



Biodiversity
Conservation
Trust

Biodiversity Conservation Trust

**Guidelines for use of conservation agreements as
development consent conditions**

August 2019

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1. Introduction

The Biodiversity Conservation Trust (BCT) was established in August 2017 under the *Biodiversity Conservation Act 2016*. The BCT's purpose, as set out in the Act, is to protect and enhance biodiversity by:

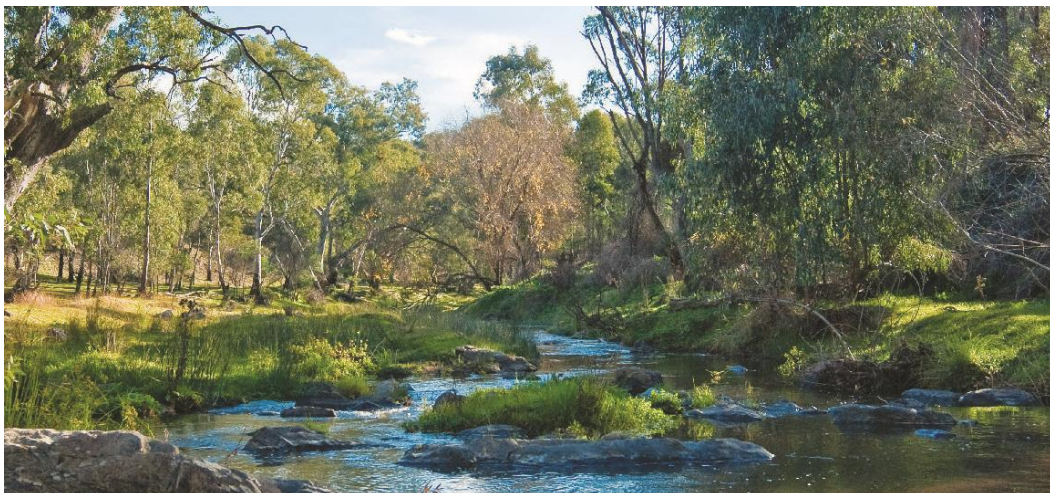
- encouraging landholders to enter into co-operative arrangements for the management and protection of the natural environment that is significant for the conservation of biodiversity;
- seeking strategic biodiversity offset outcomes to compensate for the loss of biodiversity due to development and other activities;
- providing mechanisms for achieving the conservation of biodiversity; and
- promoting public knowledge, appreciation and understanding of biodiversity and the importance of conserving biodiversity.

The BCT is funded to achieve this core purpose. Our mission is to maximise the biodiversity conservation outcomes achieved with the public and private resources entrusted in the BCT to support private land conservation. Our work is strongly guided by the Biodiversity Conservation Investment Strategy adopted by the NSW Government.

Under the *Biodiversity Conservation Act*, responsibility for private land conservation agreements has been concentrated in a single government entity, the BCT. The BCT administers three new types of agreements: biodiversity stewardship agreements (BSA), conservation agreements (CAs) and wildlife refuge agreements. These agreements are primarily used in the delivery of the BCT's programs, as outlined in the BCT's [Business Plan](#).

The BCT has a strong focus on supporting landholders to protect their land to achieve conservation outcomes. Our landholder technical support package is provided to all new and the 1,750 existing agreement holders. The package provides practical and technical support to equip landholders to implement conservation management. It involves the BCT providing site visits, telephone support, technical guidelines, field days and workshops to share skills and knowledge and undertake compliance monitoring.

The BCT is also committed to understanding and reporting on the ecological outcomes being achieved through private land conservation, through the establishment of a state-wide monitoring, evaluation and reporting program.



1.1 Purpose of the guidelines

These guidelines aim to clarify the BCT's role in delivering conservation agreements associated with development. This relates to both conservation agreements that are included in a condition of consent for a development or agreed to as part of a planning proposal. For the purposes of these guidelines, 'development consent' and 'planning proposal' are defined as described in the NSW *Environmental Planning Assessment Act 1979*. In general terms, 'development consent' refers to an approval for a specific project while 'planning proposal' refers to proposed amendments to planning instruments, such as Local Environmental Plans.

