

## Farming & Private Land Management



# Conservation on Private Land

**Last updated: November 2017**

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Sydney: 02 9262 6989

Northern Rivers: 1800 626 239

Rest of NSW: 1800 626 239

## Overview

Conservation on private land is an important aspect of biodiversity protection. In NSW, around 9% of land is held in protected areas, such as national parks;<sup>2</sup> however many of the major threats to biodiversity such as agricultural practices, grazing and land clearing take place on private land. Relying on protected areas alone will therefore not stem the tide of biodiversity loss.

The law governing private conservation in NSW changed on 25 August 2017 with the introduction of the [Biodiversity Conservation Act 2016](#). Prior to the commencement the Act, there were several options for landholders who wanted to undertake private land conservation. Under the new laws, there are three types of voluntary agreements that landholders can enter into depending on their circumstances and the conservation value of their land. These are:

- Biodiversity stewardship agreements;
- Conservation agreements; and
- Wildlife refuge agreements.

<sup>1</sup> [http://www.edonsw.org.au/legal\\_advice](http://www.edonsw.org.au/legal_advice)

<sup>2</sup> *NSW State of the Environment Report 2015*, Table 14.1 Extent and types of terrestrial protected areas in NSW and changes since 2012.

The different options offer various levels of protection, obligation and incentives.

This fact sheet provides information on the three types of private land conservation agreements. It also sets out the law that continues to apply to private conservation mechanisms that were in place before the new laws came in.

## Snapshot of new private conservation options

### Biodiversity Stewardship Agreements – Tier 1

- permanent protection and management of biodiversity
- agreement runs with the land and binds future landowners
- landholders obtain payments from a fund<sup>3</sup>
- these sites will be able to generate biodiversity credits

### Biodiversity Conservation Agreements – Tier 2

- permanent or limited-time agreement
- agreement can run with the land and bind future landowners
- landholders may be eligible for stewardship payments

### Wildlife Refuge Agreements – Tier 3

- entry level option for landholders who want to protect the biodiversity on their property but do not wish to enter into a permanent agreement
- more flexible and may be converted to higher agreements later
- agreements do not necessarily run with the land

All private land conservation agreements are entered on a public register which is available [online](#).<sup>4</sup>

## Existing agreements

Existing agreements that were in place before the new private land conservation framework came into effect on 25 August 2017 will continue and will be governed by the legislation they were made under, even where that legislation has been repealed. This means that properties protected under a permanent conservation agreement will continue to be protected in perpetuity.

The existing agreements that will continue are:

- Conservation agreements under the *National Parks and Wildlife Act 1974*;
- Trust agreements under the now-repealed *Nature Conservation Trust Act 2001*;

<sup>3</sup> The Biodiversity Stewardship Payments Fund.

<sup>4</sup> *Biodiversity Conservation Act 2016* (NSW), s. 9.7(1)(c).

- BioBanking agreements under the now-repealed *Threatened Species Conservation Act 1995*;
- Property vegetation plans made under the now-repealed *Native Vegetation Act 2003*,<sup>5</sup>
- Wildlife refuges under the *National Parks and Wildlife Act 1974*; and
- Registered property agreements under the repealed *Native Vegetation Conservation Act 1997*.<sup>6</sup>

All BioBanking agreements will automatically become biodiversity stewardship agreements.<sup>7</sup>

Landholders with any other existing agreement may be able to transfer to one of the three new options, but there is no obligation to do so.

Any applications for voluntary conservation mechanisms made before 25 August 2017 will continue to be assessed under the laws the application was made under. Information about the different types of voluntary conservation mechanisms that were entered into before the introduction of the *Biodiversity Conservation Act 2016* is set out at the bottom of this fact sheet.

More information about various transitional scenarios is available [here](#).<sup>8</sup> Specific queries regarding an existing agreement or transitioning to a new type of agreement should be directed to the Biodiversity Conservation Trust:

Website: <https://www.bct.nsw.gov.au/>

Email: [bct@environment.nsw.gov.au](mailto:bct@environment.nsw.gov.au)

Environment Line: 1300 361 967 or 02 9995 5000.

## Biodiversity Conservation Trust

The [NSW Biodiversity Conservation Trust](#)<sup>9</sup> (the Trust) was established by the *Biodiversity Conservation Act 2016*.<sup>10</sup> The Trust is a statutory not-for-profit body under the direction of the NSW Minister for the Environment and designed to oversee the private land conservation program across NSW.

The Trust is a new organisation still in its establishment phase and will initially continue the private land conservation functions of the Office of Environment and Heritage (OEH) and the Nature Conservation Trust (NCT). One of the major roles of the Trust is to enter into private land conservation agreements with landholders in order to secure the long term protection of private lands of high conservation value.<sup>11</sup>

<sup>5</sup> *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (NSW), cl. 60.

<sup>6</sup> *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (NSW), cl. 63.

<sup>7</sup> *Biodiversity Conservation (Savings and Transitional) Regulation 2017* (NSW), cl. 13.

<sup>8</sup> See: <http://www.environment.nsw.gov.au/biodiversity/transitional.htm>

<sup>9</sup> See: <https://www.bct.nsw.gov.au>

<sup>10</sup> *Biodiversity Conservation Act 2016* (NSW), s. 10.1.

<sup>11</sup> *Biodiversity Conservation Act 2016* (NSW), s. 10.4.

The Trust also plays a key role in the delivery of the [NSW Biodiversity Offsets Scheme](#).<sup>12</sup> It does this by sourcing biodiversity offsets to compensate for the loss of biodiversity from developments when proponents of development choose to meet their offset obligations by paying into the Biodiversity Conservation Fund.

