<sup>112</sup> *National Parks and Wildlife Act 1974* (NSW), s. 68(6).

## What if I want to lease my property?

If you lease your property, you should inform the lessee of your property's Wildlife Refuge status. You can stipulate terms into the lease to continue the Wildlife Refuge. You should also inform the OEH.

## What happens to the Wildlife Refuge if I sell my property?

Selling a property with Wildlife Refuge status is the same as selling a property without Wildlife Refuge status. You must advise the OEH if you are selling your property. You should also ensure that the new owners are aware of the terms of the Wildlife Refuge declaration, particularly if a restrictive covenant has been placed on the land as this will bind future landowners.

## I am looking at purchasing a property with a Wildlife Refuge listed on the title. What does this mean?

Where there is a Wildlife Refuge, this will be noted on the title of the property. There may also be a restrictive covenant placed over the property which will also be registered on the property's title.<sup>113</sup> It is important that you and your conveyancer understand the terms of the Wildlife Refuge before you purchase the property. [Contact the OEH](#)<sup>114</sup> and they will explain your commitment in more detail.

## Can a Wildlife Refuge declaration protect my land against a proposal by a statutory authority?

The consent of the Environment Minister is not required before development can be carried out within a Wildlife Refuge. However, if there are threatened species present within the Wildlife Refuge that are likely to be significantly impacted by a proposed development, the OEH or the Environment Minister's concurrence may be required.<sup>115</sup>

## Tax and rates exemptions and concessions

There are no tax concessions or local government rate reductions for Wildlife Refuge status.

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<sup>113</sup> *Conveyancing Act 1919* (NSW), s. 88E.

<sup>114</sup> See: <http://www.environment.nsw.gov.au/contact/>

<sup>115</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 79B.

## Case study: Half Moon Flat Wildlife Refuge, Mongarlowe

Half Moon Flat, located between Braidwood and Morton National Park on Mongarlowe River in NSW, has been a Wildlife Refuge with multiple owners since 1985. The area was used for grazing until 1972, when environmentalist Stewart Harris declared the land as a Wildlife Refuge. He was concerned about the threat of possible damage caused by trespassers to such a pristine wildlife habitat.

In 1985, much of the land was divided into parts and sold, but with the condition to sign a Wildlife Refuge Agreement. Nearly all new owners since that time have pledged to carry on and continue to keep the Wildlife Refuge status of their properties. Despite several attempts to mine in the area, as well as some bush fires during those years, private owners have fought to maintain the land for conservation purposes. They have established '[Friends of the Mongarlowe River Inc.](#)' with Half Moon residents, which aims to protect the Mongarlowe River and its surrounding habitats.<sup>116</sup>

The area is habitat for a wide diversity of animals and some rare plants. Swamp and Red Necked Wallabies, Quolls, Echidnas, Wombats, Platypus, Gang Gang Cockatoos, Rufous Whistler, *Eucalyptus recurva* and *Boronia rhomboidea* can all be found in the Wildlife Refuge area, which measures approximately 2,500 acres.

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<sup>116</sup> See: [http://wild-river.info/fmr/reports/Status\\_Maccas\\_Mongarlowe\\_Lintermans\\_2008.pdf](http://wild-river.info/fmr/reports/Status_Maccas_Mongarlowe_Lintermans_2008.pdf)

# LAND FOR WILDLIFE

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### Key features:

1. Easy to establish
2. Develop networks with other landholders
3. Access to information
4. Sign to display on property
5. No legal protection for the natural features of your land
6. No incentive funding
7. Not yet available in all areas of NSW

### What is Land for Wildlife?

The Land for Wildlife program is a voluntary scheme for landholders interested in conserving wildlife habitat on their property. Landholders are not obliged to do anything by joining and there are no legal restrictions for their property. The Land for Wildlife program seeks to provide landholders with the knowledge and skills to maintain native wildlife and habitats on their land.

In NSW, Land for Wildlife is coordinated on a State-wide basis by the [Community Environment Network](#)<sup>117</sup> (CEN) in collaboration with the NSW Office of Environment and Heritage (OEH) [Conservation Partners Program](#).<sup>118</sup> Regional delivery of the Land for Wildlife program is also carried out by non-government organisations, community groups, Local Land Services and local councils who form a partnership with the CEN.

### What are the Office of Environment and Heritage and the Community Environment Network?

The OEH is a separate office within Planning and Environment cluster of the NSW Government. The OEH is responsible for protecting and conserving the NSW environment and heritage. It also manages NSW national parks and reserves.

The CEN is a non-government organisation based on the NSW Central Coast. The CEN aims to be a regional voice for the environment and sustainability and is responsible for coordinating the State-wide delivery of the Land for Wildlife program.

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<sup>117</sup> See: <http://www.cen.org.au/Land-for-Wildlife/>

<sup>118</sup> See: <http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>

## What land is suitable for the Land for Wildlife program?

Land for Wildlife is designed to help landholders to protect native vegetation on their land, and is available to rural property owners with more than 0.5 hectares of bushland on their property.

## How can I get involved in Land for Wildlife?

Landholders identify land to be covered by Land for Wildlife, and the CEN coordinates site assessment, advice on management strategies, and support for landholders.

The following steps outline the typical process for establishing a Wildlife Refuge:

1. You should [contact the CEN](#) to see if Land for Wildlife is being run in your area.<sup>119</sup> If Land for Wildlife is not active in your area, you could consider encouraging your local council or community group to implement a Land for Wildlife program in your region.
2. If Land for Wildlife is being run in your area, you can submit an [expression of interest](#) for Land for Wildlife with the CEN.<sup>120</sup>
3. A CEN project officer will contact you to discuss a property assessment.
4. Following assessment, the CEN will offer advice on management strategies for your property, and will offer support and encouragement to you.

## Does it cost money?

No. Land for Wildlife registration is free.<sup>121</sup>

## How does registering with Land for Wildlife protect my property?

Land for Wildlife does not offer any legal protection for your property. However, it gives you access to information and assistance to help you manage your property for conservation.

For example, you will have access to information and education on land management and individual consultation on your particular management issues.

## What are the legal consequences of registering with Land for Wildlife?

The Land for Wildlife program is not legally binding, and registration will not change the status of your property. As Land for Wildlife is not legally binding it does not

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<sup>119</sup> For more information go to: <http://www.cen.org.au/Land-for-Wildlife/>

<sup>120</sup> See: [http://www.cen.org.au/component/com\\_sobipro/Itemid,376/sid,1/task,entry.add/](http://www.cen.org.au/component/com_sobipro/Itemid,376/sid,1/task,entry.add/)

<sup>121</sup> See: <http://www.cen.org.au/Our-Coast/Our-Wildlife/>

provide any legal protection for the conservation values of your land and does not impose any legal obligations on you or future landholders.