Delivering conservation agreements in these circumstances does not fit within the BCT's funded core business. These guidelines aim to balance the potential to secure conservation outcomes through the use of conservation agreements in these circumstances, with the need to maintain the integrity of the conservation agreement network, prioritise the delivery of the BCT's core programs, and ensure limited BCT resources are targeted to maximise conservation outcomes.

These guidelines have been developed to provide a consistent approach for the BCT, development proponents, councils and planning authorities in delivering conservation agreements associated with development. They:

- apply to legacy conditions of consent and new conditions of consent (section 3.1);
- define a discrete set of circumstances where the BCT thinks it is appropriate to deliver conservation agreements for major projects and local development (section 3.2);
- provide discretion for the BCT Regional Manager to enable a conservation agreement outside of these circumstances if an exceptional case can be made on the conservation value (section 3.2);
- outline the process for including a conservation agreement in a condition of consent (section 3.3); and
- require the payment of fees to the BCT for a conservation agreement to be established and set a fee schedule (section 4).

1.2 Scope of the guidelines

These guidelines do not affect the requirement for development to offset biodiversity impacts in accordance with the NSW biodiversity offsets scheme. They apply to projects that do not trigger the biodiversity offsets scheme or, where projects do trigger the biodiversity offsets scheme, they apply only as a mechanism to secure conservation outcomes on land where biodiversity impacts have been avoided and/or minimised. The expansion of the biodiversity offsets scheme to most types of development means the application of these guidelines is likely to be fairly restricted in scope.

These guidelines apply to local development and major projects as set out below.

Local development

The guidelines apply to:

- legacy conditions of consent issued before the publication of these guidelines;
- new conditions of consent issued after the publication of these guidelines; and
- conservation agreements that are a pre-requisite of a planning proposal.

Major projects

The guidelines apply to legacy conditions of consent issued prior to October 2014, when the Biodiversity Offsets Policy for Major Projects was introduced.

Consistent with current policy settings, the BCT will not deliver conservation agreements for major projects where conditions of consent were issued post October 2014, unless the Office of Environment and Heritage has provided prior written agreement to the use of a conservation agreement.

2. Background

2.1 Conservation mechanisms available prior to the introduction of the Biodiversity Conservation Act

Prior to the introduction of the *Biodiversity Conservation Act*, councils had access to several different conservation mechanisms to secure a biodiversity outcome on private land associated with a development occurring. Anecdotal evidence from councils suggest that the use of these mechanisms varied considerably across the state, with use often concentrated in specific council areas, predominantly along the coast.

Historically, the Office of Environment and Heritage delivered voluntary conservation agreements and Local Land Services prepared conservation property vegetation plans. Some councils chose to adopt these mechanisms as requirements in conditions of consent associated with development or as a pre-requisite approving a planning proposal.

Local councils have also required covenants to be established under section 88 of the *Conveyancing Act 1919* with an associated vegetation management plan in an effort to secure conservation outcomes over private land.

In some instances, councils have also accepted ownership of significant parcels of land to help facilitate conservation outcomes.

Some developers also opted into the voluntary BioBanking Scheme, establishing BioBanking Agreements to conserve valuable parcels of land in return for achieving a development outcome.

2.2 Conservation mechanisms available following introduction of the Biodiversity Conservation Act

With the introduction of the NSW biodiversity reforms and the *Biodiversity Conservation Act 2016*, private land conservation mechanisms available for conditioning development approvals have changed. The *Biodiversity Conservation Act* streamlined private land conservation agreements into three types: biodiversity stewardship agreements, conservation agreements and wildlife refuge agreements; all administered by the BCT. Together with section 88 covenants and land being gifted to councils, these provide the suite of mechanisms currently available to protect and manage private land. More detail on each is provided below.

Biodiversity stewardship agreements

Biodiversity stewardship agreements are an effective means of protecting land in perpetuity and ensuring management funding is secured. They are primarily used where projects trigger the biodiversity offsets scheme.