The Trust must publish a business plan every four years, and an annual report on its activities.<sup>13</sup> These documents must set out information such as goals, plans for achieving those goals, plans for investing money and managing returns, and data management.<sup>14</sup>

### **Biodiversity Conservation Investment Strategy**

The Trust's investment in biodiversity conservation and support to landholders will be guided by the Biodiversity Conservation Investment Strategy (the Strategy).<sup>15</sup>

The key purpose of the Strategy is to identify priority investment areas for biodiversity conservation and establish guiding principles for investment in those areas.<sup>16</sup>

The Strategy is to be made by the Environment Minister and must be released for public consultation for at least 4 weeks.<sup>17</sup> Once the Strategy is finalised, it must be published online.<sup>18</sup> The Minister must review the Strategy every 5 years and may amend the Strategy at any time.<sup>19</sup>

At the time of publication of this fact sheet, the Strategy was still being drafted.

### **Biodiversity Conservation Fund**

The Trust will manage a Biodiversity Conservation Fund which proponents of development can choose to pay money into instead of finding a biodiversity offset to offset the impacts of their development on the environment.<sup>20</sup> The amount a developer would pay into the Fund is determined by the [Biodiversity Offsets Payment Calculator](#).<sup>21</sup> The expenditure from the Fund will be guided by the Biodiversity Conservation Investment Strategy.

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<sup>12</sup> See: <http://www.environment.nsw.gov.au/biodiversity/offsetsscheme.htm>

<sup>13</sup> *Biodiversity Conservation Act 2016* (NSW), s. 10.7 & 10.12.

<sup>14</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 10.1 & 10.2.

<sup>15</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.1.

<sup>16</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.3.

<sup>17</sup> *Biodiversity Conservation Act 2016* (NSW), s. 9.2.

<sup>18</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.1.

<sup>19</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.4.

<sup>20</sup> *Biodiversity Conservation Act 2016* (NSW), s. 6.2(g).

<sup>21</sup> See: <http://www.environment.nsw.gov.au/biodiversity/paymentcalculator.htm>

## Biodiversity credits and the Biodiversity Offsets Scheme

The [Biodiversity Offsets Scheme](#)<sup>22</sup> is a framework to avoid, minimise and offset impacts on biodiversity caused by development and clearing, and to ensure that land that is used to offset impacts is secured in-perpetuity through stewardship agreements. Through the Scheme, landholders have a financial incentive to protect biodiversity on their properties. There are two key aspects to the Scheme:

1. Developers and landholders who undertake development or clearing generate an offset obligation (in biodiversity credits) which must be retired to offset their activity; and
2. Landholders who establish a biodiversity stewardship site on their land generate biodiversity credits to sell to developers or landholders who require those credits to offset activities at other sites.

This factsheet examines the second aspect of the Scheme. For more information on the first aspect of the Scheme, see our Fact Sheets on [Clearing Vegetation Factsheet](#) and [Development Applications & Consents](#).

When establishing a stewardship site, a landholder will need to engage an accredited assessor to assess the site using the [Biodiversity Assessment Method \(BAM\)](#)<sup>23</sup> to [calculate](#)<sup>24</sup> the number and type of credits that it will generate. The credits represent the expected improvement in biodiversity that will result from the protection and management of the site. The number and class of biodiversity credits that may be created from a biodiversity stewardship site will be specified in the stewardship agreement.<sup>25</sup>

Once a stewardship agreement and corresponding biodiversity credits are registered, the landholder can advertise their stewardship site on OEH's [expression of interest register](#)<sup>26</sup> or start selling the credits to either the Trust or a purchaser such as a developer.

Developers needing to meet a biodiversity offset obligation will have the option to buy credits directly from landholders or pay into the Biodiversity Conservation Fund.<sup>27</sup> The Trust is then responsible for securing the offset in accordance with the [offset rules](#).<sup>28</sup>

All biodiversity credits must be entered onto a public register which is available [online](#).<sup>29</sup> The register includes details such as the number and class of credits,

<sup>22</sup> See <http://www.environment.nsw.gov.au/biodiversity/offsetsscheme.htm>

<sup>23</sup> *Biodiversity Conservation Act 2016* (NSW), Part 6, Div 2.

<sup>24</sup> See: <https://www.lmbc.nsw.gov.au/bamcalc>

<sup>25</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.6.

<sup>26</sup> See: <http://www.environment.nsw.gov.au/biodiversity/systemsregistersfees.htm>

<sup>27</sup> *Biodiversity Conservation Act 2016* (NSW), s. 6.2(g).

<sup>28</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.2. See:

<http://www.environment.nsw.gov.au/biodiversity/offsetrules.htm>

<sup>29</sup> See: <http://www.environment.nsw.gov.au/publicregister/>

the name of the current and former holders of the credits and details relating to all transfers, suspensions, cancellations and retirement of the credits.<sup>30</sup> This is important to ensure that retired credits cannot go back into the market, and that the same credits cannot be sold twice.

The Scheme will depend on generating fair prices for biodiversity credits to ensure enough money is in the Biodiversity Conservation Fund to cover long term management.

## Biodiversity Stewardship Agreements

A landholder can enter into a [Biodiversity Stewardship Agreement](#)<sup>31</sup> (stewardship agreement) with the Environment Minister.<sup>32</sup> Stewardship agreements are used to permanently protect and manage biodiversity stewardship sites in priority investment areas identified under the Biodiversity Conservation Investment Strategy.