## **What support is available to landholders with Land for Wildlife?**

The Land for Wildlife program offers support for landholders, including:

- Free environmental property assessments;
- Advice on how to manage environmental issues, including wildlife habitat and weeds; and
- Advice on integrating wildlife conservation with other land management practices, including farming.

There is also a newsletter and the opportunity to network with other landholders who are interested in conservation. CEN can also assist with preparing grant documents for other grant schemes.

Land for Wildlife on the Central Coast offers additional assistance available through the [Bush Regeneration Team](#)<sup>122</sup> and access to the [Regional Seed Bank](#).<sup>123</sup> These are specific benefits for landholders in the Central Coast region who join the Land for Wildlife program.

## **Can I continue farming after registering with Land for Wildlife?**

Yes. You can continue to farm after registering with Land for Wildlife. You will be given advice on how to integrate wildlife conservation with other land management practices, including farming.

## **Do I still own my property?**

Yes, registering with Land for Wildlife does not change the ownership of your property.

## **Can people access my land?**

Registering with Land for Wildlife does not give anyone the power to enter your land.

## **How long will it last? Can Land for Wildlife be removed or changed?**

Land for Wildlife registration is ongoing but can be removed or changed at any time.

## **What if I want to lease my property?**

Registering with the Land for Wildlife program does not change the process for leasing your property. You may wish to notify the lessee of your property's

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<sup>122</sup> See: <http://www.cen.org.au/CEN-Projects/Bush-Regeneration/>

<sup>123</sup> See: <http://www.cen.org.au/Nursery/regional-seedbank.html>

registration with Land for Wildlife and discuss your property management expectations with them.

### **What if I want to sell my property? What happens to the Land for Wildlife if I sell my property?**

Registering with the Land for Wildlife program does not change the process for selling your property. You should notify the purchaser of your property's registration with Land for Wildlife. They can discuss whether they would like to register for Land for Wildlife with CEN.

### **Will Land for Wildlife registration affect the value of my property?**

As it is not legally binding, it is unlikely that Land for Wildlife will affect the value of your property. In some cases your land may increase in value because the use of superior land management practices may improve the quality of your land. Further, a prospective purchaser may acknowledge the conservation value of the land and be willing to pay a premium for a property with high conservation values.

### **Can Land for Wildlife protect my land against a proposal by a statutory authority?**

The consent of the Minister for Environment is not required before development can be carried out on land that is registered with Land for Wildlife. However, if there are threatened species present within the Land for Wildlife area, the OEH or the Environment Minister's concurrence may be required before the development can proceed.<sup>124</sup>

### **Tax and rates exemptions and concessions**

There are no tax concessions or local government rate reductions for Land for Wildlife.

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<sup>124</sup> *Environmental Planning and Assessment Act 1979* (NSW), s. 79B.

# WILDLIFE LAND TRUST

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### Key features:

1. Easy to establish
2. Develop networks with other landholders, including landholders from overseas
3. Access to information
5. No legal protection for the natural features of your land

### What is the Wildlife Land Trust?

The [Wildlife Land Trust](#) (WLT) is a global network of sanctuaries dedicated to wildlife and habitat protection. It now protects vital habitats in a number of countries throughout the world, including Australia.<sup>125</sup> 273 properties are currently registered with the WLT across Australia, covering nearly 40,000 hectares of land. The program is run in Australia by [Humane Society International Australia](#) (HSI).<sup>126</sup>

### What is Humane Society International?

HSI is a non-profit organisation that works with national and jurisdictional governments, conservation NGOs, humane organisations, and individual animal protectionists to find practical, culturally sensitive, and long-term solutions to common environmental and animal problems.

In Australia, one of the key focus areas of HSI is habitat protection and the establishment of wildlife sanctuaries through the Wildlife Land Trust.

### What land is suitable for registration with the Wildlife Land Trust?

The WLT protects not only large landscapes, but also the smaller places that provide for the needs of all wildlife. The WLT is an inclusive network and many types of land are suitable for registration whether the property is one acre or a thousand hectares, a working farm, a family home or dedicated purely to conservation. Being conservation-minded and welcoming to wildlife on your land is all that is required for membership.

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<sup>125</sup> Other countries include Canada, South Africa, the United States, Belize, Romania, Jamaica and Indonesia.

<sup>126</sup> See: <http://www.hsi.org.au> or call (02) 9973 1728.



## How can I register with Wildlife Land Trust?

You can join the Wildlife Land Trust by lodging an [application form](#) with HSI.<sup>127</sup>

## Does it cost money?

No. There is no cost to registering your property with the Wildlife Land Trust.

## Do I have to dedicate my whole property as a sanctuary zone?

As there are no legal obligations associated with registering your property with the Wildlife Land Trust, it is fine to register your entire property, even the parts you use for farming or that contain your residence.

## How does Wildlife Land Trust protect my property?

There are no legal obligations associated with joining the WLT. Landholders sign a non-binding 'Letter of Agreement' that outlines the mutually supportive and compatible missions, aims, and objectives of the owner and the WLT for the protection of the property. Owners agree to maintain and protect the property as a wildlife sanctuary. This involves not allowing the following activities to occur on your land:

- hunting of any animals;
- commercial removal of timber products;
- the use of pesticides or herbicides except where they are used to eradicate invasive weeds; and
- any other activity that is incompatible with the ongoing protection of wildlife and habitats on the property.

You will receive a sign to indicate that your property is a sanctuary zone with the WLT.

## What are the legal consequences of entering into a Wildlife Land Trust?

Registering your property with the WLT does not carry any legal consequences. It aims to complement any legal or other arrangements currently attached to the property.

## What support is available to landholders with WLT membership?

Landowners who register with the WLT join an international network of wildlife sanctuaries. HSI facilitates information sharing between WLT members and provides

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<sup>127</sup> The application form can be found at: <http://www.wildlifelandtrust.org.au/index.php/join>

access to help and advice for any legal or ecological issues regarding sanctuary areas, including from experienced land managers and native wildlife rehabilitators.

The WLT alerts its Australian members to land management grant opportunities. The WLT is also a partner of the [Private Land Conservation Grants](#),<sup>128</sup> with NSW members being eligible to apply for funding under level 3 of the program.<sup>129</sup>

### **Can I continue farming in the sanctuary area?**

Yes. A WLT places no restrictions on the operation of land other than those you voluntarily submit to.

### **Do I still own my property?**

Yes. Your property remains in your ownership and under your control.

### **Can people access my land?**

No. Membership does not carry an obligation to grant access to your property to HSI.

### **How long will it last?**

As membership is voluntary, you can opt out of the WLT program at any time and future owners of your land do not have to participate in the program.

### **What if I want to lease my property?**

Registering with the WLT does not change the process for leasing your property. You may wish to notify the lessee of your property's registration with WLT and discuss your property management expectations with them.

### **What if I want to sell my property?**

Registering with the WLT does not change the process for selling your property. You should notify the purchaser of your property's registration with WLT. They can decide whether they would like to register with WLT.

