



A GUIDE TO
PRIVATE CONSERVATION
IN NSW

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The information in this booklet was compiled by Rosemary Bullmore, EDO Project Officer, with the assistance of other EDO staff and volunteers.

The EDO is a non-profit community legal centre specialising in public interest environmental law. The EDO provides legal advice and representation, engages in policy and law reform, delivers community programs such as community legal education, and provides technical and scientific advice in public interest environmental matters. For more information about the EDO, please visit: www.edo.org.au/edonsw

To order additional copies of this publication, please contact:

Environmental Defender's Office: Sydney (02) 9262 6989; Northern Rivers 1 300 369 791

Website: www.edo.org.au/edonsw

Disclaimer

This publication is intended to provide general information about private conservation options. While all care has been taken in the preparation of this guide, it is not a substitute for legal advice in individual cases.

Currency

The information contained in this guide is current as at 31 May 2011.

Tell us what you think

We are evaluating this booklet via an online survey. To complete the survey, please visit our website: www.edo.org.au/edonsw/site/survey/publications_survey.php

In particular, we would like to know if this publication assisted you to choose and implement a private conservation option. If you would like to provide feedback to us on how you used this publication, please email education@edo.org.au or call (02) 9262 6989 and speak with someone from the EDO's Education Team.



This book has been printed on 100% recycled paper.

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INTRODUCTION

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 by the topics in this booklet.

For free legal advice on environmental law matters, contact the EDO Environmental Law Advice Line.

Sydney Office: 02 9262 6989 or 1800 626 239 (free call) between 2.30pm and 5.30pm on Monday to Thursday.

Northern Rivers Office: 1300 369 791 between 9.00am and 5.30pm Monday to Friday.

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 small fraction of all land in Australia. 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. Some of the conservation options discussed in this booklet provide legal protection for the natural features of your land and can conserve your land beyond your lifetime.

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; and
- Conservation Agreements with the Office of Environment and Heritage.

These two options will protect the natural features of your land forever and cannot be removed by future landowners. Strong legal protection prevents you and future landowners from damaging the biodiversity and natural values of your land. They restrict activities such as clearing of native vegetation, harming native fauna, commercial grazing and subdivision.

Other options that have a restrictive legal commitment and can legally protect your property include:

- Property Vegetation Plans with Catchment Management Authorities;
- Wildlife Refuges with Office of Environment and Heritage; and
- BioBanking with the Office of Environment and Heritage.

The other conservation options that will not restrict the actions of future landowners include:

- Wildlife Refuges without a restrictive covenant with the Office of Environment and Heritage;
- Land for Wildlife with the Community Environment Network and the Office of Environment and Heritage;
- Landholder Management Agreements with Catchment Management Authorities;
- Wildlife Land Trust with Humane Society International (Australia).

How do the different conservation mechanisms relate to each other?

Different conservation mechanisms can be combined together on a 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 a 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
Nature Conservation Trust	Trust Agreements
Catchment Management Authorities	Property Vegetation Plans Landholder Management Agreements
Community Environment Network	Land for Wildlife
Humane Society International	Wildlife Land Trust
Department of Sustainability, Environment, Water, Population and Communities	Federal Conservation Agreements Environmental Stewardship

Getting legal advice when implementing private conservation

The Environmental Defender's Office, in partnership with the Public Interest Law Clearing House, provides a free legal referral service for landholders who would like to get involved in private conservation.

Contact the EDO for more information:

Sydney Office: 02 9262 6989 or 1800 626 239 (free call) Northern Rivers Office: 1300 369 791

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. The Private Land Conservation Grants Program offers grants of between \$500 and \$3000 for conservation works. The grants are offered as part of the partnership between the Paddy Palin Foundation, the Foundation for National Parks and Wildlife, the Humane Society International, Diversicon Environmental Foundation, the Office of Environment and Heritage and the Nature Conservation Trust of NSW.¹ These grants are available to landholders who have established a legally binding conservation mechanism on their land.

¹ For more information go to: www.paddypalinfooundation.org.au

Private Conservation Pro Bono Referral Service

Free legal advice for landholders implementing a private conservation mechanism

The Environmental Defender's Office in partnership with the Public Interest Law Clearing House, has developed a Private Conservation Pro Bono Referral Service. The Referral Service will provide landholders with free access to independent legal advice from major Australian law firms. The referral service is available for landholders entering a *legally binding* conservation mechanism.

How does the Private Conservation Pro Bono Referral Service work?

The Public Interest Law Clearing House is a broker of pro bono legal services that will link landholders with private law firms. The private firms have agreed to take referrals and have been trained in the range of private conservation mechanisms by the EDO. Once a landholder contacts the EDO and requests access to the Referral Service, the EDO will refer the landholder to the Public Interest Law Clearing House. The Public Interest Law Clearing House will contact one of the private firms and organise the referral. Once the referral is made, the private firm will provide legal advice to the landholder.

For more information or to access the Private Conservation Pro Bono Referral Service contact the EDO: Sydney Office: (02) 9262 6989 or 1800 626 239 (free call); Northern Rivers Office: 1300 369 791



Quick Reference Table

Conservation Mechanism	Legal protection for the conservation of your land	Legally Binding?	Incentives	Tax and rates exemptions/concessions	Support offered	Establishment
Trust Agreements	High	Yes, and on future landowners	Some – in specific areas	State Land Tax concession	High	Varies
Conservation Agreements	High	Yes, and on future landowners	No	Local Government Rate exemption State Land Tax exemption, income tax deduction, concessional capital gains tax treatment	High	Varies
Property/Vegetation Plans	Moderate High if you request the PVP to be in perpetuity	Yes, and on future landowners	Yes	No	As PVPs are offered through a CMA, it will depend on the CMA. Our research has mostly returned positive reviews	Moderate
Landholder Management Agreements	Moderate – not binding on future landowners	Yes	Yes	No	Dependent on CMA. See above	Moderate
Environmental Stewardship	Moderate High if combined with a legally binding private conservation option	Yes	Yes – large market based incentives	No	High	Complex
Wildlife Refuges	Moderate to High depending on whether combined with a restrictive covenant	Yes, but can be removed at landholder request	No	No	Moderate	Simple
BioBanking	High	Yes, and on future landowners	No	No	Low	Complex
Cleaning Property Vegetation Plans	High	Yes, and on future landowners	No	No	Low	Complex
Land for Wildlife	Low	No	No	No	Moderate	Simple
Wildlife Land Trust	Low	No	Potentially	No	Moderate	Simple

I TRUST AGREEMENTS WITH THE NATURE CONSERVATION TRUST

Key features:

- *Conservation covenant*
- *Legally binding on you and future landowners*
- *Strong and permanent legal protection for the natural features of your land*
- *Some incentive funding*
- *Management advice and strong landholder support*

What is a Trust Agreement?

A Trust Agreement is an agreement between yourself and the Nature Conservation Trust (NCT) that provides everlasting protection for the natural features of your property. At the time of writing there were 26 registered Trust Agreements protecting 1,174 hectares of land. Trust Agreements are a form of conservation covenant. The Trust Agreement is legally binding and registered on the certificate of title to your property. The Trust Agreement sets out the legal obligations of both you and the NCT for the protection and conservation of your land. The registration of the Trust Agreement on the certificate of title to your property means that the Agreement is attached to the land and can be enforced upon the future owners of your land. The NCT uses a template for the development of a Trust Agreement but you are free to negotiate the terms of the Agreement. The Trust Agreement will also include a Plan of Management for your property. The Plan of Management will set out how your property will be managed to maintain your property for conservation.

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 formally created under the *Nature Conservation Trust Act 2001* (NSW). 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.¹

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;

¹ See the Nature Conservation Trust Website www.nct.org.au

3. Critical habitats or populations of threatened species; and
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. Also properties that provide protection from soil erosion or water pollution.

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. Alternatively, the NCT sells properties of high conservation value that are already subject to a Trust Agreement through the Revolving Fund.

What is the Revolving Fund?