A stewardship site can generate biodiversity credits to offset the impacts of development and clearing. A landholder can sell the biodiversity credits on the market to developers or to the Trust and the landholder will receive payments from the Biodiversity Stewardship Payments Fund in return for carrying out specified management actions on the land.<sup>33</sup>

The stewardship agreement will include a management plan that sets out required land management actions and the cost of those actions over a 20 year period as well as the ongoing maintenance costs, the number and class of biodiversity credits generated, any restrictions on development on the site, reporting requirements, and entitlement to payments from the Biodiversity Stewardship Payments Fund.<sup>34</sup>

Stewardship agreements are entered into voluntarily. However, once signed they are legally binding.<sup>35</sup>

### Agreement runs with the land forever

A stewardship agreement is registered on the title of the land and therefore binds future owners of the land.<sup>36</sup> Stewardship agreements operate forever, unless the agreement is terminated with the consent of the Environment Minister and landowner in limited circumstances. Termination of a stewardship agreement is permitted if:<sup>37</sup>

<sup>30</sup> *Biodiversity Conservation Act 2016* (NSW), s. 9.7(1)(d) & Part 6, Div 4.

<sup>31</sup> See: <https://www.bct.nsw.gov.au/private-land-conservation-2/types-of-agreements/>

<sup>32</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.5.

<sup>33</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.6.

<sup>34</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.6.

<sup>35</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.6.

<sup>36</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.12 & 5.13.

<sup>37</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.10(6).



- the landholder requests the termination within 3 months after it is entered into; or
- if in 5 years since the agreement was entered into no biodiversity credits have been created or none of the credits have been retired.

A stewardship agreement can be varied in certain circumstances, for example by a later agreement between the Environment Minister and the landowner, but only if the variation does not have a negative impact on the biodiversity values protected by the agreement.<sup>38</sup>

### Financial incentives for landholders

The management actions and the cost of those actions and ongoing maintenance costs set out in the management plan are known as the total fund deposit.<sup>39</sup> Once the stewardship agreement is set up and the agreement and credits are registered, the landholder can then transfer the total fund deposit to the Trust's Stewardship Payments Fund and start selling credits (to either the Trust or a private purchaser).<sup>40</sup>

The landholder may be entitled to stewardship payments for carrying out the management actions specified in the management plan.<sup>41</sup> Additional payments may be granted to the landholder if the site is operating at a surplus of up to 30% of the total present value of scheduled management payments.<sup>42</sup>

### Applying for a stewardship agreement

Applications to enter into a stewardship agreement can be made to the Trust via the [Biodiversity Offsets and Agreement Management System](#)<sup>43</sup> and carry a fee.<sup>44</sup> The fee is currently \$2,500.<sup>45</sup>

Landholders should seek advice early from an accredited assessor to identify the likely types of credits that would be generated on their site. Before proceeding with making an application for a stewardship agreement, landholders may wish to advertise their stewardship site on OEH's [expression of interest register](#)<sup>46</sup> to identify potential purchasers of credits.

<sup>38</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.11(3).

<sup>39</sup> *Biodiversity Conservation Act 2016* (NSW), s. 6.21; *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.13.

<sup>40</sup> *Biodiversity Conservation Act 2016* (NSW), s. 6.21.

<sup>41</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.6(2).

<sup>42</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.18.

<sup>43</sup> See: <http://www.environment.nsw.gov.au/biodiversity/systemsregistersfees.htm>

<sup>44</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.8; *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.2.

<sup>45</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 1.5.

<sup>46</sup> See: <http://www.environment.nsw.gov.au/biodiversity/systemsregistersfees.htm>

Public authorities, such as local councils, and Local Aboriginal Land Councils are also able to enter into stewardship agreements.<sup>47</sup>

### ***Land must be eligible***

The landholder needs to show that their land meets the eligibility criteria to be designated as a biodiversity stewardship site. The land will not be eligible to be a stewardship site if:<sup>48</sup>

- the land is a flora reserve or a special management zone under the *Forestry Act 2012*;
- the land is reserved as a National Park, historic site, State Conservation Area, nature reserve, Karst conservation area, wild river, Aboriginal area, Wildlife refuge or conservation area under the *National Parks and Wildlife Act 1974*;
- the land is registered as being of cultural significance to Aboriginal people under the *National Parks and Wildlife Act 1974*;
- the Environment Minister is of the opinion that:
  - any current or previous use or proposed use of the land is inconsistent with biodiversity conservation;
  - any use or proposed use of the land (or land in the vicinity of that land) will prevent management actions from being carried out; or
  - the owner of the land is already under a legal obligation to carry out biodiversity conservation measures on the land, such as obligations under an existing property vegetation plan.

Land can be designated as a single biodiversity stewardship site even if the land is only part of a parcel of land or consists of separate parcels of land, as long as the land is owned by the same person.<sup>49</sup>

### ***Landholder must be a fit and proper person***

The landholder also needs to establish that they are a fit and proper person to enter into, and fulfil the obligations of, a stewardship agreement. The Environment Minister can decline to enter into a stewardship agreement if the Minister considers that a landowner is not a fit and proper person.<sup>50</sup> To determine this, the Minister may consider:<sup>51</sup>

- the landholder's legal record and whether the landholder has contravened the law;
- whether the landholder will be competent, in the Minister's opinion, in fulfilling the land management actions under the agreement;
- whether the landholder is of good repute, honesty and integrity;

<sup>47</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.9.

<sup>48</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.1.

<sup>49</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.7(1).

<sup>50</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.8(5).

<sup>51</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.3.



- whether the landholder has been bankrupt in the previous 3 years; and
- the landholder's demonstrated financial capacity to comply with their obligations under the proposed agreement.

Many of these considerations also apply to a corporation or partnership that the landholder has been associated with.<sup>52</sup>

### ***Biodiversity stewardship site assessment report***

The application must be accompanied by a biodiversity stewardship site assessment report prepared by an [accredited assessor](#)<sup>53</sup> that sets out:

- the biodiversity values of the proposed site in accordance with the [Biodiversity Assessment Method](#)<sup>54</sup> (BAM);
- the management actions proposed to be carried out on the proposed site,<sup>55</sup> and
- the number and class of biodiversity credits that may be created in respect of those management actions.<sup>56</sup>

A public register of accredited assessors is available [online](#).