### **Will registering with WLT affect the value of my property?**

As it is not legally binding, it is unlikely that WLT membership will affect the value of your property. In some cases your land may increase in value because the use of superior land management practices may improve the quality of your land. Further, a prospective purchaser may acknowledge the conservation value of the land and be willing to pay a premium for a property with high conservation values.

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<sup>128</sup> Administered by the Foundation for National Parks and Wildlife. For more information visit <http://www.fnpw.org.au>

<sup>129</sup> Grants of up to \$2,000 are available to WLT participants.

## **Can registering with the WLT affect other private conservation mechanisms on my property?**

The Wildlife Land Trust is designed to complement other conservation mechanisms.

## **Tax and rates exemptions and concessions**

No tax exemptions and concessions are offered in conjunction with the WLT program.

# OFFSETTING

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The two conservation mechanisms discussed in this chapter are considered to be offsetting, rather than pure conservation, mechanisms. This is because the conservation gains for the environment under these mechanisms can be used to offset losses for the environment elsewhere.

## CLEARING PROPERTY VEGETATION PLANS

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### Key features:

1. Offsets the clearing of native vegetation on your property with positive conservation actions elsewhere on the property
2. Legally binding on you and future landowners
3. Allows for more flexibility in management options

### What is a Clearing Property Vegetation Plan?

A Property Vegetation Plan (PVP) is a voluntary but legally binding agreement between you and your Local Land Services (LLS) that describes how the native vegetation on your property is to be managed. A Clearing Property Vegetation Plan (PVP) is a way of authorising the clearing of native vegetation.<sup>130</sup>

Clearing PVPs are offsets because the environmental damage caused by clearing native vegetation must be offset by undertaking positive conservation actions elsewhere on your property.

Clearing PVPs are made under the *Native Vegetation Act 2003* (NSW).

### What is Local Land Services?

LLSs are statutory bodies that provide information, advice and assistance on native vegetation management to landholders. LLSs replaced the former Catchment Management Authorities in 2014.

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<sup>130</sup> *Native Vegetation Act 2003* (NSW), s. 12(1). The *Native Vegetation Act 2003* (NSW) does not apply to urban local government areas or land zoned residential or business under a Local Environmental Plan. See *Native Vegetation Act 2003* (NSW), Schedule 1, Part 3. Clearing of native vegetation may also be approved if the clearing is done in accordance with a development consent.

There are 11 LLS regions in NSW and each is managed by a local board.<sup>131</sup> LLSs have staff with practical experience in natural resource management and sustainable farming who are available to meet with landowners and provide practical advice on natural resource management issues, including vegetation management.

### What land is suitable for a Clearing PVP?

A Clearing PVP may be an option where there is a need to gain an approval to clear under the *Native Vegetation Act 2003* (NSW). There may be other options for gaining approval to clear, such as a development consent, or clearing may not require any approval at all, such as under routine agricultural management activities.

The purpose of entering into a Clearing PVP is to gain approval to clear native vegetation that would otherwise not be allowed.

Your proposal to undertake clearing must show how associated positive conservation actions will 'maintain or improve' environmental outcomes for your property.<sup>132</sup> This means that the area you propose to protect must be big enough and have a high enough conservation value (either currently or as a result of proposed management activities) to allow you to clear elsewhere without an overall harmful effect on the environment.<sup>133</sup> Some proposals will not meet the 'maintain or improve' test, and you will not get approval to clear. Examples include where the proposal is to clear threatened ecological communities or some types of riparian vegetation.

The environmental impact of your clearing proposal will be measured against the following four environmental values:<sup>134</sup>

1. Biodiversity, including threatened species;
2. Salinity;
3. Soils; and
4. Water quality.

Your positive conservation actions must correspond with the environmental damage your clearing will cause. So, if your clearing will cause a loss in biodiversity values then your positive conservation actions must improve or maintain biodiversity on the same landholding.<sup>135</sup>

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<sup>131</sup> The 11 LLSs are: Central Tablelands, North West, Central West, Northern Tablelands, Greater Sydney, Riverina, Hunter, South East, Murray, Western and North Coast. See <http://www.lls.nsw.gov.au/home>

<sup>132</sup> *Native Vegetation Act 2003* (NSW), s. 29(2).

<sup>133</sup> *Native Vegetation Act 2003* (NSW), s. 29(2).

<sup>134</sup> Environmental Outcomes Assessment Methodology (EOAM) available at: <http://www.environment.nsw.gov.au/vegetation/eoam/index.htm>. The EOAM is currently being reviewed and is expected to be take effect by mid-2014.

<sup>135</sup> *Native Vegetation Act 2003* (NSW), s. 29(2)

## How can I get a Clearing PVP?

Clearing PVPs are negotiated between you and your local LLS.

The first step is to contact your LLS to discuss your options, what you want to achieve, the application process and how you want to implement the PVP.

An LLS officer will arrange an on-site visit to discuss your proposal and help prepare the plan.

The LLS will negotiate the terms of the Clearing PVP with you by applying the Environmental Outcomes Assessment Methodology (EOAM).<sup>136</sup> The EOAM is applied using the Native Vegetation Assessment Tools (NVAT), which are objective, computer-based programs that calculate the environmental gains that will be required to offset your proposed clearing. The NVAT are only available to accredited PVP assessors, all of whom are currently LLS staff.

All owners of the land must agree to the clearing PVP being executed. If you are a leaseholder you will need to gain written permission from the owner of the land. For Crown Lands and land in the Western Division, this is the Crown Lands Division of the Department of Trade and Investment. If you have a mortgage you may also need permission from your mortgage provider.

## Does it cost money?

There are no costs to a landholder to prepare a PVP.

## What are the legal consequences of making a Clearing PVP?

A Clearing PVP is legally binding on you and future landholders.<sup>137</sup> A notice that a PVP is registered on your land will appear on the s. 149 certificate<sup>138</sup> and the certificate of title to your land.<sup>139</sup>

You will be obliged to carry out certain management actions and maintain the conservation area for the time specified in the PVP. Management actions may include fencing off the protected area from stock, controlling invasive weeds and planting native vegetation. You will be responsible for funding and carrying out the management actions.

Any clearing approved under the PVP must be carried out in accordance with the conditions of that PVP.

## How are the terms of the Clearing PVP enforced?

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<sup>136</sup> *Native Vegetation Act 2003* (NSW), Part 4. See: <http://www.environment.nsw.gov.au/vegetation/eoam/index.htm>

<sup>137</sup> *Native Vegetation Act 2003* (NSW), ss. 30(4), 31.

<sup>138</sup> Also known as a planning certificate.

<sup>139</sup> *Native Vegetation Act 2003* (NSW), s. 30.