The Revolving Fund is a program that is run by the NCT under which the NCT purchases properties of high conservation value and then resells them to private purchasers on the condition they establish a Trust Agreement on the purchased property. The proceeds of these sales are used to buy more prime conservation properties to sell on to private purchasers willing to maintain those properties for conservation.

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

A Trust Agreement is a legally binding contract and you must abide by the terms of the Agreement. A Trust Agreement can only be removed from your property with the agreement of the NCT Board. It is important that you understand the terms of the Trust Agreement and your obligations under it. You should seek legal advice before signing the Trust Agreement.

What are the benefits of a Trust Agreement?

You will be making a real and tangible contribution to conservation. A Trust Agreement serves principally to provide robust and enduring legal protection for the conservation work you have done on your property. Also, it ensures that the conservation value of your property will remain for future generations.² You will also have a document that provides detailed management strategies to preserve and improve the biodiversity values of your property.

You may also receive some funding to carry out some conservation works on your land.

² Other conservation mechanisms that are legally binding in perpetuity include Conservation Agreements and some Property Vegetation Plans.

Tax Concessions

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 Trust Agreements. It is important that you obtain advice from a lawyer or from your accountant about how the Trust Agreement will be assessed for taxation purposes.

State land tax

Land within the conservation area under the Trust Agreement will be exempt from Land Tax.³ The value of your land for the assessment of Land Tax will be reduced by the value of the proportion of the land that is included in the conservation area.⁴ For example, if 60% of your land is included in the conservation area, your land tax liability will be reduced by 60%.

Other tax concessions

At the time of writing the NCT was in the process of amending the *Nature Conservation Trust Act 2001* to allow landholders entering into Trust Agreements access to income tax deductions, concessional capital gains tax treatment and a Local Government rate exemption. Please contact the NCT to find out if these tax benefits are now available.

What are my obligations?

You are obliged to protect and maintain the area covered by the Trust Agreement (the conservation area).⁵ This may require you to fence the conservation area and make reasonable efforts to protect the area from stock, trap feral animals and remove noxious weeds. You will also be obliged not to clear or damage the conservation area. Your obligations are designed to protect the conservation area and prevent degradation of your land. You must not conduct or allow an activity to occur that may threaten the survival or evolutionary development of species, populations or ecological communities. An activity that may have this effect is called a Key Threatening Process. Key Threatening Processes are listed in the *Threatened Species Conservation Act 1995* (NSW). The list of Key Threatening Processes is updated by the NSW Scientific Committee. Before entering into a Trust Agreement you should look at the most recent list of Key Threatening Processes.⁶

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 serves as a notice to anyone inquiring about the ownership of your land that your land is to be conserved for conservation.

³ *Land Tax Management Act 1956* (NSW), s. 10 (1)(p1).

⁴ *Land Tax Management Act 1956* (NSW), s. 10 (2C).

⁵ The conservation area might be part of your property or the whole of your property.

⁶ *Threatened Species Conservation Act 1995* (NSW), Schedule 3. We have included the list of Key Threatening Process listed at the time of writing in **Annexure One** of this booklet. An up to date list is available at www.legislation.nsw.gov.au

How long does it last?

The NCT policy is for Trust Agreements to be in perpetuity (everlasting) as that offers the best protection for the conservation values on your property.

How will the Trust Agreement protect my property?

The Trust Agreement protects the conservation values of your property beyond your lifetime as all future landowners will be bound by the Trust Agreement in the same way as you will be.⁷ A Trust Agreement will be registered on the certificate of title to your land and will be registered by the Registrar General in the folio concerning your land.⁸ The NCT is responsible for enforcing the commitment made by you against both yourself and any future owners of the land.

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 practice 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.

What is the process for establishing a Trust Agreement?

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

1. You must apply for a Trust Agreement with the Nature Conservation Trust. 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. 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 management options for the conservation area and what you want to achieve.
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 Lands and registered on the certificate of title to your property.
8. You will be included in the NCT Stewardship Program (outlined below).

⁷ *Nature Conservation Trust Act 2001* (NSW), ss. 30, 37.

⁸ *Nature Conservation Trust Act 2001* (NSW), ss. 36, 37.

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. 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.

What is the difference between a Plan of Management and a Trust Agreement?

The Trust Agreement is the legally binding document that is registered on the certificate of title to your property. It is a deed between you and the NCT containing the terms of your agreement. The Plan of Management is a practical document that instructs how the property is to be managed to best achieve the conservation of the natural features of your property. A clause is included in the Trust Agreement stating that you have agreed to manage the property in accordance with 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 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. When you enter into a Trust Agreement, you have agreed that the Plan of Management reflects the condition of the conservation area. 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. The Plan of Management is designed to complement existing environmental legislation and all environmental legislation will continue to apply to the land.

Who is responsible for the management of the conservation area?

You are responsible for the management of the conservation area. You must manage the conservation area in accordance with the Plan of Management. The NCT can help source advice on most aspects of land management.

Can I continue agriculture in the conservation area?

Most Trust Agreements will exclude stock from the conservation area, although some native grasslands may benefit from grazing and stock may be allowed to graze in the conservation area at controlled times. The Plan of Management will advise how agriculture is to be conducted. An agricultural activity will only be allowed to occur within the conservation area if the activity will benefit the health of native species within the area.

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.

What ongoing support is there?

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

1. Regular contact between landowners and the NCT;
2. Land management advice;
3. Notification of various grants and agencies that may be able to fund conservation works on your property; and
4. Assistance with the preparation of grant applications.

Can the Trust Agreement be removed or changed?

It is possible to terminate the Trust Agreement, but only in extreme and unusual circumstances and only with the consent of the NCT Board. To protect your land, the Trust Agreement needs to be legally robust and not easily terminated by either party. The possibility of termination is only included to protect the parties if there is a catastrophic event that results in the destruction of all the natural heritage values for which there is no chance of recovery.

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 to get a letter of approval from the NCT to conduct 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.

It is important that you fully understand and agree with the terms of the Trust Agreement before entering into the Agreement. It is recommended you gain independent legal advice before entering into the Trust Agreement.

What happens if I breach the Trust Agreement?

If you 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.

How are the terms of the Trust Agreement enforced?

The terms of the Trust Agreement are enforceable in the Land and Environment Court.⁹ Enforcement action could be taken against you or against future owners of your land if the Trust Agreement is breached. 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 also 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.¹⁰

How does a Trust Agreement interact with Environmental Planning Instruments?

A Trust Agreement is deemed to have the status of a regulatory instrument for the purposes of the *Environmental Planning and Assessment Act 1979* (NSW).¹¹ An Environmental Planning Instrument (a Local Environmental Plan or a State Environmental Planning Policy) can suspend the operation of the Trust Agreement for the purpose of enabling development to be carried out. This cannot occur without the agreement of the NSW Minister for Environment.¹² Any Environmental Planning Instrument already in force before the Trust Agreement is made will not affect the operation of the Trust Agreement.¹³ Any future Environmental Planning Instrument must specifically state that it affects the operation of the Trust Agreement before it can do so.¹⁴

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 that the tenant will 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 Plan of Management. You must also notify the NCT that you have leased the land.

⁹ *Nature Conservation Trust Act 2001* (NSW), s. 38 (1).

¹⁰ *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).

¹¹ *Nature Conservation Trust Act 2001* (NSW), s. 38A; *Environmental Planning and Assessment Act 1979* (NSW), s. 28.

¹² At the time of writing the Minister Administering the *Nature Conservation Trust Act 2001* (NSW) was the Minister for Environment.

¹³ *Nature Conservation Trust Act 2001* (NSW), s. 38A(2).

¹⁴ *Nature Conservation Trust Act 2001* (NSW), s. 38A(2).

What if I want to sell my land?

The NCT will assist in advertising your property free of charge to help you gain a sympathetic purchaser. Selling a property with a Trust Agreement is the same as selling a property without a Trust Agreement. You must advise the NCT if you are selling your property.

What happens to the conservation area if I sell my property?

A future landowner will be legally required to maintain and protect the conservation area according to the terms of the Trust Agreement and the 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?

