

NSW Biodiversity Conservation Trust

BCT Conservation Agreement Eligibility for LALCs

1. Is your site within the Cultural Biodiversity Conservation pilot offer area?
 - 1.1. Yes - Forward to 2.
 - 1.2. No – Forward to 14.
2. Are you the owner of the land – as defined by the *Biodiversity Conservation Act 2016 (NSW)*¹?
 - 2.1. Yes – Forward to 3.
 - 2.2. No – Forward to 10.
3. Has Native Title been determined on this site?
 - 3.1. Yes – Forward to 4.
 - 3.2. No – Site is eligible to participate - noting conservation agreement cannot be entered until Native Title has been determined.
4. Land transferred prior to 28 November 1994
 - 4.1. Yes – Forward to 5.
 - 4.2. No – Forward to 6.
5. Native Title recognised. Notify BCT of an Indigenous Land Use Agreement in place. Site is eligible to participate with the consent of the Native Title holders. Forward to 7
6. Not subject to native title. Forward to 7.
7. Community Land and Business Plan contains objectives and strategies that align to entering a conservation agreement:
 - 7.1. Yes – forward to 8.
 - 7.2. No – Forward to 9.
8. What are the steps NSWALC will want to see documentation/evidence of to consent to the dealing being registered on title?

The LALC will need to obtain land dealing approval to enter a Conservation Agreement (CA) in accordance with the land dealing provisions under Division 4 of Part 2 of the Aboriginal Land Rights Act 1983.

To enable registration of an instrument (in this instance the CA) on title, the land dealing process is as follows (high level overview):

- the LALC obtains land dealing approval from members to enter the CA;
- the LALC then applies to NSWALC for land dealing approval to enter the CA;
- the LALC enters the CA as approved by members and by NSWALC;
- the LALC applies to NSWALC CEO to issue a registration approval certificate to enable registration of the CA on title.

NSWALC have fact sheets published on their website re the process of obtaining land dealing approval: [LALC Land Dealings - NSW Aboriginal Land Council](#). End.

9. NSWALC are unable to consent to the conservation agreement being registered on title, the CLBP will require updating for the site to be eligible to participate. Forward to 13.
10. Are you the claimant in a current Aboriginal Land Claim under the *Aboriginal Land Rights Act 1983*?
 - 10.1. Yes – Forward to 11.
 - 10.2. No – Forward to 14.
11. Has the current owner consented to your participation in the offer?
 - 11.1. Yes – Forward to 12.
 - 11.2. No – Forward to 14.
12. The site is eligible to participate, however the BCT will not enter into an agreement on the land until the claim is resolved. Forward to 3.

13. Update Community Land and Business Plan to contain objectives and strategies which align to entering a conservation agreement, eg:

The LALC will consider any biodiversity conservation/offer, carbon farming or renewable energy etc opportunities as and when they arise. Forward to 7.

14. The site is not eligible for the current pilot offer, keep an eye on the [BCT website](#) for program updates and information on other funded and unfunded private land conservation agreement options. End.

Footnotes:

¹ Under the *Biodiversity Conservation Act 2016* owner of land includes: (a) every person who, either at law or in equity—(i) is entitled to the land for any estate of freehold in possession, or (ii) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Land Management Act 2016* or any other Act relating to the alienation of lands of the Crown, or (iii) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits in respect of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise, and (b) a person who leases land under the *Crown Land Management Act 2016*, and (c) any other person who, under the regulations, is taken to be the owner of the land, but (unless the regulations otherwise provide) does not include a beneficiary of a trust relating to the land.