The provisions of a Clearing PVP are legally enforceable.<sup>140</sup> All Clearing PVPs are recorded on a public register that can be viewed on the website of the Office of Environment and Heritage (OEH).<sup>141</sup> The OEH is responsible for enforcing the *Native Vegetation Act 2003* (NSW). If you breach a Clearing PVP, enforcement actions may include directions to undertake remedial works, fines and criminal prosecutions.

### **What support is available to landholders with Clearing PVPs?**

Landholders with Clearing PVPs are given a free high-resolution satellite image of their property.

You will not normally get financial assistance for works undertaken as part of a PVP as you are already required to undertake the works as part of the offsetting provisions of the PVP and the works are not for conservation. If you propose to undertake additional conservation works then you may be eligible for some financial assistance – see Chapter 4 for more information.

### **Can I continue farming within the conservation area?**

The purpose of a clearing PVP is to give landholders approval to clear vegetation for farming purposes, and to secure any offsets associated with that clearing. While it may restrict you from farming within conservation areas, Clearing PVPs allow landholders to continue farming outside of the conservation area.

### **Do I still own my property?**

Yes, you still own your property. PVPs do not change the ownership of your property at all.

### **Can people access my land?**

Your land will continue to be under your control. Authorised officers (usually LLS or OEH staff) can enter your land, conduct investigations and require you to provide reasonable assistance and access to documents and records to determine whether the PVP is being complied with.

It is an offence to obstruct such an officer or fail or refuse to comply with a request for assistance.<sup>142</sup>

### **How long will it last? Can the PVP be removed or changed?**

The provisions allowing you to carry out clearing can last for up to 15 years<sup>143</sup> to give you certainty to invest and plan for your property. The conservation requirements

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<sup>140</sup> *Native Vegetation Act 2003* (NSW), Part 5.

<sup>141</sup> See: <http://www.environment.nsw.gov.au/vegetation/publicregister.htm>

<sup>142</sup> *Native Vegetation Act 2003* (NSW), s. 35

<sup>143</sup> *Native Vegetation Act 2003* (NSW), s. 30(1).

that make up your environmental offsets may last longer, and may be permanent (in perpetuity).

### What if I want to lease my property?

Clearing PVPs do not prohibit you from leasing your property. However, as PVPs run with the land,<sup>144</sup> your lessee will be required to manage the land in accordance with the provisions of the PVP.

### What happens to the PVP if I sell my property?

Future landowners will be bound by the Clearing PVP.<sup>145</sup> A notice that a PVP is registered on your land will appear on the s. 149 certificate<sup>146</sup> and the certificate of title to your land.<sup>147</sup>

### Tax and rates exemptions and concessions

There are no tax exemptions or concessions, and no local government rate reductions available for entering into a Clearing PVP.

## BIOBANKING

### Key features:

1. Legally binding on you and future landowners
2. Market-based incentives
3. Can be complex and costly to establish
4. Strong legal protection for the natural features of your land

### What is BioBanking?

The Biodiversity Banking and Offsets Scheme (BioBanking) is a market-based mechanism for the creation of biodiversity credits that can be bought or sold. The scheme aims to give landowners a financial incentive to protect biodiversity on their property and to allow more flexibility for developers in offsetting the biodiversity impacts of development.

A BioBanking Agreement is made under the *Threatened Species Conservation Act 1995*. It is a legally binding agreement between you and the Minister for the Environment that establishes a biobank site on your land. Under the BioBanking Agreement, you will be issued with tradeable biodiversity credits in return for

<sup>144</sup> *Native Vegetation Act 2003* (NSW), s. 30.

<sup>145</sup> *Native Vegetation Act 2003* (NSW), s. 30(4).

<sup>146</sup> Also known as a planning certificate.

<sup>147</sup> *Native Vegetation Act 2003* (NSW), s. 30.



agreeing to manage the biobank site in accordance with the Agreement. Once a biodiversity credit is created, it can be sold. The purchaser of that credit can either choose to continue trading the credit or use the credit to offset the impacts of a development. Once a credit has been used as an offset, it is retired and cannot be traded further.

Developers can obtain a BioBanking Statement from the NSW Government for sites where clearing of native vegetation is proposed. The BioBanking Statement describes the number of credits needed to be purchased and retired by the developer to offset the clearing.

When a biodiversity credit is sold, part of the sale price must be paid into the BioBanking Trust Fund. The money in the Fund is invested and the income generated is used to make scheduled payments to landowners to help them meet the costs of maintaining the conservation values of the biobank site in perpetuity.<sup>148</sup>

The specific amount of the sale price that must be paid into the BioBanking Trust Fund is called the Total Fund Deposit. The amount of the Total Fund Deposit will be stipulated in the BioBanking Agreement and represents the predicted cost of the ongoing management of your land for conservation.<sup>149</sup> You will not receive any payments from the BioBanking Trust Fund unless at least 80% of the Total Fund Deposit has been paid into the BioBanking Trust Fund.

BioBanking is a complicated, commercially focused scheme. It is therefore important that you obtain financial and legal advice before entering into a BioBanking Agreement.

## **What is the Office of Environment and Heritage?**

The Office of Environment and Heritage (OEH) is a separate office within the Planning and Environment cluster of the NSW Government. The OEH is responsible for protecting and conserving the NSW environment and heritage. It also manages NSW national parks and reserves.

## **What land is suitable for BioBanking?**

Your land may be suitable for a biobank site if it contains native vegetation or threatened species, populations or ecological communities, or their habitats.<sup>150</sup>

To be eligible to enter into a BioBanking Agreement you must pass a character test called the 'fit and proper person test'. The test is designed to determine if you will abide by your obligations under the BioBanking Agreement.

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<sup>148</sup> *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 29.

<sup>149</sup> The Total Fund Deposit is the Net Present Value needed to generate payments in perpetuity from the BioBanking Trust Fund.

<sup>150</sup> See: <http://www.environment.nsw.gov.au/resources/biobanking/09336establishingbiobangsite.pdf>

## How can I get a BioBanking Agreement?

If you are considering entering into a BioBanking Agreement to establish a biobank site you should contact the OEH.<sup>151</sup> You will need to engage an accredited [BioBanking Assessor](#) to undertake a site assessment to work out the number and type of biodiversity credits that will be created.<sup>152</sup> They do this by applying a tool called the [BioBanking Credit Calculator](#).<sup>153</sup>

You can then submit an [Expression of Interest form](#) with the OEH.<sup>154</sup> Expression of Interest forms are entered into a [public register](#) which contains information about the size, general location, vegetation and threatened species on the potential biobank site.<sup>155</sup> Lodging an Expression of Interest form does not create an obligation to establish a biobank site. It may give you an idea of the demand for your types of credits and a potential purchaser may contact you through the Expressions of Interest register.

Similarly, there is an [online register](#) of credits that are being sought so you can see whether there will be interest in your types of credits.<sup>156</sup>

If you decide to proceed with the BioBanking Agreement, one or more management plans will be prepared.