Sometimes a Trust Agreement will affect the value of your land. 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. The effect of a Trust Agreement on the value of your land will be very specific to the circumstance of your property and in some cases may reduce the value of your property.

2 CONSERVATION AGREEMENTS

Key features:

- *Conservation Covenant*
- *Legally binding on you and future landowners*
- *Strong and permanent legal protection for the conservation value of your land*
- *Management advice and strong landholder support*
- *Tax exemptions and concessions*

What is a Conservation Agreement?

A Conservation Agreement is a formal agreement you can use to protect and conserve your land forever (often referred to as an 'in perpetuity agreement'). The Conservation Agreement is made between you and the NSW Environment Minister (through the Office of Environment and Heritage). At the time of writing there were 298 Conservation Agreements in place in NSW protecting 132,750 hectares.¹ The Conservation Agreement is listed on the certificate of title to your land and is legally binding. The registering of the Conservation Agreement on the title to your land means that future owners must continue protecting and conserving the land in accordance with the terms set out in the Conservation Agreement. The Office of Environment and Heritage (OEH) is responsible for enforcing the terms of the Conservation Agreement with future owners of your land. Conservation Agreements are a type of conservation covenant.

What land is suitable for a Conservation Agreement?

The OEH will only enter into a Conservation Agreement over land of high conservation value. Land of high conservation value is land that has a range of natural and cultural attributes, is in a native condition and is not environmentally degraded. The first thing you should do is contact the OEH 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 they will visit your property to confirm if it has the qualities they are looking for. If your land is not suitable for a Conservation Agreement it may be suitable for one of the other conservation options discussed in this publication.

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

How can I get a Conservation Agreement?

If you own land with high conservation value you can apply to the OEH to have a Conservation Agreement implemented on your land.

¹ Statistics about the Conservation Partners Program: www.environment.nsw.gov.au/cpp/ConservationPartnersStatistics.htm

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. A Conservation Agreement can only be removed from your property with the agreement of the Minister for Environment; to date this has not occurred.² It is important that you understand the terms of the Conservation Agreement and your obligations under it. You should seek legal advice before signing the Conservation Agreement.

What are the benefits of a Conservation Agreement?

You will be making a real and tangible contribution to conservation. The main benefit of a Conservation Agreement is the everlasting legal protection for the conservation values of your land and conservation work you have done on your property. The Conservation Agreement ensures that the conservation value of your property will remain for future generations.³ You will also have a document that provides a framework for management to conserve and improve the biodiversity values of your property.

By entering into a Conservation Agreement, you will be part of the OEH Conservation Partners Program. The Conservation Partners 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. You may also receive some financial support for fencing and weed control.

What help and support are offered for entering into Conservation Agreement?

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 local Catchment Management Authority.

Tax and rates exemptions and concessions

Local governments provide landowners with Conservation Agreements a rate exemption for land included in the conservation area.⁴ Your rate liability will 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 will be reduced by 70%.

Example:

Jo's rates are \$1000 per annum. Jo enters into a Conservation Agreement and includes 70%

² At the time of writing the Minister for Environment was minister administering the *National Parks and Wildlife Act 1974* (NSW).

³ Other conservation mechanisms that are legally binding in perpetuity include: Trust Agreements and some Property Vegetation Plans.

⁴ *Local Government Act 1993* (NSW), s. 555.

of his property in the conservation area. Jo's rates are reduced by 70% and are now \$300 per annum.

A Conservation Agreement does not entitle you to an exemption from rates payable to Livestock Health and Pest Authorities (LHPAs). 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 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 local LHPA 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 LHPA with which you are associated.

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 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.⁵

There is no concessional tax treatment for leasehold land regardless of the length of the lease.⁶

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. 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.⁷

State land tax

The conservation area will be exempt from State Land Tax.⁸ Land tax will be levied in a similar way as local government rates will be levied. If 70% of your land is included in the conservation area then your land tax will be reduced by 70%.

Income tax deductions

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 Conservation Agreement.⁹

The reduction in land value must be more than \$5000. To get an income tax deduction, you must get the Australian Valuation Office to come and value your land at your own expense. The fees charged by the Australian Valuation Office are tax deductible. The decrease in the value of your land can be spread over five financial years to maximise the deduction available

5 Go to: www.ato.gov.au/nonprofit/content.asp?doc=/content/19507.htm

6 Shearing, 2006, 'Taxation incentives for conservation covenants', *Local Government Law Journal*, volume 11, p. 139.

7 ATO interpretive decision, ATO ID 2002/678, *Income Tax Division 31 - 'material benefit' for entering into a conservation covenant*, 3 July 2002.

8 *Land Tax Management Act* (NSW) s. 10(p1).

9 Entering into a Conservation Agreement is a Capital Gains Tax Event D4 to allow landholders to access an income tax deduction.

to you. 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 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 by a significant amount and in other situations there may be no reduction at all. For example, if your land is in a world heritage area or contains a threatened ecological community, the highest and best use of the land may be conservation and there will be little or no reduction in the value of the land by entering into a Conservation Agreement. There may even be an increase in the value. 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.

Capital gains tax

Entering into a Conservation Agreement is a capital gains tax event.¹⁰ For concessional capital gains tax treatment, you must have entered 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. 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.

There is no guarantee that a Conservation Agreement will result in a reduction of the value of your land; indeed there may even be an increase in the value of your land where there is an appreciation of the varied benefits of conserving areas of high biodiversity value. Further, there may be no reduction in value where the land is already subject to restrictions, either through zoning, or laws protecting threatened species or restricting the clearing of native vegetation. Where your land does not reduce in value or does not reduce by a significant amount you will still trigger a capital gains tax event by entering into a Conservation Agreement and may become liable to pay capital gains tax.¹¹ You should speak to a lawyer or accountant about potential capital gains tax liability before entering into a Conservation Agreement.

What are my obligations?

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. You may also have

¹⁰ *Income Tax Assessment Act 1997* (Cth), s. 104-47(1).

¹¹ The EDO has confirmed this by applying for General Tax Advice from the ATO. Please contact the EDO if you would like to obtain a copy of the General Tax Advice on the Capital Gains Tax treatment of Conservation Agreements.

to remove noxious weeds and trap feral animals, as is already required by other legislation.¹² 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.

What restrictions does a Conservation Agreement place on my property?

The Conservation Agreement prevents you, as the owner, from carrying out any activity that harms native flora, fauna, habitats, cultural heritage and geological heritage in the conservation area. Subdivision is not allowed in the conservation area. If you lease your property, you must include in the terms of the lease that the tenant will comply with the Conservation Agreement. If there is a change of ownership or control, you must inform the OEH within 28 days.

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 is the process for entering into a Conservation Agreement?

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; otherwise you can access the Private Conservation Pro Bono Referral Service.¹³ 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 must 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. Contact the OEH 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.

¹² *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: www.edo.org.au/edonsw/site/publications.php or call (02) 9262 6989 to order a free copy.

¹³ The Environmental Defender's Office, in partnership with the Public Interest Law Clearing House, provides a free legal referral service for landholders who would like to get involved in private conservation. The referral service is discussed at the beginning of this booklet. Contact the EDO: Sydney Office: 02 9262 6989 or 1800 626 239 (free call); Northern Rivers Office: 1300 369 791.

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.
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 all my property have to be included 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.

Can I continue to conduct agriculture in 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. In general, agriculture will not be permitted within the conservation area.

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.¹⁴ The Land and Environment Court can award damages against a landowner who intentionally or recklessly breaches a Conservation Agreement.¹⁵

How does a Conservation Agreement protect my land against a proposal by a statutory authority?

A statutory authority, for example the Roads and Traffic Authority, can only carry out a development within a conservation area protected by a Conservation Agreement with the consent of the Minister for Environment.¹⁶ The Minister for Environment cannot consent to the

¹⁴ *National Parks and Wildlife Act 1974* (NSW), s. 69G (1).

¹⁵ *National Parks and Wildlife Act 1974* (NSW), s. 69G (2).

¹⁶ *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).