The Minister may require a landholder of a proposed site to provide land management plans relating to the site.<sup>57</sup>

## **Development and mining affecting biodiversity stewardship agreements**

### ***Mining and petroleum***

Land that is under a mining or production lease or mineral claim can only have a stewardship agreement granted over it if the lease or claim holder consents to the stewardship agreement or the Environment Minister has consulted them.<sup>58</sup>

A stewardship agreement does not prevent the granting of a mining or petroleum authority, or any activities authorised under that authority, over a biodiversity stewardship site.<sup>59</sup> This means that mining and CSG activities can occur on a site even though a stewardship agreement already exists over that site. Where this happens, the Minister can vary or terminate the stewardship agreement that applies to the site without the consent of the landowner if the Minister is of the opinion that the mining activity will adversely affect the management actions or

<sup>52</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.3(3).

<sup>53</sup> See: <http://www.environment.nsw.gov.au/biodiversity/assessors.htm>

<sup>54</sup> See: <http://www.environment.nsw.gov.au/biodiversity/assessmentmethod.htm>

<sup>55</sup> Management actions under a biodiversity stewardship agreement for which biodiversity credits may be created are taken to be exempt development for the purposes of the Environmental Planning and Assessment Act 1979 (NSW): *Biodiversity Conservation Act 2016* (NSW), s. 5.14.

<sup>56</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.8(3) & 6.11; *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.10.

<sup>57</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.8(4).

<sup>58</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.9(1)(e) & (f).

<sup>59</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.19.

biodiversity values protected by the stewardship agreement.<sup>60</sup> The landowner is not entitled to any compensation if this happens.<sup>61</sup>

The Minister can order the holder of the mining or petroleum authority to retire biodiversity credits.<sup>62</sup> It is an offence not to comply with such an order.<sup>63</sup>

The Minister can compel the holder of the mining or petroleum authority to pay back the costs incurred by the Minister or landholder in establishing the biodiversity stewardship agreement.<sup>64</sup> Any money required to be paid is recoverable as a debt in court.<sup>65</sup>

### ***Development***

Development by a public authority is permitted on a biodiversity stewardship site (even where the site is not owned by that public authority) if the Environment Minister is satisfied that:<sup>66</sup>

- the development will not adversely affect any management actions that may be carried out under the biodiversity stewardship agreement or adversely affect the biodiversity values protected by the agreement; or
- any adverse effect of the development on biodiversity values will be offset by the retirement of biodiversity credits by the public authority; or
- the development is required for an essential public purpose or for a purpose of special significance to the State.

The Minister can vary or terminate the stewardship agreement without the consent of the landholder if doing so is necessary to carry out the development. In these circumstances, the landholder is not entitled to any compensation for the termination of the stewardship agreement.<sup>67</sup>

### **Enforcement of stewardship agreements**

The Trust is responsible for ensuring landholders comply with their obligations, and landholders may be subject to auditing and other compliance activities by the Trust or OEH.

Biodiversity stewardship agreements are legally binding and can be enforced in the Land and Environment Court. The Environment Minister, as well as any person, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a biodiversity stewardship agreement.<sup>68</sup>

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<sup>60</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.18(1).

<sup>61</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.10.

<sup>62</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.18(2).

<sup>63</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.18(6).

<sup>64</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.18(11).

<sup>65</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.8.

<sup>66</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.16.

<sup>67</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.16(8).

<sup>68</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(1).

If the Court is satisfied that a breach has been committed or that a breach will be committed unless restrained by a Court order, the Court can make such orders as it thinks fit to remedy or restrain the breach.<sup>69</sup> This includes awarding damages against a landholder who breaches an agreement by an intentional, reckless or negligent act or omission or directing the landholder to retire biodiversity credits.<sup>70</sup>

### ***Biodiversity offsets enforcement orders***

Where a landholder breaches a stewardship agreement, the Environment Minister can order them to carry out work or actions the Minister considers necessary to rectify the breach.<sup>71</sup> If an order is given and not complied with, the Minister can authorise others to enter the land and carry out the works and then recover the costs of the works from the landholder.<sup>72</sup>

The Minister can also direct a landholder to retire biodiversity credits if the Minister is satisfied that biodiversity credits were created in a manner that does not comply with the stewardship agreement.<sup>73</sup>

Before making either type of enforcement order, the Minister is required to notify the landholder that they intend to make the order and give the landholder an opportunity to respond.

Failure to comply with either of these orders is an offence. The maximum penalty is a fine of \$132,000 for an individual and \$660,000 for a corporation, plus an additional daily penalty.<sup>74</sup> Failure to comply with these orders is also grounds for cancelling a stewardship agreement.

A person who is given an enforcement order can appeal to the Land and Environment Court within 30 days of receiving the order.<sup>75</sup>

## **Conservation agreements**

A landholder can enter into a conservation agreement with the Trust for the purpose of conserving or studying the biodiversity of the land.<sup>76</sup> Conservation agreements are used to protect and manage high conservation value land or areas of scientific interest for study.

A conservation agreement may include conditions that:<sup>77</sup>

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<sup>69</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(3).

<sup>70</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(4).

<sup>71</sup> *Biodiversity Conservation Act 2016* (NSW), s. 11.26(1).

<sup>72</sup> *Biodiversity Conservation Act 2016* (NSW), s. 11.26(2).

<sup>73</sup> *Biodiversity Conservation Act 2016* (NSW), s. 11.25.

<sup>74</sup> *Biodiversity Conservation Act 2016* (NSW), s. 11.27; 13.1.

<sup>75</sup> *Biodiversity Conservation Act 2016* (NSW), s. 11.28.

<sup>76</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.20.

<sup>77</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.22.

- restrict development or certain activities on the land;
- require the landholder to carry out specified activities;
- require the Trust to provide financial assistance or technical advice; or
- require the landholder to repay money paid to them under the agreement if there is a breach of the agreement.