Visit the Office of Environment and Heritage [website](#) for more information about the pathways to developing a Biobanking Agreement.<sup>157</sup>

## Does it cost money?

The establishment costs of a biobank site can be significant. You must pay for a [BioBanking Assessor](#) to assess your site to determine how many and what types of biodiversity credits can be issued for your biobank site.<sup>158</sup> The OEH also charges a number of fees for establishing and administering your biobank site. Fees are adjusted for CPI at 1 August each year and are listed on the [OEH website](#).<sup>159</sup>

There is a risk that you will be unable to generate a return on your investment if you are unable to sell all or some of your biodiversity credits. In pricing your biodiversity credits, you will also encounter some possible risks. The following are some risks that you should consider when pricing your biodiversity credits:

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<sup>151</sup> Call the BioBanking team at the OEH on 131 555 or email [biobanking@environment.nsw.gov.au](mailto:biobanking@environment.nsw.gov.au)

<sup>152</sup> See: <http://www.environment.nsw.gov.au/biobanking/Assessorlist.htm>

<sup>153</sup> See: <http://www.environment.nsw.gov.au/biobanking/tools.htm>

<sup>154</sup> See: <http://www.environment.nsw.gov.au/biobanking/forms.htm>

<sup>155</sup> See: <http://www.environment.nsw.gov.au/bimsprapp/SearchBiobankingEOI.aspx?Start=1>

<sup>156</sup> See: <http://www.environment.nsw.gov.au/bimsprapp/SearchCWR.aspx?Start=1>

<sup>157</sup> See: <http://www.environment.nsw.gov.au/biobanking/participants.htm>

<sup>158</sup> See: <http://www.environment.nsw.gov.au/biobanking/assessors.htm>

<sup>159</sup> See: <http://www.environment.nsw.gov.au/biobanking/participants.htm>

1. If you underestimate your management costs, the BioBanking Trust Fund payments will not cover the costs of your management actions. You will still be required to undertake all management actions under the BioBanking Agreement regardless of the amount of the BioBanking Trust Fund payments.
2. There may also be unexpected management costs, like a new invasive species that is difficult and costly to control.
3. If there is a fall in the market price of biodiversity credits due to oversupply or lack of demand for your type of biodiversity credits, you may be unable to get an adequate price for your biodiversity credits.

The value of your land may also be affected, although this is hard to predict and will depend on what buyers in the property market are prepared to pay.

### **Do I have to set aside all of my property in the biobank site?**

No, you can decide which areas of your land will make up the biobank site. It is common to exclude the parts of your land occupied by a dwelling and livestock from the biobank site.

### **How does a BioBanking Agreement protect my property?**

Biobank sites are required to be managed in accordance with the BioBanking Agreement. BioBanking Agreements are generally made in perpetuity and are registered on the certificate of title to your property. The Agreement therefore binds you and future landowners to continue to protect and maintain the biodiversity values of your land.

Once your credits have been purchased and proceeds paid into the BioBanking Trust fund, you will receive ongoing financial support for carrying out the management actions you have committed to. This allows some landholders to both conserve the biodiversity values of their land and make a profit for doing so.

As BioBanking is an offsetting program rather than strictly a conservation program, the biodiversity credit issued for the protection of your biobank site can be used to offset environmental harm on another site. However, anyone is able to buy biodiversity credits. While potential purchasers could be developers looking to offset the environmental harm of their development, conservationists who wish to create a net gain for biodiversity or investors who trade the biodiversity credits might also be interested in purchasing credits.

### **What are the legal consequences of entering into a BioBanking Agreement?**

A BioBanking Agreement is a long term commitment under the *Threatened Species Conservation Act 1995* (NSW). Landowners enter an Agreement voluntarily but, once in place, the Agreement is a legally binding contract and the owner must abide by the terms of the Agreement.

The BioBanking Agreement will outline the activities that must be undertaken to protect and conserve the biodiversity values of the biobank site. These are called management actions. There are two types of management actions under the BioBanking Agreement:

1. **passive management actions** include refraining from conducting activities that will harm biodiversity and native vegetation such as leaving fallen timber and maintaining low stock levels.
2. **active management actions** are more costly and include removing invasive weeds, controlling feral animals and carrying out fire risk management. You will also be obliged to protect the biobank site from any environmental damage that reduces the biodiversity values of the biobank site.

You must also prepare an annual report describing the management actions you have undertaken for the year and provide details of any events that had an impact on the biobank site, such as bushfire.

It is important that you understand the terms of the BioBanking Agreement and your obligations under it. You should therefore seek legal advice before signing the Agreement.

When it comes to selling your credits, you and a potential buyer will be free to negotiate a price. It is important that you price your credits accurately. The price should include the cost of ongoing management actions of the biobank site (this will be the amount of the Total Fund Deposit which is set up front in the BioBanking Agreement), the establishment costs of the biobank site, opportunity cost<sup>160</sup> and the value of your land. You might also want to include in the price a profit margin and the possibility of an increase in the costs of your future management actions.

If you have not made enough money from the sale of your biodiversity credits to pay 80% of the Total Fund Deposit, then you will only be required to undertake passive management actions. You will still have to complete the annual reporting requirements. Also, if you have not made 80% of the Total Fund Deposit, you will be required to pay the outstanding amount.

So, for example, if you enter a BioBanking Agreement which stipulates the Total Fund Deposit as \$50,000, you might then create a biobank site and sell the credits for \$100,000. Under the BioBanking Agreement, you need to pay \$50,000 into the BioBanking Trust Fund in order to receive scheduled payments from the OEH. This leaves you with \$50,000 remaining as a profit.

Alternatively, if you only manage to sell the credits for \$30,000 you will still be required to pay at least 80% of the Total Fund Deposit (being \$40,000) in order to receive the scheduled payments. If, as in this case, you have not made enough

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<sup>160</sup> Opportunity cost is the cost of using the land as a biobank site measured against other alternative uses for your land, eg commercial farming.

money to pay 80% of the Total Fund Deposit, you will have to pay the outstanding amount (in this case, \$10,000) from your own resources.

It is recommended that your first sale of biodiversity credits is large enough to pay 80% of the Total Fund Deposit so that you avoid the risk of being out of pocket.

As BioBanking is a market-based scheme, the market demand and market supply for biodiversity credits will affect the price of the credits. Some types of biodiversity credits may be in high demand and other credits may experience low demand or over supply. All trading of credits must be registered in the [BioBanking Public Register](#).<sup>161</sup>

### How are the terms of the BioBanking Agreement enforced?

The OEH is responsible for enforcing the commitment made by you against both yourself and any future owners of the land.

Your commitment under the BioBanking Agreement can also be enforced by *any person* in the NSW Land and Environment Court.<sup>162</sup> Possible enforcement actions include:

1. Withholding annual payments from the BioBanking Trust Fund;
2. Directing you to undertake restorative works at your own cost;
3. Suspending, cancelling or ordering you to retire your biodiversity credits;
4. Seeking damages (money) from you; and
5. Applying for a court order to transfer your land to a responsible land manager.<sup>163</sup>

### What support is available for landholders with BioBanking Agreements?

The primary benefit of BioBanking is that you will receive annual payments from the BioBanking Trust Fund to help you meet the costs of undertaking your management actions.