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.¹⁷ If the Minister for Environment does consent to the development you will not be entitled to compensation for a variation or termination of the Conservation Agreement.¹⁸ However, the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) will still apply to your land if your land is designated for acquisition by the Government. At the time of writing, no Conservation Agreements had been terminated by the Minister for Environment due to a proposal of a statutory authority.

How does a Conservation Agreement interact with Environmental Planning Instruments?

A Conservation Agreement is deemed to have the status of a regulatory instrument for the purposes of the *Environmental Planning and Assessment Act 1979* (NSW).¹⁹ 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.²⁰ Any Environmental Planning Instrument already in force before the Conservation Agreement is made will not affect the operation of the Conservation Agreement.²¹ Any future Environmental Planning Instrument must specifically state that it affects the operation of the Conservation Agreement before it can do so.²²

Will the Conservation Agreement affect the value of my property?

Sometimes a Conservation Agreement will affect the value of your land. 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. The effect of a Conservation Agreement on the value of your land will be very specific to the circumstance of your property and in some cases may reduce the 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 and they will explain your commitment in more detail.

¹⁷ *National Parks and Wildlife Act 1974* (NSW), s. 691 (2)(b).

¹⁸ *National Parks and Wildlife Act 1974* (NSW), s. 691 (6).

¹⁹ *National Parks and Wildlife Act 1974* (NSW), s. 69KA (1)(a); *Environmental Planning and Assessment Act 1979* (NSW), s. 28.

²⁰ *Environmental Planning and Assessment Act 1979* (NSW), s. 28.

²¹ *National Parks and Wildlife Act 1974* (NSW), s. 69KA (2).

²² *National Parks and Wildlife Act 1974* (NSW), s. 60KA (2).

3 FEDERAL CONSERVATION AGREEMENTS

Key features:

→ *Only available in very limited circumstances*

→ *Flexible*

What is a Federal Conservation Agreement?

A Federal Conservation Agreement is a legally binding agreement between any person and the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities (SEWPaC) on behalf of the Commonwealth. A Federal Conservation Agreement is entered under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).¹ They can provide for the protection and conservation of a range of things, including biodiversity on private land, and can be for variable periods of time.

In practice, Federal Conservation Agreements have been used to reinforce the conditions of projects approved under the EPBC Act or to enforce compliance. In this sense, Conservation Agreements bind the parties to specific actions to protect or remediate certain aspects of the environment. There are only two Federal Conservation Agreements currently in place in NSW.²

A Federal Conservation Agreement is used as a specific tool to carry out the aims of the EPBC Act. Sometimes they are imposed on landholders that have breached the EPBC Act. The Agreement may provide for remediation work to be carried out to rectify environmental damage or protect a threatened species that has been harmed. The Agreement may also require landowners to make financial contributions.

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

There is no set application process or program for the management and implementation of Federal Conservation Agreements.

There is generally no ongoing support from the Federal Government for the maintenance of the property.

1 *Environment Protection and Biodiversity Conservation Act 1999* (Cth), Part 14.

2 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 www.environment.gov.au/epbc/about/conservation-agreements.html#list

4 CONSERVATION PROPERTY VEGETATION PLANS

Key features:

- *Legally binding on you and future landowners*
- *Flexible options*
- *Incentive funding*
- *No tax incentives or local government rate reduction*

What are Conservation Property Vegetation Plans?

A Property Vegetation Plan (PVP) is a legally binding agreement between you and your local Catchment Management Authority (CMA) that describes how the native vegetation on your property is to be managed. PVPs are made under the *Native Vegetation Act 2003* (NSW) and can be used for different purposes. They can be used to authorise clearing of native vegetation, to restore degraded land or as a legal tool to protect your land for conservation. Here we will discuss PVPs that are used to restore degraded land and for conservation purposes. These are also known as 'incentive PVPs'. PVPs that authorise the clearing of native vegetation are discussed in Chapter 10 Offsetting.

What is a Catchment Management Authority?

Catchment Management Authorities are State Government agencies that facilitate coordinated catchment management and natural resource management over a total catchment area. There are 13 CMAs in NSW.¹ CMAs have staff with practical experience in natural resource management and sustainable farming. They are well resourced to meet with landowners and provide practical advice on natural resource management issues.

What are the benefits of a Property Vegetation Plan?

There are a few practical benefits of a PVP. Firstly, CMAs often have incentive funding available to help landholders carry out particular conservation works on their property. To receive incentive funding you may have to implement a PVP that sets out how the money will be spent to improve natural resource management on your property. CMAs fund a broad range of conservation works, including rebuilding riparian vegetation, fencing off riparian or other sensitive habitats, planting to improve biodiversity and management of existing high value vegetation.

CMAs also have a strong focus on sustainable farming and PVPs can be tailored to be compatible with farming. A PVP can also cover more than one property.

¹ The 13 CMAs are: Northern Rivers, Border Rivers-Gwydir, Central West, Hawkesbury – Nepean, Hunter – Central Rivers, Lachlan, Lower Murray Darling, Murray, Murrumbidgee, Namoi, Southern Rivers, Sydney Metro and Western. See www.cma.nsw.gov.au

If your land is not of high conservation value and therefore not eligible for a Trust Agreement or a Conservation Agreement, you could still protect your land using a conservation PVP. You may then be able to access funding to allow you to restore your property to the point where it becomes eligible for a conservation covenant of some type.

What are my obligations?

As PVPs are flexible and varied, it can be difficult to give advice on your obligations. You will have to comply with the terms of the PVP as it is a legally binding agreement. It is important to be specific and understand what you are agreeing to. For example, if you agree to control environmental weeds, you should have the specific species of weed listed so if a new weed problem develops you have not agreed to control a weed that is beyond your capacity to control. You should also consider your future plans for your property and ensure that the term of the agreement is aligned with those future plans.

What are the disadvantages?

The main disadvantage of entering a PVP is that you will not get tax incentives or a local government rate reduction for an agreement in perpetuity.

CMAAs have natural resource priorities that are highlighted in their Catchment Action Plans. The funding that the CMAAs offer will be focused on achieving those priorities. If the works you want to undertake do not align with the CMA priorities then they may not be able to fund your works.

CMAAs operate independently from each other and you may be in a catchment area where the CMA has chosen to focus its funds and resources elsewhere than conservation.

How does a Property Vegetation Plan protect native vegetation on my property?

A conservation PVP makes it illegal to damage or clear the vegetation you have agreed to protect under the PVP. A conservation PVP will remove the landholder's option to seek approval for private native forestry activities in the area being protected and most exemptions under the *Native Vegetation Act 2003* (NSW) will be foregone. A PVP is binding on future landowners. The provisions of the PVP can be enforced by the OEH in the Land and Environment Court.² The Land and Environment Court has a broad range of powers to enforce the PVP, including fines and criminal penalties.

Can a Property Vegetation Plan be terminated?

A PVP can be varied with the consent of the Minister for Environment.³ A PVP can only be terminated if the landholder has been given a notice of termination and an opportunity to provide written submissions.⁴

² *Native Vegetation Act 2003* (NSW), Part 5.

³ *Native Vegetation Act 2003* (NSW), s. 30(2)(a). At the time of writing the Minister for Environment was the Minister administering the *Native Vegetation Act 2003* (NSW).

⁴ *Native Vegetation Act 2003* (NSW), s. 30(2)(b).

How do I get a conservation Property Vegetation Plan?

The first step in getting a PVP is to contact your local CMA and discuss your options. Also, if you are interested in incentives you can sign up for the CMA newsletter and look out for a funding program that might be suitable for your property. When funding becomes available, you must make an application for funding. It is important that you be specific and precise in your application. Contact the CMA and discuss the application process and what they are looking for before you submit your application.

How do Property Vegetation Plans interact with other conservation options?

You cannot get incentive funding for conservation actions you are already required to carry out under another conservation option. This does not prevent you from gaining incentive funding but you will have to show that the conservation works you propose will be *additional* to those you are required to do under your existing conservation option. Similarly, incentive funding will not be provided to implement other landholder obligations such as conditions of a development consent.