Conservation agreements are entered into voluntarily. However, once signed they are binding.

### **Duration of conservation agreements**

Conservation agreements operate forever, unless the agreement states otherwise or it is terminated with the agreement of all parties.<sup>78</sup> The Trust can also terminate an agreement if it is no longer effective.<sup>79</sup>

If the agreement intended to be permanent, it will be registered on the title of the land and therefore all future owners of the land will be bound by the agreement.<sup>80</sup>

### **Financial and technical support**

A landholder may be eligible for payments for carrying out actions to help protect and manage the land. Landholders with a conservation agreement will be able to access the Trust's [Landholder Support Program](#)<sup>81</sup> that offers support, advice and resources to those landholders.

Land which is covered by a conservation agreement is exempt from local council rates,<sup>82</sup> or if only part of a property is covered by the agreement, then the landowner is entitled to a rate reduction.<sup>83</sup> Other tax concessions may also apply.

### **Applying for a conservation agreement**

Applications to enter into a conservation agreement can be made to the [Trust](#).<sup>84</sup>

### **Development and mining affecting conservation agreements**

#### ***Mining and petroleum***

A conservation agreement does not prevent the granting of a mining or petroleum authority, or any activities authorised under that authority, over the land subject to the conservation agreement.<sup>85</sup> This means that a mining or

<sup>78</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23 & 5.24.

<sup>79</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23(4).

<sup>80</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23 & 5.24.

<sup>81</sup> See: <https://www.bct.nsw.gov.au/landholder-support-landholder-stories/landholder-support-program/>

<sup>82</sup> *Local Government Act 1993* (NSW), s. 555(1)(b1).

<sup>83</sup> *Local Government Act 1993* (NSW), s. 555(3).

<sup>84</sup> See: <https://www.bct.nsw.gov.au/private-land-conservation-2/how-do-i-apply-for-an-agreement/>

<sup>85</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.26.

petroleum authority<sup>86</sup> can be granted on a site even though a conservation agreement already exists over that site.

If a mining or petroleum authority is granted over land subject to a conservation agreement and the Environment Minister is of the view that the mining or petroleum activity will adversely affect the management actions or biodiversity protected by the agreement, the Minister can direct the Trust to vary or terminate the conservation agreement.<sup>87</sup> The landowner is not entitled to any compensation if this happens.<sup>88</sup>

Where this happens, the Trust can require the landholder to reimburse any unspent money paid to the landholder by the Trust under the conservation agreement.<sup>89</sup> If the conservation agreement was registered on the title of the land, the Minister can compel the holder of the mining or petroleum authority to pay back the costs incurred by the Minister, Trust or landholder in establishing the biodiversity stewardship agreement.<sup>90</sup>

### ***Development***

Development by a public authority is permitted on land subject to a conservation agreement (even where the site is not owned by that public authority) if the Environment Minister is satisfied that:<sup>91</sup>

- the development will not adversely affect any management actions that may be carried out under the conservation agreement or adversely affect the biodiversity values protected by the agreement; or
- there is no practical alternative to the carrying out of the development; or
- the development is required for an essential public purpose or for a purpose of special significance to the State.

If directed by the Environment Minister, the Trust can vary or terminate the conservation agreement without the consent of the landholder if doing so is necessary to carry out the development.<sup>92</sup> Where this happens, the landowner is not entitled to any compensation.<sup>93</sup>

If the landholder does not agree to the variation, the landholder can terminate the agreement.<sup>94</sup>

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<sup>86</sup> This includes an authority to extract coal seam gas.

<sup>87</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23(7).

<sup>88</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23(9).

<sup>89</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.23(10); *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.9.

<sup>90</sup> *Biodiversity Conservation Regulation 2017* (NSW), cl. 5.9(3).

<sup>91</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.25.

<sup>92</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.25(3).

<sup>93</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.25(5).

<sup>94</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.25(4).

## Enforcement of conservation agreements

The Trust is responsible for ensuring landholders comply with their obligations, and landholders may be subject to auditing and other compliance activities by the Trust or OEH.

Conservation agreements are legally binding and can be enforced in the Land and Environment Court. The Environment Minister, or any person with the consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a conservation agreement.<sup>95</sup>

If the Court is satisfied that a breach has been committed or that a breach will be committed unless restrained by a Court order, the Court can make such orders as it thinks fit to remedy or restrain the breach.<sup>96</sup> This includes awarding damages against a landholder who breaches an agreement by an intentional, reckless or negligent act or omission.<sup>97</sup>

## Wildlife refuge agreements

Landholders may wish to enter into a wildlife refuge agreement (refuge agreement) with the Trust if they seek to conserve or study the biodiversity on the whole or part of their property but do not wish to enter into a permanent agreement.<sup>98</sup>

Refuge agreements are entered into voluntarily. However, once signed they are legally binding. A refuge agreement may include conditions that:<sup>99</sup>

- restrict development or certain activities on the land;
- require the landholder to carry out specified activities;
- require the Trust to provide financial assistance or technical advice; or
- require the landholder to repay money paid to them under the agreement if there is a breach of the agreement.

## Duration of refuge agreements

Refuge agreements operate until they are terminated by a subsequent agreement or by the Trust.<sup>100</sup> Unless and until the agreement is terminated, it will be registered on the title of the land and therefore all future owners of the land will be bound by the agreement.<sup>101</sup>

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<sup>95</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(2).

<sup>96</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(3).

<sup>97</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(4).

<sup>98</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.27.

<sup>99</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.29.

<sup>100</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.30(3).

<sup>101</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.31.

## Financial and technical support

The land subject to a refuge agreement is not subject to an exemption from the payment of land tax or local council rates and the landholder is not entitled to any financial support from the Trust.<sup>102</sup>

## Applying for a refuge agreement

Applications to enter into a refuge agreement can be made to the [Trust](#).<sup>103</sup>

If a landholder wishes to, they may be able to upgrade from a refuge agreement to a conservation agreement or a stewardship agreement depending on the conservation values of the land.