### Can I continue farming in the biobank site?

Because BioBanking Agreements require landholders to carry out management actions to improve biodiversity values on the site and to not undertake activities that would reduce the biodiversity values of the site, it is unlikely that you will be able to continue to farm on the biobank site. However, some activities may be permitted, as long as they do not have a negative impact on the biodiversity values of the land.

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<sup>161</sup> See: <http://www.environment.nsw.gov.au/bimsprapp/biobankingpr.aspx>

<sup>162</sup> *Threatened Species Conservation Act 1991* (NSW), ss. 127L-127O.

<sup>163</sup> You would be compensated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

The terms of the BioBanking Agreement will determine what activities can and cannot be carried out on the biobank site.

### **Do I still own my property?**

Yes, you still own your property. The BioBanking Agreement does not change the ownership of your property at all. The registration of the BioBanking Agreement on the certificate of title to your land notifies anyone inquiring about the ownership of the land that the part of your land within the conservation area is to be conserved. However, you should note the possible enforcement action that can be taken against you if you do not uphold your commitment under the BioBanking Agreement.

### **Can people access my land?**

The BioBanking Agreement may contain terms requiring you to grant access to your land to certain people. This could include a BioBanking Assessor for the purpose of assessing the value of your credits, or an authorised officer to ensure that the Agreement is being complied with.

### **How long will it last? Can the BioBanking Agreement be removed or changed?**

BioBanking Agreements are generally made in perpetuity, meaning that the conservation values of the biobank site are required to be protected forever.

If you have sold or retired any of your biodiversity credits then you cannot terminate the BioBanking Agreement without the consent of the NSW Minister for Environment.<sup>164</sup>

You can terminate your BioBanking Agreement within the first three months as long as you still hold all the biodiversity credits.<sup>165</sup> If, after five years, you still have not sold any credits you can terminate the Agreement.<sup>166</sup> Therefore, you have a three month window to terminate the BioBanking Agreement without the need for the agreement of the Minister for Environment; otherwise you will have to wait until five years after you entered into the Agreement to cancel it.<sup>167</sup> Within this time you will still be required to undertake the passive management actions and annual reporting requirements.

BioBanking Agreements can be terminated or varied with the consent of both the NSW Environment Minister and the landholder in certain circumstances,<sup>168</sup> as long as the negative impacts of terminating the biobank site are offset. This could include

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<sup>164</sup> At the time of writing the Minister for Environment was the Minister responsible for administering the *Threatened Species Conservation Act 1995* (NSW).

<sup>165</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G(6)

<sup>166</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G(6)

<sup>167</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G(3)

<sup>168</sup> *Threatened Species Conservation Act 1995* (NSW), ss. 127G, 127H

the cancellation of credits related to the site, or entering into another BioBanking Agreement to replace the terminated agreement.<sup>169</sup>

### **What if I want to lease my property?**

A BioBanking Agreement should technically not affect your ability to lease the land as long as the terms of the Agreement are fulfilled. However, you may wish to include a clause in the BioBanking Agreement that addresses leasing the land.

### **What if I want to sell my property?**

Because a BioBanking Agreement runs with the land, the new property owners will be bound by the Agreement. This means that the biobank site will remain subject to the Agreement and be managed accordingly.

### **Will the BioBanking Agreement affect the value of my property?**

Depending on the nature and extent of the Biobanking Agreement, the Agreement may either increase or decrease the value of your property. You are encouraged to seek independent legal and financial advice regarding the potential effects a BioBanking Agreement may have on the value of your property.

### **I am looking at purchasing a property with a BioBanking Agreement listed on the title. What does this mean?**

As the BioBanking Agreement is registered on the land, you will be required to comply with the obligations contained within the Agreement. You should seek independent legal advice about the nature of the Agreement before purchasing the property.

### **How does a BioBanking Agreement interact with other conservation mechanisms?**

Biodiversity credits can only be created for management actions that are *additional* to any actions already required under an existing conservation obligation such as a Conservation Agreement. The BioBanking Assessment Methodology requires that, where a BioBanking Agreement is entered into on land subject to an existing conservation obligation, the creation of credits is discounted by a certain percentage for each management action already required to be undertaken on the land. This means that if all of the management actions required under the BioBanking Agreement are already being undertaken on a site, then no credits can be created on that site.

Land that has been set aside as an offset as part of a property vegetation plan is not eligible for a BioBanking Agreement.<sup>170</sup>

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<sup>169</sup> *Threatened Species Conservation Act 1995* (NSW), ss. 127G, 127H

## Can a BioBanking Agreement protect my land against a proposal by a statutory authority?

A statutory authority must seek the consent of the Minister for Environment for development on land on which there is a BioBanking Agreement. The Minister may grant development consent only if:

- the Minister is of the opinion that the proposed development will not adversely affect either the BioBanking Agreement or the biodiversity values protected by the Agreement, or
- the Minister is satisfied that any adverse effect to the site will be offset by the retirement of biodiversity credits held by the public authority, or
- the proposed development is to provide an essential public purpose or is of special State significance, and
- the Minister has given notice of approval for the development to proceed in writing to the public authority.<sup>171</sup>

The Environment Minister is able to vary or terminate a BioBanking Agreement without the consent of the landowner provided such an order is published in the Gazette.<sup>172</sup> Additionally, the Minister may vary or terminate a BioBanking Agreement without the consent of the landowner in the event that a mining authority or petroleum title is granted on the biobank site.<sup>173</sup>

If the Minister wishes to vary or terminate a BioBanking Agreement without the consent of the owner of the biobanking site, they must give written notice to that owner.<sup>174</sup> This notice must express the Minister's intention to vary or terminate the BioBanking Agreement, and give the owner 28 days to make submissions to the Minister.<sup>175</sup> The Minister must consider any submissions before an order to vary or terminate the BioBanking Agreement can be made.<sup>176</sup> If the order is made, the order must be laid before Parliament for 30 sitting days and published in the Gazette.<sup>177</sup>

## Tax and rates exemptions and concessions<sup>178</sup>

Taxation issues are complex and the effect they will have on you financially will depend on your personal circumstances. The information below broadly discusses the various tax treatments of BioBanking Agreements. It is important that you obtain

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<sup>170</sup> *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 11.

<sup>171</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127Q (2).

<sup>172</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127Q(6).

<sup>173</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127S.

<sup>174</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127T

<sup>175</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127T (2).

<sup>176</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127T (2)(b).

<sup>177</sup> *Threatened Species Conservation Act 1995* (NSW) s. 127T (3).