The expansion of the biodiversity offsets scheme means that biodiversity stewardship agreements, or the retirement of biodiversity credits, will now be required for most development. The biodiversity offset scheme threshold is outlined on OEH's website:

<https://www.environment.nsw.gov.au/biodiversity/entryrequirements.htm>.

In summary, the biodiversity offsets scheme threshold has two elements:

1. whether the amount of native vegetation clearing exceeds the area clearing threshold; or
2. whether the impacts occur on an area mapped on the biodiversity values map.

The area thresholds are set out in Figure 1 for context.

Figure 1: Area thresholds under the biodiversity offsets scheme thresholds

Minimum lot size	Area of clearing which triggers the biodiversity offsets scheme
Less than 1 hectare	0.25 hectares or more
1 hectare to less than 40 hectares	0.5 hectares or more
40 hectares to less than 1000 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

Conservation agreements

Conservation agreements provide another effective mechanism for permanent or long-term protection of land. Under the *Biodiversity Conservation Act* conservation agreements are primarily used in the delivery of the BCT’s Conservation Management Program and Conservation Partners Program:

- Conservation Management Program – encourages landholders within priority investment areas or with conservation assets on their property to enter into funded conservation agreements, in accordance with the priorities outlined in the Biodiversity Conservation Investment Strategy.
- Conservation Partners Program – encourages landholders anywhere in the state with eligible properties (over 20ha) to enter into unfunded conservation agreements.

There is also ongoing demand from councils for conservation agreements to be used to achieve biodiversity outcomes associated with development. These will continue to be a suitable mechanism for securing private land conservation outcomes where they meet the requirements set out in section 3.2 of these guidelines.

Wildlife refuges

Wildlife refuge agreements provide an entry level option for landholders who wish to protect biodiversity on their property, but do not wish to enter into a permanent agreement or have the agreement registered on title. They are generally not used in a development context.

Section 88 covenants

Section 88 covenants can be established by councils under the *Conveyancing Act 1919*. The Act enables councils to create public positive covenants on land they do not hold, to impose obligations on the owner of the land. Section 88 covenants can be registered on the title of the land and can bind

successors in title. They can be combined with a requirement to establish a vegetation management plan and/or a bond to secure the implementation of the vegetation management plan.

Section 88 covenants are a potentially useful tool to achieve biodiversity conservation outcomes for sites not suitable for a conservation agreement. The BCT recognises, however, that councils have raised a number of constraints with using section 88 covenants to achieve conservation outcomes, and improvements are needed in their operation to ensure they complement the private land conservation agreements offered by the BCT.

Land transferred into council ownership

Councils can choose to accept the transfer of private land into council ownership, to ensure the land is managed for biodiversity conservation. This could include the provision of adequate management funding to cover the costs to council of managing the land. In some instances, councils have used the biodiversity assessment method to calculate an appropriate level of management funding.

3. Establishing Conservation Agreements as conditions of consent

3.1 Application of the guidelines

The scope of the guidelines is outlined above in section 1.2.

These guidelines include two main components:

- requirements for entering into a conservation agreement, including elements such as size, biodiversity values and configuration, plus providing for Regional Manager discretion (section 3.2); and
- fee schedule for entering into a conservation agreement (section 4).

These components of the guidelines apply to local development and major projects, as set out in Figure 2.

Figure 2: Application of the guidelines to local development and major projects

Local development	Requirements	Fee schedule
Legacy condition of consent (issued prior to the adoption of the policy)		✓
New conditions of consent	✓	✓
Agreements under planning proposals	✓	✓
Major projects	Requirements	Fee schedule
Legacy conditions of consent (issued prior to October 2014)		✓

3.2 BCT requirements

The BCT has established minimum requirements to ensure that new conservation agreements will make a viable ecological contribution to the conservation area network. The requirements cover four issues:

- size
- biodiversity values
- configuration
- condition

These requirements are outlined in Figure 3.

Where a proposed site does not meet these requirements, but a strong case can be made for a conservation agreement on other grounds, a case can be submitted to the relevant BCT Regional Manager for consideration to approve a conservation agreement.