I don't want incentives but I would still like to implement a Property Vegetation Plan

PVPs are available without incentive funding. As each CMA is independent and operates differently, you should contact your local CMA and discuss what you want to achieve and how you want to implement a PVP. Some landholders have used a PVP in perpetuity to protect the native vegetation on their property.

5 LANDHOLDER MANAGEMENT AGREEMENTS

Key features:

- *Short term*
- *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. You will receive funding to carry out the activity required by the Agreement. An LMA is legally enforceable against you personally under contract law, but the Agreements are not binding on future landowners.

The terms of the Agreement will be set out in the written contract. It is important that you understand what the Agreement says and that you agree to all the terms of the Agreement. If you do not agree with one of the terms but you sign the Agreement 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 Catchment Management Authorities (CMA), Local Councils or a private conservation group. A CMA may use a Landholder Management Agreement where a Property Vegetation Plan is not suitable.¹

How can I get a Landholder Management Agreement?

Landholder Management Agreements will normally be offered in conjunction with a particular funding program. Funding programs are advertised by your Catchment Management Authority 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.

¹ See previous section for more information on Property Vegetation Plans.

6 ENVIRONMENTAL STEWARDSHIP

Key features:

- *Large incentives*
- *Complex tender process*
- *Often combined with another conservation option*

What is Environmental Stewardship?

Environmental Stewardship (stewardship) is a conservation program under the Federal Government initiative 'Caring for our Country' that uses market-based incentives to identify and fund conservation actions on suitable private properties.¹ Stewardship programs provide annual payments to land managers who agree to undertake conservation works on their land. Stewardship payments are offered through specific funding programs that target a particular conservation outcome or environmental asset. To be eligible for environmental stewardship funding, your land must contain the specific ecological feature targeted by the funding program. These programs are offered through delivery agents, for example NSW Catchment Management Authorities. Each funding program will have different requirements, targets and application processes. The information below is on stewardship broadly. If a funding round is offered in your area you should look at the specifics of that funding program to determine if your property is eligible.

What is a market-based approach?

A market-based approach means that market forces of supply and demand for services will determine the price for environmental and conservation works. You will need to lodge a competitive application for funding known as a tender or a bid. Your tender should be a costing of the works you propose to carry out and the environmental gains you expect to achieve. Your tender will be assessed against other tenders and the most competitive tenders will be selected. Not all tenders will be successful. If you offer to implement another private conservation mechanism that lasts in perpetuity, like a Trust Agreement or Conservation Agreement, your funding application will be more competitive.² A conservation mechanism in perpetuity will protect your conservation works and the government will have surety that their investment will be protected beyond the funding arrangement. If you have proposed to implement another conservation mechanism, you have two years from signing the Head Funding Deed to establish the other conservation mechanism. You should begin the process of establishing a Conservation Agreement or Trust Agreement as soon as possible as the process can be lengthy.

1 For more information, go to: www.nrm.gov.au/stewardship/index.html

2 See Chapter 1 on Trust Agreements and Chapter 2 for Conservation Agreements.

Your tender is successful, now what?

If your tender is successful you will be offered funding. There is no obligation to accept the funding. If you choose to accept, you will be required to sign a Head Funding Deed. By signing the Deed, you agree to undertake certain conservation activities in exchange for annual funding. A Deed will normally last between 10-15 years, depending on the time period you select. The Deed is a formal contract that can be enforced like in any commercial arrangement. Your property will be monitored to ensure you are carrying out the works you agreed to carry out. Payments under the Environmental Stewardship program are taxable for income tax purposes.

Case Study: Box Gum Grassy Woodland Project

The Box Gum Grassy Woodland is an ecological community that runs through the wheat belt between Victoria and Southern Queensland. Only 5% of the Box Gum Grassy Woodland remains in its original condition and there was an urgent need for conservation and restoration works. The Box Gum Grassy Woodland was the first ecological community to be targeted by the Environmental Stewardship program. The NSW Natural Resource Management regions targeted under the Box Gum Grassy Woodland Project were the Lachlan, Murrumbidgee, Central West, Border Rivers - Gwydir and Namoi Catchment Management Authorities.

To find out about the next funding program, go to: www.nrm.gov.au/stewardship/index.html

7 WILDLIFE REFUGES

Key features:

- *Legally binding on you and future landholders while in place*
- *Can be revoked at any time by either party*
- *Generally covers the whole property*
- *Easy to implement*
- *Habitat conservation and other land uses can coexist*

What is a Wildlife Refuge?

A Wildlife Refuge is a dedication of your land for the protection of the habitat of wildlife and the wildlife itself under the *National Parks and Wildlife Act 1974* (NSW). Wildlife Refuges are a popular private conservation mechanism with 662 Wildlife Refuges in place at 30 May 2011 covering 1,935,100 hectares.¹

How does a Wildlife Refuge protect my land?

Wildlife Refuge status is noted on the certificate of title to your land. The Wildlife Refuge status will stay in place with current and future owners unless there is a formal revocation by the Governor acting on advice from the Minister for Environment.²

The *National Parks and Wildlife Act 1974* (NSW) contains additional provisions for the legal protection of wildlife within a Wildlife Refuge. Hunting or harming fauna without a licence is banned and the harming of non native animals can only be lawfully allowed with the owner's permission. It is also illegal to pick native plants within a Wildlife Refuge without the owner's permission.³

What are the benefits?

The status of your land as a Wildlife Refuge is compatible with other uses of your land. For example, you can continue to carry out commercial agriculture or conduct an eco tourism operation, provided it is consistent with the preservation of the native wildlife. A Wildlife Refuge does not affect possible future uses of your land. Wildlife Refuges are also easy and quick to establish. You'll get signage to display on your property to notify that the area is a refuge for wildlife. When you implement a Wildlife Refuge you join the Conservation Partners Program with the Office of Environment and Heritage (OEH). The OEH Conservation Partners Program provides property signage, subscription to the 'Bush Matters' newsletter and the opportunity to join a network of likeminded people.

¹ www.environment.nsw.gov.au/cpp/ConservationPartnersStatistics.htm

² At the time of writing the Minister for Environment was the Minister administering the National Parks and Wildlife Act 1974 (NSW).

³ *National Parks and Wildlife Act 1974* (NSW), ss. 70, 71.

What are the disadvantages?

A Wildlife Refuge status is legally binding while in place but it can be revoked at any time by either party.⁴ The vast majority of Wildlife Refuges are not revoked and many have remained in place for decades. There are no tax concessions or local government rate reductions.

How is a Wildlife Refuge made?

An agreement is made between you and the OEH. The dedication of your land is made official by the publication of a notice called a proclamation in the Government Gazette.⁵ The Governor of New South Wales makes the proclamation and you will receive a copy of the proclamation for your records and display.

What is a Wildlife Refuges with a restrictive covenant?

The OEH now offers additional protection for land with a Wildlife Refuge status by providing a restrictive covenant to landholders who have Wildlife Refuges.⁶ 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 your land.

What support is available to landholders with Wildlife Refuges

The OEH provides some support and advice on property management and planning. The Bush Matters newsletter provides access to information and education sessions, contacts with likeminded people and helps keep you up to date on the latest in ecological property management news.

⁴ *National Parks and Wildlife Act 1974* (NSW), ss. 68(3)(b), 68(6).

⁵ *National Parks and Wildlife Act 1974* (NSW), s. 68 (1).

⁶ *Conveyancing Act 1919* (NSW), s. 88E.

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 decided to claim 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 build a mining development 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 11 Half Moon residents, which aims to protect the Mongarlowe River and its surrounding habitats.

The area is habitat for a wide diversity of birds, 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 2500 acres.

8 LAND FOR WILDLIFE

Key features:

- *Easy to establish*
- *Develop networks with other landholders*
- *Access to information*
- *Signage to display on property*
- *No legal protection for the natural features of your land*
- *No incentive funding*
- *Not yet available in all areas of NSW*

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 implications 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 in collaboration with the NSW Office of Environment and Heritage (OEHS) Conservation Partners Program. Regional delivery of the Land for Wildlife program is also carried out by non government organisations, community groups, Catchment Management Authorities and Local Councils who form a partnership with the Community Environment Network.

