

## Farming & Private Land Management



# Conservation on Private Land

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**EDO NSW has published a book on private conservation in NSW. For a more comprehensive guide, read [A guide to Private Conservation in NSW](#).**

## Overview

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

This fact sheet explains how landholders in NSW can voluntarily conserve areas of ecological or cultural value on their properties. The options range from non-binding agreements (such as wildlife refuges) to binding agreements that attach to the land title (such as conservation agreements). This fact sheet provides information on the following private conservation mechanisms:

- Conservation agreements
- Nature Conservation Trust 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 2012*, Table 5.8 Extent and types of terrestrial protected areas in NSW and changes since 2009.

- Property vegetation plans
- Wildlife refuges
- Biobanking
- Ramsar wetlands
- Privately owned reserves and land acquisition organisations

For more detailed information on the above mechanisms, as well as other private conservation options, please refer to the EDO NSW publication [‘A Guide to Private Conservation in NSW’](#).

### **Key differences between the private conservation options**

The various private conservation mechanisms differ in the level of legal commitment required of the landholder and the targeted ecological outcomes. The conservation options with a strong legal commitment and high protection include:

- Trust Agreements with the Nature Conservation Trust; and
- Conservation Agreements with the OEH.

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;
- Wildlife Refuges (although these will not restrict the actions of future landowners); and
- BioBanking.

Other private conservation options not addressed in this fact sheet, including federal conservation agreements, landholder management agreements, Wildlife Land Trust, and Land for Wildlife, are explained in the EDO NSW publication [‘A Guide to Private Conservation in NSW’](#).

### **Conservation agreements**

In NSW, a landowner can enter into a permanent [conservation agreement](#) with the Environment Minister.<sup>3</sup>

Conservation agreements are entered into voluntarily. However, once signed they are binding. Although the land remains in the ownership of the landholder

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<sup>3</sup> *National Parks and Wildlife Act 1974 (NSW)*, Division 12, s. 69B.

under the agreement, the landowner and future landowners are all bound by the agreement. Conservation agreements 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.

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.

Draft conservation agreements between the Environment Minister and a statutory authority or another Minister must be publicly exhibited before they can be entered into. During this period, any person may make a written submission to the Minister about the draft agreement. The Minister must consider any submissions made before entering into the agreement.<sup>4</sup>

Conservation agreements are entered on a public register which is available for public inspection.<sup>5</sup>

### **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>6</sup> Agreements operate forever, unless the agreement says otherwise or it is terminated with the agreement of all parties.<sup>7</sup> The Environment Minister can also terminate an agreement if it is no longer effective.<sup>8</sup>

### **Enforcement of agreements**

Conservation agreements are legally binding and can be enforced in the Land and Environment Court.<sup>9</sup> In certain circumstances, damages may be awarded against an owner of a conservation area for breach of a conservation agreement.<sup>10</sup>

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

<sup>5</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69H.

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

<sup>7</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69D(3).

<sup>8</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69D(4).

<sup>9</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G, and *Land and Environment Court Act 1979* (NSW), s. 20(1)(ce).

<sup>10</sup> *National Parks and Wildlife Act 1974* (NSW), s. 69G(3).

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>11</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>12</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>13</sup>

Land which is covered by a conservation agreement is exempt from local council rates,<sup>14</sup> or if only part of a property is covered by the agreement, then the landowner is entitled to a rate reduction.<sup>15</sup> Other tax concessions also apply.

#### Case Study: Bow Wow Creek Gorge Conservation Agreement

Colin and Pamela Fitzsimmons entered into a conservation agreement to protect the vulnerable and endangered plants and animals of 65 hectares of bushland at Mount Vincent, south west of Cessnock.

More than 150 species of bird are found in the area, including species such as the powerful owl, grey goshawk, raven, kingfishers, gerygone, brown tree creeper, as well as certain rare plants and other flora, including ferns, orchids, *Callistemon shiressii*, *Macrozamia flexuosa* and cycads.

The objectives of the agreement include more effective and controlled action on weeds, greater control of the spread of possible bush fire and other threats of erosion. There is regular spot spraying in the area.

For more information on conservation agreements, see the EDO NSW publication '[A Guide to Private Conservation in NSW](#)'.

### Nature Conservation Trust agreements

A landowner can also choose to manage and protect their land (or part of their land) through an agreement with the [Nature Conservation Trust](#).<sup>16</sup> By entering

<sup>11</sup> *National Parks and Wildlife Act 1974* (NSW), s. 70 and 71.