<sup>178</sup> The information provided here is of a general nature and does not constitute tax or financial advice. Before purchasing a covenanted property or covenanting a property, you should obtain independent expert advice that takes into account your particular circumstances.



advice from a lawyer or from your accountant about how the BioBanking Agreement will be assessed for taxation purposes.<sup>179</sup>

### **Income Tax**

On the sale of biodiversity credits, the portion of the proceeds that is deposited directly into the BioBanking Trust Fund is not treated as assessable income. However, any remaining portion is treated as ordinary assessable income.

The annual payments from the BioBanking Trust Fund are treated as ordinary assessable income. Bonus payments from the BioBanking Trust Fund are also treated as ordinary assessable income.

### **Capital Gains Tax**

Entering into a BioBanking Agreement may result in a capital gain or loss. Additionally, the disposal of your biodiversity credits is a capital gains tax event so when you sell or retire your biodiversity credits, a capital gain or loss may arise.

### **Goods and Services Tax**

Three BioBanking transactions involve a goods and services tax (GST) liability for landowners who are registered for GST:

- the creation of biodiversity credits on entering into a BioBanking Agreement;
- the sale of credits; and
- the annual Tax payment from the BioBanking Trust Fund.

There will also be GST implications for registered landowners for other related transactions such as the acquisition of goods or services when performing management actions.

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<sup>179</sup> For more information on the tax implications of a BioBanking Agreement, see Department of Environment, Climate Change and Water (2010) *Tax Implications of a BioBanking Agreement*. Available at: <http://www.environment.nsw.gov.au/resources/biobanking/201051Biobanktaxfacts.pdf>

# OTHER ORGANISATIONS INVOLVED IN CONSERVATION

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## Organisations involved in conservation works and environmental management

### Greening Australia

Greening Australia<sup>180</sup> has more than 25 years of experience in creating sustainable environmental outcomes through a wide range of conservation activities. Greening Australia has a network of over 200 staff in locations across the country and works with people from remote, regional and metropolitan communities.

### Landcare

Landcare<sup>181</sup> is a national network of thousands of locally-based community groups who care for our country. Landcare is the biggest environmental volunteer movement in Australia. Landcare can also provide information on most areas of land management. Some Landcare groups can organise for conservation works to be done on your property.

Many primary producers are active participants in Landcare. They make significant contributions to combating soil salinity and erosion through sound land management practices and sustainable productivity. More than 40% of farmers are involved in Landcare and many more practice Landcare farming. Landcare can provide information on sustainable farming and how to improve the profitability of your farm.

There are Landcare groups in most communities in NSW. You can find out about your local Landcare group by contacting Landcare Australia.<sup>182</sup>

## Land acquisition organisations

There are various organisations involved in the acquisition and protection of high conservation value land. These organisations accept donations of money and land.

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<sup>180</sup> See: [www.greeningaustralia.org.au](http://www.greeningaustralia.org.au) or call (02) 9560 9144.

<sup>181</sup> See: <http://www.landcareonline.com.au>

<sup>182</sup> Call 1800 151 105 or [enquiries@landcareaustralia.com.au](mailto:enquiries@landcareaustralia.com.au).

## The Nature Conservation Trust

The [Nature Conservation Trust](#)<sup>183</sup> (NCT) is a not for profit organisation set up to promote native conservation on private land in NSW. The NCT buys and then re-sells properties of high conservation value through their [Conservation Property Fund](#).<sup>184</sup> When a property is re-sold it must be managed for conservation in perpetuity. The NCT also protects private property by assisting landowners to place conservation covenants over their properties. These are known as Trust Agreements and are discussed in Chapter 1. The NCT also helps landowners to maintain and enhance the ecological values of their land through support and guidance as part of their [Stewardship Program](#).<sup>185</sup> These programs enable real gains for conservation and biodiversity.

## Bush Heritage Australia

[Bush Heritage Australia](#)<sup>186</sup> is a not for profit organisation that protects Australian animals and plants, and their habitats.

Bush Heritage currently owns 35 conservation reserves covering nearly 1 million hectares. Their reserve managers protect the land and encourage native species to prosper again. Bush Heritage places a conservation covenant over its reserves to ensure that their work in maintaining and enhancing biodiversity is protected forever. Tax-deductible donations from the community are a vital part of this conservation effort. Such donations enable the purchase and ongoing management of reserves and help support partnerships.

## Australian Wildlife Conservancy

[AWC](#)<sup>187</sup> acquires land and works with other landholders to establish sanctuaries for the conservation of threatened wildlife and ecosystems. AWC now owns 23 sanctuaries covering more than 3 million ha in places such as north Queensland, the Kimberley, western New South Wales, the Northern Territory and the forests of south-western Australia.

## The Nature Conservancy

The [Nature Conservancy](#)<sup>188</sup> is a worldwide conservation organisation. They protect ecologically-important lands and waters for nature and humans. The Nature Conservancy runs a number of conservation programs in Australia, including the adopt-an-acre program.

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<sup>183</sup> See: [www.nct.org.au](http://www.nct.org.au) or call (02) 6365 7543.

<sup>184</sup> See: <http://nct.org.au/rural-land-for-sale>

<sup>185</sup> See: <http://nct.org.au/supporting-land-owners/land-management-support.html>

<sup>186</sup> See: <http://www.bushheritage.org.au> or call 1300 NATURE (1300 628 873).

<sup>187</sup> See: <https://www.australianwildlife.org/> or call 08 9380 9633

<sup>188</sup> See: <http://www.nature.org/wherewework/asiapacific/australia/> or call (03) 8346-8600.

## **The Paddy Pallin Foundation**

The [Paddy Pallin Foundation](#)<sup>189</sup> purchases or contributes to the purchase of land of high conservation value that is not yet within the State or private reserve system. The Paddy Pallin Natural Environment Fund is managed by the Paddy Pallin Foundation as trustee.

## **General conservation-focused organisations**

### **NSW Foundation for National Parks and Wildlife**

The [NSW Foundation for National Parks and Wildlife](#)<sup>190</sup> is a not for profit organisation that seeks to care for Australia's native plants, animals and cultural heritage. They run a wide range of programs that cater to all aspects of conservation.