What are the benefits?

The benefits include individual consultation on management issues, and access to information and education on management issues. There is also a newsletter and opportunities to network with other landholders who are interested in conservation.

What are the disadvantages?

As Land for Wildlife is not legally binding it does not provide any legal protection for the conservation values of your land. It is unlikely that joining Land for Wildlife will give you access to grants or incentive funding.

How can I join Land for Wildlife?

You should contact the Community Environment Network to see if Land for Wildlife is being run in your area.¹ 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.

What is the Community Environment Network?

The Community Environment Network (CEN) is a non government organisation based on the Central Coast. CEN is responsible for coordinating the State-wide delivery of the Land for Wildlife program.

Land for Wildlife on the Central Coast and Hunter Region

Land for Wildlife on the Central Coast has added assistance from the Bush Regeneration Team and access to the Regional Seed Bank. These are specific benefits for landholders in the Central Coast region who join the Land for Wildlife program.

¹ For more information go to: www.cen.org.au/landforwildlife/

9 WILDLIFE LAND TRUST

Key features:

- *Easy to establish*
- *Develop networks with other landholders, including landholders from overseas*
- *Access to information*
- *Signage to display on property*
- *No legal protection for the natural features of your land*

What is the Wildlife Land Trust?

The Wildlife Land Trust is run in Australia by Humane Society International (HSI).¹ The Wildlife Land Trust 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.²

What are the benefits?

Wildlife Land Trust members receive a certificate of membership and signage to display at the sanctuary. The Wildlife Land Trust provides an opportunity to highlight the work being done by landholders on behalf of wildlife through a range of national and international newsletters, e-mail distributions and websites. The Wildlife Land Trust network is one of the few international forums for landowners concerned with wildlife protection to exchange experiences, advice and news with others around the world.

Members can access an advisory service for biodiversity conservation, as well as sanctuary and habitat management advice. Members also receive access to advice on implementing additional protective measures and campaign advice to protect the fauna or flora on the property from development or other threats.

What are my obligations?

There are no legal obligations associated with joining the Wildlife Land Trust. Landholders sign a non-binding 'Letter of Agreement' that outlines the mutually supportive and compatible missions, aims, and objectives of the owner and the Wildlife Land Trust for the protection of the property. The owners agree to maintain and protect the property as a wildlife sanctuary. In protecting your land as a wildlife sanctuary you must not allow the following activities to occur:

¹ For more information, please contact Humane Society International (Australia) www.wildlifelandtrust.org.au

² Other countries include Canada, South Africa, the United States, Belize, Romania, Jamaica and Indonesia.

1. Hunting of any native animals;
2. Commercial removal of timber products;
3. The use of pesticides or herbicides except where they are used to eradicate invasive weeds; and
4. Any other activity that is incompatible with the ongoing protection of wildlife and habitats on the property.

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

The Wildlife Land Trust protects not only large landscapes, but also the smaller places that provide for the needs of all wildlife. The Wildlife Land Trust 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 the declaration of intent that membership signifies.

What support is available to members with WLT membership?

The WLT provides small grants to many of its international project partners, and alerts its Australian members to land management grant opportunities. Advice regarding both the legal and ecological integrity of the property is provided when sought, and assistance is provided should your sanctuary zone come under any threats of development.

If I register with the Wildlife Land Trust will it affect other private conservation mechanisms on my property?

The Wildlife Land Trust is designed not to conflict with any other existing or future conservation mechanisms.

10 OFFSETTING

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

10.1 Clearing Property Vegetation Plans

Key features:

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

What is a clearing Property Vegetation Plan?

A clearing Property Vegetation Plan (clearing PVP) can authorise the clearing of native vegetation that would otherwise be illegal under the *Native Vegetation Act 2003* (NSW).¹ A PVP can be made with your local Catchment Management Authority. A clearing PVP is called an offset because the environmental damage caused by clearing native vegetation is able to be offset by undertaking some positive conservation actions elsewhere on your property.

How does the offsetting in clearing Property Vegetation Plans work?

Your proposal to undertake clearing and associated positive conservation actions must 'maintain or improve' environmental outcomes for your property as a whole.² This means that the area you propose to protect must be big enough and have a high enough conservation value to allow you to clear elsewhere without an overall harmful effect on the environment. 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:

1. Biodiversity;
2. Salinity;
3. Soils; and
4. Water quality.³

¹ *Native Vegetation Act 2003* (NSW), s. 12(1). The *Native Vegetation Act* 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.

² *Native Vegetation Act 2003* (NSW), s. 29(2).

³ *Native Vegetation Regulation 2005* (NSW) Environmental Outcomes Assessment Methodology available at: www.environment.nsw.gov.au/vegetation/eoam.htm

Your positive conservation actions must correspond with the environmental damage your clearing will cause. If your clearing will cause a loss of biodiversity then your positive conservation actions must improve biodiversity.

What are the benefits?

The purpose of entering into a clearing PVP is to gain approval to clear native vegetation that would otherwise not be allowed. You will not normally get financial assistance for works undertaken as part of a clearing 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. Clearing PVPs give landholders some flexibility in the management of their land by allowing them to undertake activities that would otherwise not be approved in return for a commitment to offset the environmental harm caused in a way that maintains or improves the overall environmental outcomes on the property.

What are my obligations?

You will be obliged to carry out certain management actions and maintain the conservation area for the entire length of 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. The costs of carrying out management actions may be too expensive for some landowners and this will prevent them from entering a PVP. You must also only clear native vegetation strictly in accordance with the provisions of the clearing PVP.

Is a clearing Property Vegetation Plan legally binding?

A clearing PVP is legally binding.⁴ Future landowners will be bound by the clearing PVP.⁵ A notice that a PVP is registered on your land will appear on the s. 149 certificate⁶ and the certificate of title to your land.

How long does a clearing Property Vegetation Plan last?

The provisions allowing you to carry out clearing will normally last 15 years⁷ to give you certainty to invest and plan for your property. The conservation requirements that make up your environmental offsets may last longer; and may be permanent.

How can I get a clearing Property Vegetation Plan?

The CMA accepts applications for and approves clearing PVPs. The CMA will negotiate the terms of the clearing PVP with you under the guidance of a special software tool called the

⁴ *Native Vegetation Act 2003* (NSW), s. 31.

⁵ *Native Vegetation Act 2003* (NSW), s. 30(4).

⁶ Also known as a planning certificate.

⁷ *Native Vegetation Act 2003* (NSW), s. 30(1).

PVP developer: All CMAs must use the PVP developer software to calculate the environmental offsets that will allow you to undertake your proposed clearing.⁸

Who else may be required to agree to the clearing Property Vegetation Plan?

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 this is the Land and Property Management Authority (under the Department of Trade and Investment, Regional Infrastructure and Services) or in the Western Division, the Commissioner of Western Lands. If you have a mortgage you may also need permission from your mortgage provider.

How are the provisions of a clearing Property Vegetation Plan enforced?

The provisions of a clearing PVP are legally enforceable.⁹ All clearing PVPs are recorded on a public register that can be viewed on the website of the Office of Environment and Heritage (OEH).¹⁰ The OEH is responsible for enforcing the *Native Vegetation Act 2003*. If you breach a clearing PVP, enforcement actions may include directions to undertake remedial works, fines and criminal prosecutions.

10.2 BioBanking

Key features:

- *Legally binding on you and future landowners*
- *Market-based incentives*
- *Complex and costly to establish*
- *Strong legal protection for the natural features of your land*

What is BioBanking?

The Biodiversity Banking and Offsets Scheme (BioBanking) was introduced to give landowners a financial incentive to protect biodiversity on their property. The scheme enables you to be issued tradeable biodiversity credits in return for agreeing to establish a biobank site on your land to manage and protect biodiversity on that site in accordance with a BioBanking Agreement. These biodiversity credits can be sold for a profit and create a financial return for your commitment to protect biodiversity. A BioBanking Agreement is legally binding and runs with the land so it is also binding on any future landowners.¹¹ BioBanking is a complicated,

⁸ For more information on the PVP developer software go to: www.environment.nsw.gov.au/resources/vegetation/nvinfosheet8.pdf

⁹ *Native Vegetation Act 2003* (NSW), Part 5.

