



Agreement Assurance Policy

For private land conservation agreements under Part 5 of the *NSW Biodiversity Conservation Act 2016*

October 2024

NSW Biodiversity Conservation Trust



Acknowledgement of Country

The NSW Biodiversity Conservation Trust acknowledges the Traditional Custodians of NSW and recognises their ongoing connection to land, waters, biodiversity, and culture.

Aboriginal cultural values are connected to Country and are found in waterways, mountains wetlands, floodplains, hills, sandhills, rock outcrops and within the biodiversity of these geological features.

These cultural values are often present on privately-owned land and are associated with ongoing cultural practices and learning

We pay our respects to Elders past, present, and future and commit to genuinely collaborating and partner with Aboriginal people in private land conservation

© 2024 State of NSW and Department of Climate Change, Energy, the Environment and Water

With the exception of photographs, the State of NSW and Department of Climate Change, Energy, the Environment and Water (the department) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required to reproduce photographs.

Learn more about our copyright and disclaimer at www.environment.nsw.gov.au/copyright

Cover photo: Landholders and NSW Biodiversity Conservation Trust staff look over a conservation agreement site in the Snowy Monaro region. Credit: Colin Elphick

Published by: NSW Biodiversity Conservation Trust
Department of Climate Change,
Energy, the Environment and Water
Locked Bag 5022, Parramatta NSW 2124
Phone: 1300 992 688
TTY users: phone 133 677, then ask for 1300 361 967
Speak and listen users: phone 1300 555 727, then ask for 1300 361 967
Email info@bct.nsw.gov.au
Website www.bct.nsw.gov.au

Find out more at:

bct.nsw.gov.au

Document control

| | |
|---|---|
| Title | Agreement Assurance Policy for private land conservation agreements |
| Current version number and approval date | Version 1 – October 2024 |
| CM document number | DOC24/946850 |
| Document status | Draft Version 0 |
| Prepared by | Regional Delivery |
| Approved by | NSW Biodiversity Conservation Trust Board |
| Date of next review | 1 October 2027 |

| Version | Release date | Revision Description |
|----------------|---------------------|-----------------------------|
| 1 | 15 November 2024 | First draft |

Contents

- Contents iii
- 1. Introduction 1
- 2. Purpose 1
- 3. Legislative context 1
- 4. Key roles and responsibilities 6
 - 4.1. Governance..... 6
 - 4.2. Roles and Responsibilities 6
- 5. Approach to entering into agreements 8
 - 5.1. Landholder support program..... 9
- 6. Approach to monitoring agreements 10
 - 6.1. Decision support tools.....10
 - 6.2. Desktop review11
 - 6.3. Annual reporting and review.....11
 - 6.4. Site visit.....12
 - 6.5. Recommendations.....12
- 7. Risk analysis framework 13
 - 7.1. Agreement risk score.....14
- 8. Approach to agreement assurance 15
 - 8.1. Promoting and encouraging agreement assurance.....15
 - 8.2. Agreement assurance mechanisms15
 - 8.3. Conservation partner grant agreement assurance mechanisms.....16
- 9. Referral to other agencies 17
- 10. Agreement assurance monitoring and reporting 17
 - 10.1. Evaluation and accountability.....17
 - 10.2. Measuring and reporting.....17
 - 10.3. Continuous improvement.....17
- Appendix 1: Agreement assurance mechanisms table 19
- Appendix 2: Description of agreement assurance mechanisms 20

1. Introduction

The NSW Biodiversity Conservation Trust's vision is vibrant private land conservation areas protecting our unique and diverse plants and animals. Achieving these conservation outcomes rely on the landholders who enter conservation agreements fulfilling the obligations set out in their agreements.

Agreement assurance is essential to governance, and informed decision making provides confidence that obligations are being met and risks are being managed effectively. The NSW Biodiversity Conservation Trust is committed to supporting landholders to voluntarily fulfill their agreement obligations and to respond to landholders who are not fulfilling their agreement obligations in a consistent and transparent way, according to risk rating, to ensure integrity.

2. Purpose

The purpose of this policy is to set out the approach the NSW Biodiversity Conservation Trust will undertake to ensure landholders who have entered into private land conservation agreements are meeting their agreement obligations from a risk-based approach. This approach aligns with the [NSW Biodiversity Conservation Trust's Risk Management Policy](#) and associated Risk Appetite Statement. The policy will:

- Provide an overview of the NSW Biodiversity Conservation Trust's private land conservation agreements.
- Outline the roles and responsibilities of the NSW Biodiversity Conservation Trust to monitor agreements.
- Outline how the NSW Biodiversity Conservation Trust will support landholders to voluntarily fulfill their agreement obligations.
- Outline how the NSW Biodiversity Conservation Trust will approach agreements where the landholder is not fulfilling the agreement obligations.
- Guide NSW Biodiversity Conservation Trust staff in making consistent decisions to address agreements where obligations are not being fulfilled.