### **Humane Society International (Australia)**

The [Humane Society International](#)<sup>191</sup> (HSI) focuses on the protection of animals and their habitats in Australia and all over the world. Humane Society International seeks to create an ecologically sustainable and humane world for all animals and their environments. Through education, advocacy and empowerment, they seek to forge a comprehensive change in human behaviour, protecting all wildlife and their habitats.<sup>192</sup>

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<sup>189</sup> See: [www.paddypallinfoundation.org.au](http://www.paddypallinfoundation.org.au)

<sup>190</sup> See: <http://fnpw.org.au/> or call (02) 9221 1949

<sup>191</sup> See: [www.hsi.org.au](http://www.hsi.org.au) or call 1800 333 737

<sup>192</sup> Humane Society International Mission Statement from [www.hsi.org.au](http://www.hsi.org.au)

## CHAPTER 11

# USEFUL CONTACTS

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Name	Postal Address	Phone	Website
<b>Nature Conservation Trust of NSW</b>	PO Box 883 Orange NSW 2800	(02) 6365 7543	<a href="http://www.nct.org.au">www.nct.org.au</a>
<b>OEH Conservation Partners Program</b>	PO Box A290 Sydney South NSW 1232	(02) 9995 6768	<a href="http://www.environment.nsw.gov.au/cpp/ConservationPartners.htm">www.environment.nsw.gov.au/cpp/ConservationPartners.htm</a>
<b>Commonwealth Department of the Environment</b>	GPO Box 787 Canberra ACT 2601	(02) 6274 1111; 1800 803 772	<a href="http://www.environment.gov.au">www.environment.gov.au</a>
<b>Community Environment Network</b>	PO Box 149 Ourimbah NSW 2258	(02) 4349 4756	<a href="http://www.cen.org.au/">http://www.cen.org.au/</a>
<b>Humane Society International Australia</b>	PO Box 439 Avalon NSW 2107	(02) 9973 1728	<a href="http://www.hsi.org.au">www.hsi.org.au</a>
<b>LLS Northern Tablelands</b>	PO Box 411 Inverell NSW 2360	(02) 6728 8020	<a href="http://northerntablelands.lls.nsw.gov.au/home">http://northerntablelands.lls.nsw.gov.au/home</a>
<b>LLS Central West</b>	PO Box 227 Wellington NSW 2820	(02) 6840 7800	<a href="http://centralwest.lls.nsw.gov.au">http://centralwest.lls.nsw.gov.au</a>
<b>LLS Greater Sydney</b>	PO BOX 4515 Westfield Penrith 2750	(02) 4725 3050	<a href="http://greatersydney.lls.nsw.gov.au/home">http://greatersydney.lls.nsw.gov.au/home</a>
<b>LLS Hunter</b>	Private Bag 2010 Paterson NSW 2421	(02) 4930 1030	<a href="http://hunter.lls.nsw.gov.au/home">http://hunter.lls.nsw.gov.au/home</a>

<b>LLS Murray</b>	PO Box 835 Deniliquin NSW 2710	(03) 5880 1400	<a href="http://murray.lls.nsw.gov.au/home">http://murray.lls.nsw.gov.au/home</a>
<b>LLS Riverina</b>	PO Box 513 Wagga Wagga NSW 2650	1300 795 299	<a href="http://riverina.lls.nsw.gov.au/home">http://riverina.lls.nsw.gov.au/home</a>
<b>LLS North West</b>	PO Box 546 Gunnedah NSW 2380	(02) 6742 9220	<a href="http://northwest.lls.nsw.gov.au/home">http://northwest.lls.nsw.gov.au/home</a>
<b>LLS North Coast</b>	PO Box 158 Casino NSW 2470	(02) 6662 3166	<a href="http://northcoast.lls.nsw.gov.au/home">http://northcoast.lls.nsw.gov.au/home</a>
<b>LLS South East</b>	PO Box 1350 Batemans Bay NSW 2536	(02) 4475 1000	<a href="http://southeast.lls.nsw.gov.au/home">http://southeast.lls.nsw.gov.au/home</a>
<b>LLS Western</b>	62 Marshall Street, Cobar NSW 2835	(02) 6836 1575	<a href="http://western.lls.nsw.gov.au/home">http://western.lls.nsw.gov.au/home</a>

# KEY THREATENING PROCESSES

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The following is a list of Key Threatening Processes.<sup>193</sup> Many private conservation mechanisms will require you to refrain from engaging in any of the Key Threatening Processes listed below and to take reasonable steps to control these threats on your property.

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Aggressive exclusion of birds from woodland and forest habitat by abundant Noisy Miners, *Manorina melanocephala* (Latham, 1802)

Alteration of habitat following subsidence due to longwall mining

Alteration to the natural flow regimes of rivers and streams and their floodplains and wetlands (as described in the final determination of the Scientific Committee to list the threatening process)

Anthropogenic Climate Change

Bushrock removal (as described in the final determination of the Scientific Committee to list the threatening process)

Clearing of native vegetation (as defined and described in the final determination of the Scientific Committee to list the key threatening process)

Competition and grazing by the feral European Rabbit, *Oryctolagus cuniculus* (L.)

Competition and habitat degradation by Feral Goats, *Capra hircus* Linnaeus 1758

Competition from feral honey bees, *Apis mellifera* L.

Death or injury to marine species following capture in shark control programs on ocean beaches (as described in the final determination of the Scientific Committee to list the key threatening process)

Entanglement in or ingestion of anthropogenic debris in marine and estuarine environments (as described in the final determination of the Scientific Committee to list the key threatening process)

Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners

Herbivory and environmental degradation caused by feral deer

High frequency fire resulting in the disruption of life cycle processes in plants and animals and loss of vegetation structure and composition

Importation of Red Imported Fire Ants *Solenopsis invicta* Buren 1972

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<sup>193</sup> *Threatened Species Conservation Act 1995*, Schedule 3

Infection by Psittacine Circoviral (beak and feather) Disease affecting endangered psittacine species and populations

Infection of frogs by amphibian chytrid causing the disease chytridiomycosis

Infection of native plants by *Phytophthora cinnamomi*

Introduction and establishment of Exotic Rust Fungi of the order Pucciniales pathogenic on plants of the family Myrtaceae

Introduction of the Large Earth Bumblebee *Bombus terrestris* (L.)

Invasion and establishment of exotic vines and scramblers

Invasion and establishment of Scotch Broom (*Cytisus scoparius*)

Invasion and establishment of the Cane Toad (*Bufo marinus*)

Invasion, establishment and spread of Lantana (*Lantana camara* L. sens. lat)

Invasion of native plant communities by African Olive *Olea europaea* subsp. *cuspidata* (Wall. ex G. Don) Cif.

Invasion of native plant communities by *Chrysanthemoides monilifera*

Invasion of native plant communities by exotic perennial grasses

Invasion of the Yellow Crazy Ant, *Anoplolepis gracilipes* (Fr. Smith) into NSW

Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants

Loss of hollow-bearing trees

Loss or degradation (or both) of sites used for hill-topping by butterflies

Predation and hybridisation by Feral Dogs, *Canis lupus familiaris*

Predation by *Gambusia holbrooki* Girard, 1859 (Plague Minnow or Mosquito Fish) (as described in the final determination of the Scientific Committee to list the threatening process)

Predation by the European Red Fox *Vulpes vulpes* (Linnaeus, 1758)

Predation by the Feral Cat *Felis catus* (Linnaeus, 1758)

Predation by the Ship Rat *Rattus rattus* on Lord Howe Island

Predation, habitat degradation, competition and disease transmission by Feral Pigs, *Sus scrofa* Linnaeus 1758

Removal of dead wood and dead trees