## Development and mining affecting refuge agreements

### *Mining and petroleum*

A refuge agreement does not prevent the granting of a mining or petroleum authority, or any activities authorised under that authority, over the land subject to the refuge agreement.<sup>104</sup> This means that a mining or petroleum authority<sup>105</sup> can be granted on a site even though a refuge agreement already exists over that site.

If a mining or petroleum authority is granted over land subject to a refuge agreement and the Environment Minister is of the view that the mining or petroleum activity will adversely affect the management actions or biodiversity protected by the agreement, the Minister can direct the Trust to vary or terminate the refuge agreement.<sup>106</sup> The landowner is not entitled to any compensation if this happens.<sup>107</sup>

### *Development*

Development by a public authority is permitted on land subject to a refuge agreement (even where the site is not owned by that public authority) if the Environment Minister is satisfied that:<sup>108</sup>

- the development will not adversely affect any management actions that may be carried out under the refuge agreement or adversely affect the biodiversity values protected by the agreement; or
- there is no practical alternative to the carrying out of the development; or

<sup>102</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.27.

<sup>103</sup> See: <https://www.bct.nsw.gov.au/private-land-conservation-2/how-do-i-apply-for-an-agreement/>

<sup>104</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.33.

<sup>105</sup> This includes an authority to extract coal seam gas.

<sup>106</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.30(4).

<sup>107</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.30(5).

<sup>108</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.32(2).



- the development is required for an essential public purpose or for a purpose of special significance to the State.

If directed by the Minister, the Trust can vary or terminate the refuge agreement without the consent of the landholder if doing so is necessary to carry out the development.<sup>109</sup> Where this happens, the landowner is not entitled to any compensation.<sup>110</sup>

If the landholder does not agree to the variation, the landholder can terminate the agreement.<sup>111</sup>

### **Enforcement of refuge agreements**

The Trust is responsible for ensuring landholders comply with their obligations under the refuge agreement, and landholders may be subject to auditing and other compliance activities by the Trust or OEH.

Refuge agreements are legally binding and can be enforced in the Land and Environment Court. The Environment Minister, or any person with the consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of a refuge agreement.<sup>112</sup>

If the Court is satisfied that a breach has been committed or that a breach will be committed unless restrained by a Court order, the Court can make such orders as it thinks fit to remedy or restrain the breach.<sup>113</sup> This includes awarding damages against a landholder who breaches an agreement by an intentional, reckless or negligent act or omission.<sup>114</sup>

### **Application of land clearing laws to private conservation land**

Land secured under a stewardship, conservation or refuge agreement must be managed for conservation. It is an offence to clear native vegetation on land subject to a private land conservation agreement, including under one of the land management (native vegetation) codes.<sup>115</sup>

Some limited allowable activities are permitted, such as clearing for environmental protection works and for permanent boundary fences.<sup>116</sup> Other restrictions on development and activities on the land may also be included in the agreement itself.

<sup>109</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.32(3).

<sup>110</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.32(5).

<sup>111</sup> *Biodiversity Conservation Act 2016* (NSW), s. 5.32(4).

<sup>112</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(2).

<sup>113</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(3).

<sup>114</sup> *Biodiversity Conservation Act 2016* (NSW), s. 13.15(4).

<sup>115</sup> *Local Land Services Act 2013* (NSW), ss. 60D, 60I(2)(c) & 60N.

<sup>116</sup> *Local Land Services Act 2013* (NSW), Sch 5A.

## Ramsar wetlands

Listing a wetland as a [Ramsar wetland](#) provides legal protection and international recognition of the importance of that wetland.<sup>117</sup> Ramsar wetlands can be declared over public or private land.

Landholders interested in protecting the wetlands on their property as a Ramsar wetland should [contact the Australian Department of Environment and Energy](#).<sup>118</sup>

For more information on Ramsar wetlands, see our [EPBC Act](#) Fact Sheet and our [Protected Areas](#) Fact Sheet.

## Organisations involved in private conservation

A range of non-profit conservation organisations support landholders to conserve their land while others buy private land of high conservation value and protect the land by managing it to improve its capacity to support biodiversity.

### Australian Wildlife Conservancy

The [Australian Wildlife Conservancy](#) is an independent, non-profit organisation dedicated to the conservation of Australia's threatened wildlife and ecosystems.

It acquires land to establish sanctuaries for the conservation of threatened species, and implements management programs such as to eradicate feral animals and weeds.

### Bush Heritage Australia

[Bush Heritage Australia](#) (formerly the Australian Bush Heritage Fund) is a national non-profit organisation which buys or acquires land of outstanding conservation value, and then manages and protects that land forever.

It aims to purchase properties which will secure key ecological assets within particular regions, for example, by linking together fragmented habitat and creating wildlife corridors.

### Rainforest Rescue

[Rainforest Rescue](#) is another such organisation that purchases rainforest at risk of development and protects it by converting areas to nature refuges.

### Wildlife Land Trust

Humane Society International operates the [Wildlife Land Trust](#)<sup>119</sup> program in Australia and globally. It aims to support landholders undertaking private land conservation.

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<sup>117</sup> Ramsar wetlands are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

<sup>118</sup> Call 1800 803 772.

## Land for Wildlife

The Community Environment Network, together with the Office of Environment and Heritage, coordinates the [Land for Wildlife](#) scheme.<sup>120</sup> Land for Wildlife is a voluntary property registration scheme for landholders who wish to manage areas of wildlife habitat on their property.