¹⁰ www.environment.nsw.gov.au/vegetation/publicregister.htm

¹¹ *Threatened Species Conservation Act 1995* (NSW), s. 127J.

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

What are the benefits?

The main benefit of entering into a BioBanking Agreement is that you may get financial support for conserving your land and may even gain a profit for maintaining your land for conservation.

What are the disadvantages?

As BioBanking is an offsetting program rather than a conservation program, the biodiversity credit issued for the protection of your biobank site offsets development and environmental loss on another site. There is also financial uncertainty about the demand for and resulting market price of biodiversity credits.

What are my obligations?

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 – passive management actions and active management actions. 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. 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.

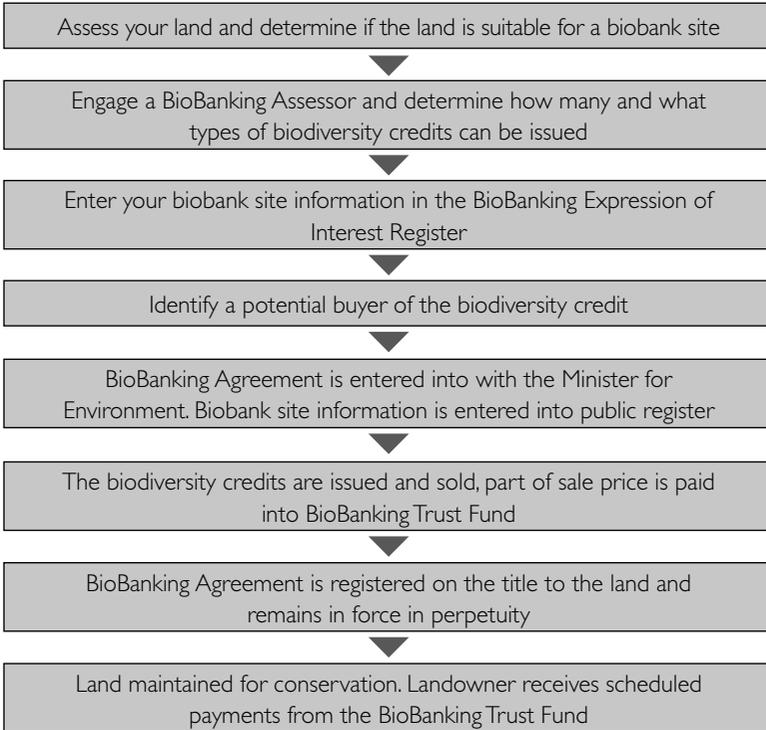
You must also prepare an annual report describing the management actions you have undertaken for the year and provide details of any events that had an impact on the biobank site, such as bush fire. The annual report must be lodged with the OEHL with a prescribed fee.¹²

What is the process for establishing a biobank site and selling the biodiversity credits?

To establish a biobank site you must engage an accredited BioBanking Assessor. The Assessor must use the approved BioBanking Assessment Methodology and the BioBanking Credit Calculator to assess your land and determine how many and what types of biodiversity credits can be issued. The process is as follows:¹³

¹² The Annual Reporting fee at the time of writing was \$1122.

¹³ Department of Environment, Climate Change and Water NSW, *Guide to Establishing a BioBank site*, August 2009, available at: www.environment.nsw.gov.au/resources/biobanking/093336establishingbiobanksite.pdf



Is BioBanking costly?

The establishment costs of a biobank site are high. 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. The OEH also charges a number of fees for establishing and administering your biobank site.

Fee (from 1 August 2009)	Amount
Application to establish a BioBanking Agreement	\$612
Annual reporting fee (due each year)	\$1122
Application to transfer credits (per batch)	\$102
Application to vary a BioBanking Agreement	\$1122
Application to terminate a BioBanking Agreement	\$714

Note: Fees are adjusted for CPI at 1 August each year.¹⁴

¹⁴ Department of Environment, Climate Change and Water NSW, *Guide to Establishing a BioBank site*, August 2009, available at: www.environment.nsw.gov.au/resources/biobanking/09336establishingbiobangsite.pdf

Am I eligible to participate in the BioBanking Scheme?

To be eligible to participate in the BioBanking Scheme 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. To pass the 'fit and proper person' test you must have complied with environmental laws in the past,¹⁵ be a person of honesty and integrity, be competent to manage the biobank site, have not been involved in fraud or dishonesty, have avoided bankruptcy in the past three years and have the financial capacity to comply with the obligations of the BioBanking Agreement.

How does the trading of biodiversity credits work?

Once a biodiversity credit is created it can be sold. The purchaser of that credit can either choose to continue trading the credit or retire the credit. If the credit is used to offset a development then the biodiversity credit must be retired.

How can I tell if there is a market for biodiversity credits?

If you are considering establishing a biobank site you can lodge an Expression of Interest form with the OEH. The 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. A potential purchaser may contact you through the Expressions of Interest register. Lodging an Expression of Interest does not create an obligation to establish a biobank site. 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.¹⁶

Who are the potential buyers of biodiversity credits?

Anyone is able to buy biodiversity credits. Likely potential purchasers could be developers looking to offset the environmental harm of their development, conservationists who wish to create a net gain for biodiversity conservation or investors who trade the biodiversity credits.

How are biodiversity credits priced?

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), the establishment costs of the biobank site, opportunity cost¹⁷ 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.

As BioBanking is a market-based scheme, the market demand and market supply for biodiversity credits will affect the price of the credits. Some particular 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.

¹⁵ *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 15(4).

¹⁶ www.environment.nsw.gov.au/biobanking/listwantedcredits.htm

¹⁷ Opportunity cost is the cost of using the land as a biobank site measured against other alternative uses for your land, eg commercial farming.

What is the BioBanking Trust Fund?

When the 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.¹⁸ One of the aims of the BioBanking Scheme is to help landowners interested in conserving their land to meet the costs of maintaining that land for conservation.

What is the Total Fund Deposit?

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. The amount of the Total Fund Deposit is the predicted cost of the ongoing management of your land for conservation.¹⁹ 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. 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 but 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. It is recommended that your first sale of biodiversity credits is large enough to pay 80% of the Total Fund Deposit. Otherwise you will be taking the risk that you will not be able to sell your remaining credits and will have to pay the outstanding amount yourself.

So, for example, if you enter a BioBanking Agreement with the OEH, which stipulates the Total Fund Deposit as \$50,000, you then create a biobank site and sell 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.

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 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.

What are the tax implications of entering into a BioBanking Agreement?

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 advice from a lawyer or from your accountant about how the BioBanking Agreement will be assessed for taxation purposes.²⁰

¹⁸ *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 29.

¹⁹ The Total Fund Deposit is the Net Present Value needed to generate payments in perpetuity from the BioBanking Trust Fund.

²⁰ 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: www.environment.nsw.gov.au/resources/biobanking/201051Biobanktaxfacts.pdf

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, the 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 payment.

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.

Can I terminate a BioBanking Agreement?

If you have sold or retired any of your biodiversity credits then you cannot terminate the BioBanking Agreement without the consent of the Minister for Environment.²¹

You can terminate your BioBanking Agreement within the first three months as long as you still hold all the biodiversity credits. If, after five years you still have not sold any credits you can terminate the Agreement. 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. Within this time you will still be required to undertake the passive management actions and annual reporting requirements.

How are BioBanking Agreements enforced?

Your commitment under the BioBanking Agreement can be enforced by the OEHL in the NSW Land and Environment Court.²² 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.²³

²¹ At the time of writing the Minister for Environment was the Minister responsible for administering the *Threatened Species Conservation Act 1995* (NSW).

²² *Threatened Species Conservation Act 1991* (NSW), s. 127L-O.

²³ You would be compensated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

It is important that you understand the legal obligations under the BioBanking Agreement and the *Threatened Species Conservation Act 1995* (NSW). BioBanking is a commercial program and your obligations under the BioBanking Agreement will be enforced.