Figure 3: Requirements for a conservation agreement under development consent conditions

SIZE	BIODIVERSITY VALUES	CONFIGURATION	CONDITION
5 ha	<p>The site:</p> <ul style="list-style-type: none"> • is on the biodiversity values map • is identified as high environmental value in a council strategic plan or local priority area mapping • contains an endangered or critically endangered ecological community • contains significant habitat for a critically endangered species • contains entities that are likely to meet the serious and irreversible impact principles and criteria • improves landscape connectivity or stepping stone corridors at a local or regional scale, is part of a larger area of remnant vegetation or is connected to a protected area. 	<p>The site:</p> <ul style="list-style-type: none"> • has a common, responsible party across all lots involved • configuration is relatively contiguous and is likely to remain as the one property entity for the foreseeable future • configuration is appropriate to manage edge effects (e.g. it does not consist of small ribbons of land on the perimeter of multiple lots) • configuration has an area of land excluded from the covenanted area large enough for a dwelling and suitable APZ. 	<p>The site:</p> <ul style="list-style-type: none"> • is in overall moderate to good ecological condition • does not include significant areas in poor condition (i.e. more than 10% of the site).
<p>REGIONAL MANAGER DISCRETION</p> <p>If a site does not meet these requirements but a strong case can be made that the site is of significant conservation value, the BCT Regional Manager has the discretion to approve using a conservation agreement.</p>			

3.3 Process for including a conservation agreement in a condition of consent

Figure 4 sets out the process for including a conservation agreement (CA) in a condition of consent. The BCT recommends councils follow a similar process to consult with the BCT if considering negotiating a conservation agreement as part of a planning proposal.

Figure 4: Process for including a conservation agreement in a condition of consent