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<sup>119</sup> See: <https://www.wildlifelandtrust.org.au/index.php/about>

<sup>120</sup> See: <http://www.environment.nsw.gov.au/cpp/LandForWildlife.htm>

## Laws applying to existing voluntary conservation agreements

The information that follows only applies to voluntary conservation agreements entered into, or applications submitted, before 25 August 2017.

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### Conservation agreements under the *National Parks and Wildlife Act 1974*

[Conservation agreements](#)<sup>121</sup> are used to permanently protect land which has special features, such as high quality vegetation, habitat, scenery, Aboriginal objects or places, threatened species habitat or threatened vegetation. They may also be entered into for the purpose of protecting areas of scientific interest for study.

Conservation agreements are entered into voluntarily. However, once signed they are binding. Although the land remains in the ownership of the landholder under the agreement, the landowner and future landowners are all bound by the agreement. A management plan is attached to the conservation agreement and it sets out the things the landholder must do, or not do, to conserve the land. Typical obligations include controlling invasive species and leaving fallen timber. Each management plan is different and is negotiated between the landholder and the Environment Minister through the OEH.

Conservation agreements are entered on a [public register](#) which is available for public inspection.<sup>122</sup>

#### **Applications**

Applications for conservation agreements under the *National Parks and Wildlife Act 1974* that were submitted before 25 August 2017 can be approved under that legislation. The Biodiversity Conservation Trust will take over the management of these agreements and applications.

#### **Agreement runs with the land**

A conservation agreement is registered on the title of the land, runs with the land, and therefore binds future owners of the land.<sup>123</sup> Agreements operate forever, unless the agreement says otherwise or it is terminated with the agreement of all parties.<sup>124</sup> The Environment Minister can also terminate an agreement if it is no longer effective.<sup>125</sup>

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<sup>121</sup> *National Parks and Wildlife Act 1974* (NSW), Division 12, s. 69B.

<sup>122</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69H.

<sup>123</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69E and s. 69F.

<sup>124</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69D(3).

<sup>125</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69D(4).

### ***Enforcement of agreements***

Conservation agreements are legally binding and can be enforced in the Land and Environment Court.<sup>126</sup> In certain circumstances, damages may be awarded against an owner of a conservation area for breach of a conservation agreement.<sup>127</sup>

It is an offence to harm native animals or pick native plants if the land is covered by a conservation agreement, (although there are some exceptions to these offences).<sup>128</sup>

Statutory authorities such as the Roads and Maritime Services cannot develop land covered by a conservation agreement without the Environment Minister's agreement.<sup>129</sup>

### ***Financial and technical assistance***

In return for protecting their land, a landowner may receive financial and technical assistance from the government. This might include financial assistance with fencing materials, plant and animal surveys, and stabilisation works.<sup>130</sup>

Land which is covered by a conservation agreement is exempt from local council rates,<sup>131</sup> or if only part of a property is covered by the agreement, then the landowner is entitled to a rate reduction.<sup>132</sup> Other tax concessions also apply.

### **Nature Conservation Trust agreements under the *Nature Conservation Trust Act 2001***

A landowner could choose to manage and protect their land (or part of their land) through an agreement with the [Nature Conservation Trust](#).<sup>133</sup> By entering into a trust agreement, a person can permanently protect the conservation values of their land beyond their lifetime.<sup>134</sup>

A trust agreement is accompanied by a plan of management that sets out the obligations of the landholder with regard to the conservation area.

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<sup>126</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G, and *Land and Environment Court Act 1979* (NSW), s. 20(1)(ce).

<sup>127</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G(3).

<sup>128</sup> *National Parks and Wildlife Act 1974* (NSW), s. 70 and 71.

<sup>129</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69I.

<sup>130</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 69C(2) and (3).

<sup>131</sup> *Local Government Act 1993* (NSW), s. 555(1)(b1).

<sup>132</sup> *Local Government Act 1993* (NSW), s. 555(3).

<sup>133</sup> *Nature Conservation Trust Act 2001* (NSW), s. 30.

<sup>134</sup> *Nature Conservation Trust Act 2001* (NSW), s. 34.

The trust agreement is negotiated between the landholder and the Nature Conservation Trust. Once it is finalised, it is registered on the title of the property and runs with the land, thereby binding future landholders.<sup>135</sup> The Trust has the obligation to uphold the agreement, particularly in the case where a subsequent owner may not be complying with the agreement. The Trust supports, monitors and defends all of its agreements through a long term Stewardship Program.

Trust agreements generally last forever, although their term can be fixed under the agreement.<sup>136</sup> Trust agreements are binding on the parties,<sup>137</sup> and can be enforced by either party in the Land and Environment Court.<sup>138</sup> All trust agreements are available on a [public register](#).<sup>139</sup>

In return for entering into an agreement, a landowner can receive financial assistance and technical advice from the Trust on things such as flora and fauna management, and weed and vermin control.<sup>140</sup> The Trust can also direct landowners to opportunities to apply for grants and subsidies.

### **Applications**

Applications for Nature Conservation Trust agreements that were submitted before 25 August 2017 can be approved under the *Nature Conservation Trust Act 2001*.

The Biodiversity Conservation Trust will take over the management of these agreements and applications.

### **Property vegetation plans under the now-repealed *Native Vegetation Act 2003***

Property vegetation plans (PVPs) are usually used as a means to authorise and offset the clearing of native vegetation but they can also be used as a voluntary conservation measure.<sup>141</sup>

PVPs are prepared by a landholder, and submitted to Local Land Services (LLS) for approval.<sup>142</sup> A landholder might choose to enter into a PVP in order to attract funding from LLS or other government funding program for managing the native vegetation on their property.<sup>143</sup> PVPs set out how long they will operate and bind future owners of the land during that time.<sup>144</sup>

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<sup>135</sup> *Nature Conservation Trust Act 2001* (NSW), ss. 36 and 37.

<sup>136</sup> *Nature Conservation Trust 2001* (NSW), s. 34.