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

<sup>13</sup> *National Parks and Wildlife Act 1974* (NSW), ss. 69C(2) and (3).

<sup>14</sup> *Local Government Act 1993* (NSW), s. 555(1)(b1).

<sup>15</sup> *Local Government Act 1993* (NSW), s. 555(3).

<sup>16</sup> *Nature Conservation Trust Act 2001* (NSW), s. 30.

into a trust agreement, a person can permanently protect the conservation values of their land beyond their lifetime.<sup>17</sup>

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

### **Nature Conservation Trust**

The Nature Conservation Trust is a non-profit, non-government organisation.<sup>18</sup> One of the major roles of the Trust is to enter into agreements with landowners in order to secure the long term protection of private lands of high conservation value.

The Trust is particularly interested in land which has significant environmental values, such as land containing habitat for endangered species or ecological communities, wetlands, and land which forms a wildlife corridor or buffer to other conservation areas.

The Nature Conservation Trust also receives government grants, private donations of money and land, and bequests of money and land.<sup>19</sup> Land which is bought or bequeathed to the Trust is protected with a trust agreement and then resold. In this way, the Trust operates a Revolving Fund<sup>20</sup> to increase conservation protection on private land.

### **Trust agreements are binding and legally enforceable**

The trust agreement is negotiated between the landholder and the Trust. Once it is finalised, it is registered on the title of the property and runs with the land, thereby binding future landholders.<sup>21</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>22</sup> Trust agreements are binding on the parties,<sup>23</sup> and can be enforced by either party in the Land and Environment Court.<sup>24</sup> All trust agreements are available on a public register.<sup>25</sup>

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<sup>17</sup> *Nature Conservation Trust Act 2001* (NSW), s. 34.

<sup>18</sup> The NCT is established under the *Nature Conservation Trust Act 2001* (NSW). The Act is administered by the Environment Minister.

<sup>19</sup> *Nature Conservation Trust 2001* (NSW), ss. 14 and 15.

<sup>20</sup> *Nature Conservation Trust 2001* (NSW), ss. 7.

<sup>21</sup> *Nature Conservation Trust Act 2001* (NSW), ss. 36 and 37.

<sup>22</sup> *Nature Conservation Trust 2001* (NSW), s. 34.

<sup>23</sup> *Nature Conservation Trust 2001* (NSW), s. 32.

<sup>24</sup> *Nature Conservation Trust 2001* (NSW), s. 38.

<sup>25</sup> *Nature Conservation Trust 2001* (NSW), s. 39.

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>26</sup> The Trust can also direct landowners to opportunities to apply for grants and subsidies.

For more information on trust agreements, see the EDO NSW publication [‘A Guide to Private Conservation in NSW’](#).

## Property vegetation plans

Property vegetation plans are usually used as a means to authorise the clearing of native vegetation but they can also be used as a voluntary conservation measure.<sup>27</sup>

Property vegetation plans are prepared by a landholder, and submitted to the Local Land Services (LLS) for approval.<sup>28</sup> A landholder might choose to enter into a property vegetation plan in order to attract funding from LLS or other government funding program for managing the native vegetation on their property.<sup>29</sup> Property vegetation plans set out how long they will operate and bind future owners of the land during that time.<sup>30</sup> See our [Clearing Vegetation](#) Fact Sheet for more information on property vegetation plans. See also the EDO NSW publication [‘A Guide to Private Conservation in NSW’](#).

## Wildlife refuges

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>31</sup> If the nomination is accepted, the NSW Governor then declares the land to be wildlife refuge by making a proclamation in the NSW Government Gazette.<sup>32</sup> Voluntary and binding while in place

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, unlike conservation agreements or trust agreements, 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>33</sup>

<sup>26</sup> *Nature Conservation Trust 2001* (NSW), s. 33.

<sup>27</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>28</sup> *Native Vegetation Act 2003* (NSW), s. 26.

<sup>29</sup> *Native Vegetation Act 2003* (NSW), s. 28(d).

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

<sup>31</sup> Under the *National Parks and Wildlife Act 1974* (NSW).

<sup>32</sup> *National Parks and Wildlife Act 1974* (NSW), s. 68(1).

<sup>33</sup> *National Parks and Wildlife Act 1974* (NSW), s. 68(3)(b).

Wildlife refuges are usually used by landowners who wish to improve their capacity to manage parts of their land for local wildlife species. 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.