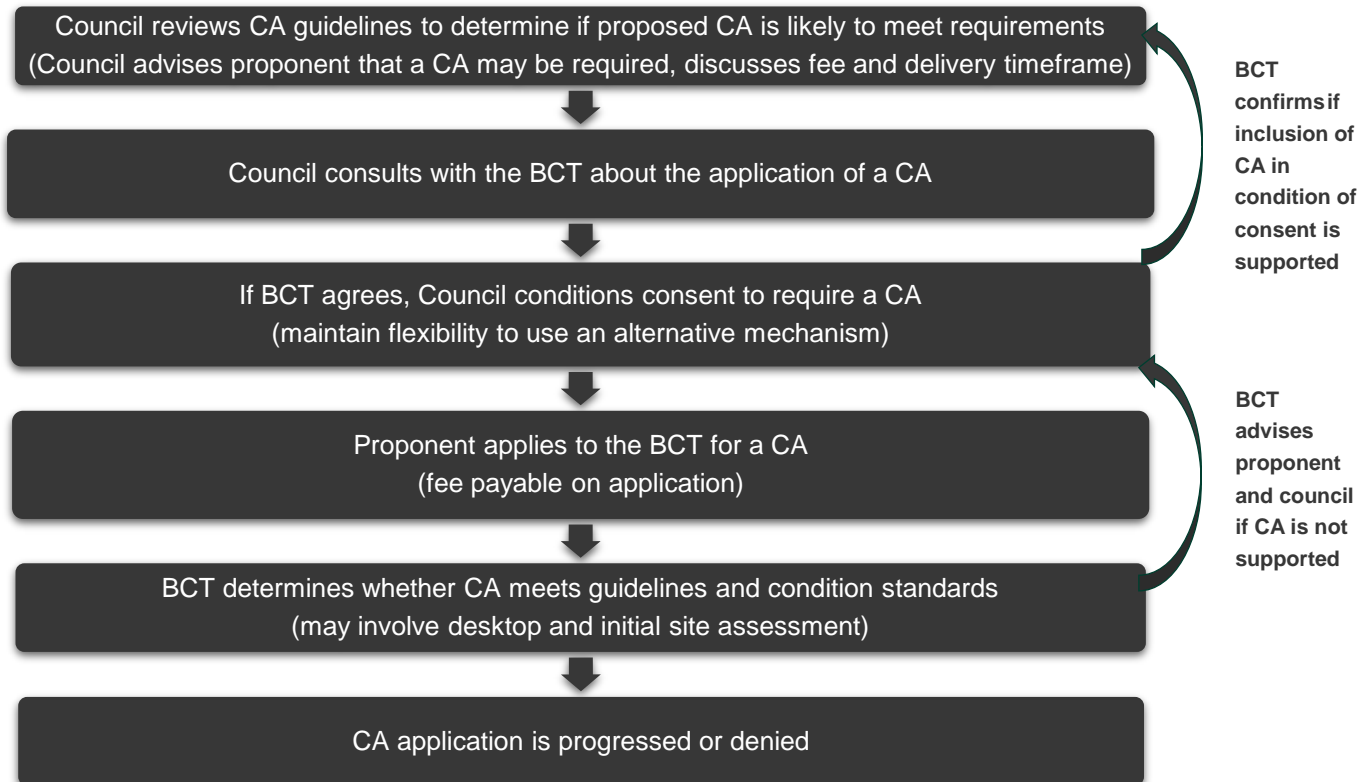


Figure 5 provides a summary of key roles and responsibilities involved in this process for including and implementing a conservation agreement as a condition of consent.

Figure 5: Roles and responsibilities for implementing a CA as a condition of consent

Role	Proponent	Consent authority	BCT
Development proposal submitted	✓		
Offset site assessed against CA guideline requirements		✓	
Consultation with proponent and BCT about proposed CA application		✓	
Agreement to proposed CA application			✓
Requirement for CA included in conditions of consent		✓	
Application for CA submitted to BCT	✓		
Review of CA application			✓
Creation of CA and registration on title			✓
Ongoing management and annual reporting on CA site	✓		
Ongoing landholder support and periodic site audit			✓

4. Fee schedule

The BCT is funded to deliver its core purpose, as set out in section 1. In order to deliver conservation agreements under conditions of consent, the BCT needs to introduce fees to recover its costs. Fees will take effect from the date the BCT publishes this guideline. The BCT will review the fee schedule periodically.

4.1 Fee Structure

It is proposed that fees are split into two parts:

- Application costs – \$7,350 to \$9,825
- Landholder technical support costs – \$32,000 to \$62,460

The application costs cover the BCT's costs of establishing the agreement. This includes a site visit, preparation of the management plan, negotiation of the agreement, legal and other review processes.

Landholder support costs will cover ongoing BCT support for the landholder and site, including site visits, compliance and ecological condition monitoring, phone calls, advice and access to the BCT landholder support network and activities. The fees have been indexed to cover this role into the future.

The fee range represents the different size and complexity of potential sites. The upper fee range is for large sites with multiple management zones. The fee range is outlined in more detail in Figures 6 and 7 below.

Figure 6: Application fees

Base application cost	\$7,350 plus any additional costs set out below
Property size above 100 ha	+ \$550
Property size above 500 ha	+ \$1,100
4-6 management zones	+ \$275
7-10 management zones	+ \$550

Figure 7: Landholder technical support fees

Base landholder technical support costs	\$32,000 plus any additional costs set out below
Property size above 100 ha	+ \$6,769
Property size above 500 ha	+ \$13,538
4-6 management zones	+ \$3,384
7-10 management zones	+ \$6,769

4.2 Fee categories

There are two fee categories dependent on the development type.

Fee category 1: Charged agreement establishment fees only

- Applies to a residential dwelling
- Applies to public landholders

Fee category 2: Charged agreement establishment fees and landholder support fees

- Applies to all other development; including subdivisions, medium density, seniors living, tourism and major projects.

These categories recognise the difference between public landholders and people building a single residential dwelling (fee category 1) with a landholder who is doing development for profit (fee category 2). In fee category 1, the BCT recovers the costs of establishing the conservation agreement but provides landholder support at no cost to the landholder. In fee category 2, the BCT recovers all costs.

Fees will be payable to the BCT upon application for a conservation agreement and adjusted to reflect the size and complexity of the site as the application is progressed.

5. Contacting the BCT

Councils and development proponents can contact the BCT at info@bct.nsw.gov.au or 1300 992 688. You will be directed to your relevant BCT Regional Team.