<sup>137</sup> *Nature Conservation Trust 2001* (NSW), s. 32.

<sup>138</sup> *Nature Conservation Trust 2001* (NSW), s. 38.

<sup>139</sup> *Nature Conservation Trust 2001* (NSW), s. 39.

<sup>140</sup> *Nature Conservation Trust 2001* (NSW), s. 33.

<sup>141</sup> *Native Vegetation Act 2003* (NSW), Part 4, ss. 26 – 32. See also the *Native Vegetation Regulation 2005* (NSW), Part 3, cl. 7 – 14 which set out many provisions regarding the form, content and public information provided regarding property vegetation plans.

<sup>142</sup> *Native Vegetation Act 2003* (NSW), s. 26.

<sup>143</sup> *Native Vegetation Act 2003* (NSW), s. 28(d).

<sup>144</sup> *Native Vegetation Act 2003* (NSW), ss. 30, 31.

PVPs made under the now-repealed *Native Vegetation Act 2003* continue to remain in force. Provisions under the old Act relating to variation, termination, change of land ownership amongst other things continue to apply to PVPs.

### **Wildlife refuges under the *National Parks and Wildlife Act 1974***

Private landowners, public land managers and lessees of Crown land can nominate the whole or part of their property to be declared a [wildlife refuge](#).<sup>145</sup> If the nomination is accepted, the NSW Governor then declares the land to be a wildlife refuge by making a proclamation in the NSW Government Gazette.<sup>146</sup>

Wildlife refuges are voluntary and are binding while they are in place. Once the declaration is gazetted, it is noted on the property title. However, a landholder can easily revoke a wildlife refuge declaration and future landholders do not have to be bound by the wildlife refuge agreement if they do not wish to be.<sup>147</sup>

Wildlife refuges are usually used by landowners who wish to improve their capacity to manage parts of their land for local wildlife. Once an area has been declared as a wildlife refuge, the landowner can receive technical assistance and advice about how they can manage that area for wildlife.

### ***Applications***

Applications for wildlife refuges under the *National Parks and Wildlife Act 1974* that were submitted prior to 25 August 2017 can be approved under the old legislation. The Biodiversity Conservation Trust will take over the management of these agreements and applications.

### **BioBanking Agreements under the now-repealed *Threatened Species Conservation Act 1995***

The BioBanking Scheme is a market-based biodiversity offsetting scheme under which landowners can be granted tradable biodiversity credits in return for agreeing to protect their land.

Biobank sites are created through BioBanking agreements. Once a landowner has identified a potential BioBank site, the landowner can then enter into a BioBanking agreement with the Environment Minister.<sup>148</sup> A BioBanking agreement sets out the management actions that the landowner must take to protect and improve the biodiversity values on their land in order to receive credits.<sup>149</sup> The sorts of management actions that might be required under an

<sup>145</sup> Under the *National Parks and Wildlife Act 1974* (NSW).

<sup>146</sup> *National Parks and Wildlife Act 1974* (NSW), s. 68(1).

<sup>147</sup> *National Parks and Wildlife Act 1974* (NSW), s. 68(3)(b).

<sup>148</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127D; *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 14.

<sup>149</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127E.



agreement will depend upon the species or ecological communities which will be protected on each site.

BioBanking agreements are legally enforceable by the Environment Minister or by any person in the Land and Environment Court.<sup>150</sup> A serious breach of a BioBanking agreement can result in the Land and Environment Court ordering the ownership of the land be transferred to the Environment Minister on payment of compensation.<sup>151</sup>

The amount and type of credits that can be created for the site are specified in the biobanking agreement.<sup>152</sup> Once credits have been issued, they can be sold to developers who are looking to offset the impacts of their development. Alternatively, they can be 'retired' or sold to a conservation organisation as a way of permanently protecting an area without offsetting harm elsewhere.

### ***Applications***

Applications for BioBanking agreements submitted before 25 August 2017 will continue to be processed under the repealed *Threatened Species Conservation Act 1995*. An application for a BioBanking agreement may be lodged up to 6 months after 25 August 2017 if OEHL is satisfied that relevant information was collected before that date. The BioBanking agreement must be finalised and signed by all parties within 18 months of 25 August 2017.

### ***Duration of BioBanking agreements***

A BioBanking agreement lasts forever, unless it is terminated by both parties, or by the Environment Minister alone.<sup>153</sup> The landholder can voluntarily terminate the agreement within 3 months after it is entered into if no credits have been created or after 5 years if the landowner is still holding all the credits.<sup>154</sup>

A BioBanking agreement is registered on the land title.<sup>155</sup> The agreement runs with the land and therefore binds both current and future owners of the land.<sup>156</sup> A BioBanking agreement can be varied in certain circumstances by a later agreement between the Environment Minister and the landowners, but the variation must not have a negative impact on the biodiversity values protected by the agreement.<sup>157</sup>

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<sup>150</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127L.

<sup>151</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127O.

<sup>152</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127E.

<sup>153</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G.

<sup>154</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G(6).

<sup>155</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127I.

<sup>156</sup> *Threatened Species Conservation Act 1995* (NSW), ss. 127E and s 127J.

<sup>157</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127H.

### ***Public register for BioBanking agreements***

BioBanking agreements, sites, statements and credits are entered onto a [public register](#).<sup>158</sup>

### ***BioBanking Trust Fund***

The BioBanking Trust Fund invests money generated by the sale of biodiversity credits and the income generated is used to make scheduled annual payments to landowners to help them meet the long term costs of managing their BioBank site in line with the BioBanking agreement.<sup>159</sup>

When credits are first sold, part of the sale price must be paid into the BioBanking Trust Fund (called the Total Fund Deposit).

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<sup>158</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127X, s. 127ZZB – s. 127ZZD.

<sup>159</sup> *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 29.