The OEH can assist with identifying land which is suitable for a wildlife refuge, and can help to prepare a property report and management plan

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

Half Moon Flat, located between Braidwood and Morton National Park on the Mongarlowe River in NSW, has been a wildlife refuge with multiple owners for many years. The area was used for grazing until 1972, when environmentalist Stewart Harris decided to claim the land as the 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 that each purchaser sign onto the wildlife refuge agreement. Nearly all new owners since that time have pledged to carry on and continue to keep the wildlife refuge. Despite several attempts to develop the area for mining, as well as some bush fires during those years, private owners have fought to maintain the refuge for conservation purposes. They have established '[Friends of the Mongarlowe River Inc.](#)' 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 Wistler, *Eucalyptus recurva* and *Boronia rhomboidea* can all be found in the refuge area, which measures approximately 2500 acres.

## **Biobanking**

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 threatened vegetation and threatened species on their land.

The main purpose of the Biobanking Scheme is to give landowners a financial incentive to protect biodiversity on their properties. Once a landowner has been granted biodiversity credits, they can then sell them to a developer who can purchase them to offset the impact of their development on biodiversity.

## Biobanking agreements

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>34</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>35</sup> The sorts of management actions that might be required under an agreement will depend upon the vegetation or species 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>36</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>37</sup>

The amount and type of credits that can be created for the site are specified in the biobanking agreement.<sup>38</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 organization as a way of permanently protecting an area without offsetting harm elsewhere.

### ***How long does a biobanking agreement last?***

A biobanking agreement lasts forever, unless it is terminated by both parties, or by the Minister alone.<sup>39</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>40</sup>

A biobanking agreement is registered on the land title.<sup>41</sup> The agreement runs with the land and therefore binds both current and future owners of the land.<sup>42</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>43</sup>

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<sup>34</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127D; *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 14.

<sup>35</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127E.

<sup>36</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127L.

<sup>37</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127O.

<sup>38</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127E.

<sup>39</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G.

<sup>40</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127G(6).

<sup>41</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127I.

<sup>42</sup> *Threatened Species Conservation Act 1995* (NSW), ss. 127E and s 127J.

<sup>43</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>44</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>45</sup>

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

## **Ramsar wetlands**

Listing a wetland as a [Ramsar wetland](#) provides legal protection and international recognition of the importance of that wetland.<sup>46</sup> Ramsar wetlands can be declared over public or private land.

Wetlands are under-represented in the NSW public reserve system, with most being located on private and leasehold land. Around 7% of inland wetlands and 19% of coastal wetlands are protected within the terrestrial reserve system of NSW.<sup>47</sup>

Landholders interested in protecting the wetlands on their property as a Ramsar wetland should contact the Commonwealth Department of Environment, Water, Heritage and the Arts.<sup>48</sup>

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

## **Privately owned reserves**

Over the past decade, a range of non-profit conservation organisations have been established for the purpose of creating privately owned reserves. These organisations buy private land of high conservation value, and protect the land by managing it to improve its capacity to support biodiversity.

Some of the conservation organisations which have established privately owned reserves are described below.

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<sup>44</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127X, s. 127ZZB – s. 127ZZD.

<sup>45</sup> *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* (NSW), cl. 29.

<sup>46</sup> Ramsar wetlands are protected under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

<sup>47</sup> NSW State of the Environment Report 2012, Chapter 4.3 Wetlands.

<sup>48</sup> Call 1800 803 772.

## 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.

## Glossary

### Key to terms used in this Fact Sheet

In this Fact Sheet:

**Biobanking Scheme** means the Biodiversity Banking and Offset Scheme allowing the creation and sale of biodiversity credits.<sup>49</sup>

**OEH** means the NSW Office of Environment and Heritage.

**Environment Minister** means the NSW Minister for Environment

**NPWS** means the NSW National Parks & Wildlife Service.

## Useful websites

- OEH website on [conservation programs](#)
- OEH website on [biobanking](#)
- Nature Conservation Trust website on [Trust Agreements](#)
- EDO NSW [‘A Guide to Private Conservation in NSW’](#)

<sup>49</sup> Established under the *Threatened Species Conservation Act 1995* (NSW), Part 7.

## Useful legal texts

- *Environmental & Planning Law in New South Wales*, by Lyster, Lipman, Franklin, Wiffen and Pearson, The Federation Press (2012), Chapter 11 *Protected areas*, pp. 446-487
- *The Environmental Law Handbook*, Farrier and Stein, eds, 4<sup>th</sup> ed, Redfern Legal Centre Publishing, (2006), Chapter 11, *Biodiversity conservation*, pp. 401-419.