What are some of the possible financial risks I should consider?

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:

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; and
3. If there is a fall in the market price of biodiversity credits due to oversupply or lack of demand for 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.

Interactions between BioBanking Agreements and other conservation options

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 Alive

Land Alive is a program that provides additional support for Aboriginal landowners and communities that want to get involved in the BioBanking Scheme. Land Alive includes the following features:

1. Advice on participating in the BioBanking Scheme;
2. Assistance in biodiversity assessment and mapping;
3. Training in land management and employment services;
4. Support for starting a small business focusing on land management; and
5. Assistance in developing land management plans.

For more information on Land Alive, please go to: www.environment.nsw.gov.au/landalive

ADDITIONAL ORGANISATIONS INVOLVED IN CONSERVATION

11.1 Organisations involved in conservation works and environmental management

Great Eastern Ranges Initiative

The Great Eastern Ranges Initiative aims to maintain and improve long-term connectivity conservation of mountain ecosystems running the length of eastern Australia. The 1,200 km New South Wales section of the Great Eastern Ranges is the current area of focus.

Voluntary efforts by individual landholders are a key feature of the Great Eastern Ranges Initiative. If you manage your property in a way that is sympathetic to local and migratory flora and fauna you can contribute an important link in the conservation chain.

For more information, go to www.greateasterranges.org.au or call 0438 250 600.

Greening Australia

Greening Australia has over 25 years of experience in creating sustainable environmental outcomes through a wide range of conservation activities. Greening Australia has a network of over 350 staff in locations across the continent and works with people from remote, regional and metropolitan communities. For more information go to www.greeningaustralia.org.au or call (02) 9560 9144.

Landcare

Landcare 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. For more information go to www.landcareonline.com.au or call 1800 151 105

11.2 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.

The Nature Conservation Trust

The Nature Conservation Trust is a non-profit organisation set up to promote native conservation on private land in NSW. The Nature Conservation Trust buys and then re-sells properties of high conservation value through their revolving fund. When a property is re-sold it is sold as a conservation property and it must be managed for conservation in perpetuity. The Nature Conservation Trust also protects private property by assisting landowners to place conservation covenants over their properties. 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. These programs enable real gains for conservation and biodiversity.

For more information go to www.nct.org.au or call (02) 6365 7543.

Bush Heritage Australia

Bush Heritage Australia is a non-profit organisation that protects Australian animals and plants, and their habitats.

Bush Heritage currently owns 31 conservation reserves totalling over 946,276 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.

For more information go to www.bushheritage.org.au or call 1300 NATURE (1300 628 873).

Australian Wildlife Conservancy

AWC acquires land, and works with other landholders, to establish sanctuaries for the conservation of threatened wildlife and ecosystems. AWC now owns 21 sanctuaries covering over 2.5 million ha in places such as north Queensland, the Kimberley, western New South Wales, the Northern Territory and the forests of south western Australia.

For more information on the AWC, go to www.australianwildlife.org.au or call 08 9380 9633.

The Nature Conservancy

The Nature Conservancy 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. For more information on the Nature Conservancy's activities in Australia go to www.nature.org/wherewework/asiapacific/australia/ or call (03) 8346-8600.

The Paddy Pallin Foundation

The Paddy Pallin Foundation 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. For more information go to the Paddy Pallin Foundation website www.paddypallinfoundation.org.au

12 USEFUL CONTACTS

Nature Conservation Trust

PO Box 883 Orange NSW 2800
Phone: (02) 6365 7543
Fax: (02) 6365 7768
Website: www.nct.org.au

OEH Conservation Partners Program

PO Box A290 Sydney South NSW 1232
Phone: (02) 9995 6768
Fax: (02) 9995 6791
Website: www.environment.nsw.gov.au/cpp/ConservationPartners.htm

Department of Sustainability, Environment, Water, Population and Communities

GPO Box 787 Canberra ACT 2601
Phone: (02) 6274 1111
Website: www.environment.gov.au

Community Environment Network

PO Box 149 Ourimbah NSW 2258
Phone: (02) 4349 4756
Fax: (02) 4349 4755
Website: www.cen.org.au/landforwildlife

Humane Society International

PO Box 439 Avalon NSW 2107
Phone: (02) 9973 1728
Fax: (02) 9973 1729
Website: www.hsi.org.au

Border Rivers-Gwydir CMA

PO Box 411 Inverell NSW 2360
Phone: (02) 6728 8020
Fax: (02) 6728 8098
Website: www.brg.cma.nsw.gov.au

Central West CMA

30 Warne Street Wellington NSW 2820
Phone: (02) 6840 7800
Website: cw.cma.nsw.gov.au

Hawkesbury-Nepean CMA

Locked Bag 2048 Goulburn NSW 2580
Phone: (02) 4828 6747
Fax: (02) 4828 6750
Website: www.hn.cma.nsw.gov.au

Hunter-Central Rivers CMA

Private Bag 2010 Paterson NSW 2421
Phone: (02) 4930 1030
Fax: (02) 4930 1013
Website: www.hcr.cma.nsw.gov.au

Lachlan CMA

PO Box 726 Forbes NSW 2871
Phone: (02) 6851 9500 or 1800 885 747
Fax: (02) 6851 6991
Website: www.lachlan.cma.nsw.gov.au

Lower Murray Darling CMA

PO Box 363 Buronga NSW 2739
Phone: (03) 5021 9460
Fax: (03) 5021 1308
Website: www.lmd.cma.nsw.gov.au

Murray CMA

PO Box 835 Deniliquin NSW 2710
Phone: (03) 5880 1400
Fax: (03) 5880 1444
Website: www.murray.cma.nsw.gov.au

Murrumbidgee CMA

PO Box 5224 Wagga Wagga NSW 2650
Phone: (02) 6932 3232
Fax: (02) 6932 3269
Website: www.murrumbidgee.cma.nsw.gov.au

Namoi CMA

PO Box 546 Gunnedah NSW 2380
Phone: (02) 6742 9220
Fax: (02) 6742 4022
Website: www.namoi.cma.nsw.gov.au

Northern Rivers CMA

PO Box 618 Grafton NSW 2460

Phone: (02) 6642 0622

Fax: (02) 6642 0640

Website: www.northern.cma.nsw.gov.au

Southern Rivers CMA

PO Box 3095 Wollongong East NSW 2500

Phone: (02) 4224 9700

Fax: (02) 4224 9669

Website: www.southern.cma.nsw.gov.au

Sydney Metropolitan CMA

PO BOX 3720 Parramatta NSW 2124

Phone: (02) 9895 7898

Fax: (02) 9895 7330

Website: www.sydney.cma.nsw.gov.au

Western CMA

PO Box 307 Cobar NSW 2835

Phone: (02) 6836 1575

Fax: (02) 6836 2988

Website: www.western.cma.nsw.gov.au

ANNEXURE ONE

The following is a list of Key Threatening Processes listed in the *Threatened Species Conservation Act 1995* (NSW). 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.

Key Threatening Processes¹

- 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
- 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*

¹ *Threatened Species Conservation Act 1995*, Schedule 3

- 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 *Chrysanthemoides monilifera*
- Invasion of native plant communities by exotic perennial grasses
- Invasion of the Yellow Crazy Ant, *Anoplolepis gracilipes* (Fr. Smith) into NSW
- 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



Public reserves such as national parks account for a small fraction of all land in Australia. 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. Some of the conservation options discussed in this booklet provide legal protection for the natural features of your land and can conserve your land beyond your lifetime.



Environmental Defender's Office (NSW)

Sydney Office

Level 5, 263 Clarence St, Sydney NSW 2000
Tel: (02) 9262 6989 Fax: (02) 9262 6998
Freecall: 1800 626 239

Northern Rivers Office

Level 1, 71 Molesworth Street
PO Box 868, Lismore NSW 2480
Tel: (02) 6621 1111 or 1300 369 791
Fax: (02) 6621 3355

www.edo.org.au/edonsw