3. Legislative context

The NSW Biodiversity Conservation Trust is a statutory non-for-profit body established under the [Biodiversity Conservation Act \(2016\) NSW](#).

The NSW Biodiversity Conservation Trust is responsible for establishing, administering, and monitoring new and existing private land conservation agreements across NSW and providing landholder's support to achieve the outcomes of the agreement.

Under Part 5 of the *Biodiversity Conservation Act (2016) NSW*, the NSW Biodiversity Conservation Trust can enter into different types of private land conservation agreements with landholders (Table 1).

Table 1: Private land conservation programs and agreements

| Program | Agreement | Description | Annual reporting requirements? |
|--|--|--|--------------------------------|
| Biodiversity Offset Program (BOP) | | <p>Enable landholders to generate and sell biodiversity credits in turn for carrying out funded biodiversity stewardship management actions.</p> <p>These agreements are in-perpetuity.</p> | |
| | Biodiversity stewardship agreement (BSA) | Established by the Department of Climate Change, Energy, the Environment and Water (DCCEEW) and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . | Required |
| Conservation Management Program (CMP) | | <p>These agreements are funded conservation agreements. The NSW Biodiversity Conservation Trust makes annual payments to landholders for satisfactorily undertaking management actions to conserve under-protected NSW landscapes or other priority conservation assets.</p> <p>These agreements may be termed or in-perpetuity.</p> <p>The program includes:</p> <ul style="list-style-type: none"> • Fixed price offers • Conservation tenders • Co-investment partnerships • Revolving fund | |

| | | | |
|--|------------------------------------|---|------------------------------|
| | Funded conservation agreement (CA) | Established and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . | Required |
| Conservation Partners Program (CPP) | | These agreements are unfunded agreements aimed to encourage landowners to conserve biodiversity and support productive landscapes. These agreements are in-perpetuity. | |
| | Conservation agreements (CA) | Established and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . These are non-income generating agreements. | Not required |
| | Wildlife refuge agreements (WRA) | Established and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> | Not required |
| | CA (Conditions of consent) | Established and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> | May be required ¹ |
| | Conservation partners grants | NSW Biodiversity Conservation Trust Conservation partners grants are available for landholders with 'non-income generating agreements | Required |

¹ Annual reporting requirements vary between individual agreements, where reporting is required, this may be for a timed period or in-perpetuity depending on the conditions of an individual agreement.

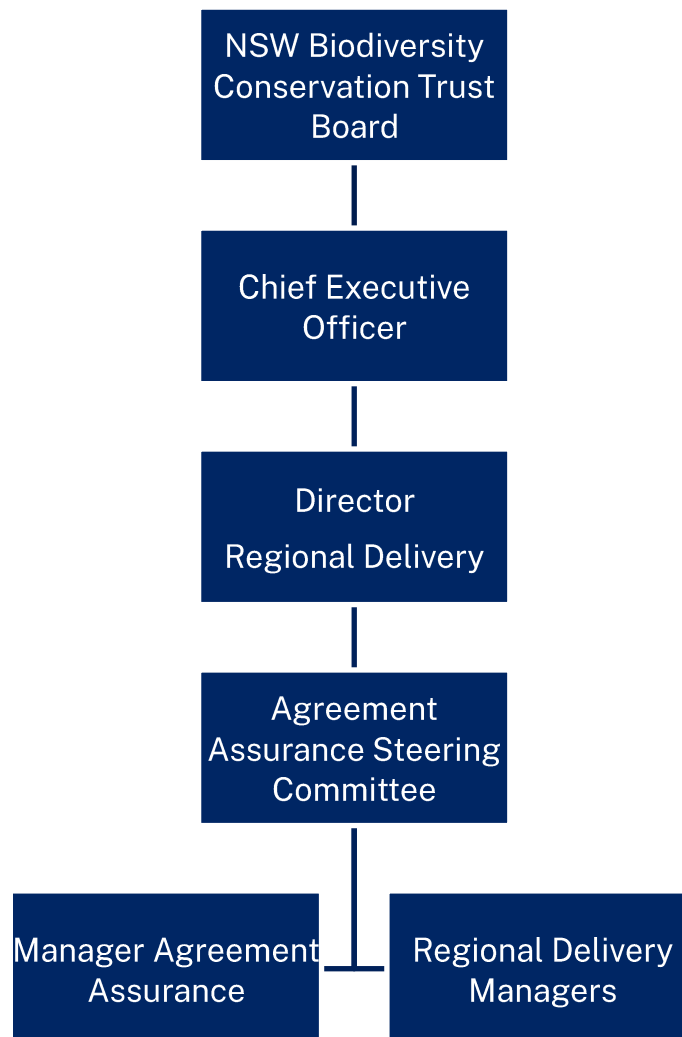
| | | | |
|--------------------------|--|---|------------------------------|
| Legacy agreements | | Agreements established prior to the formation of the NSW Biodiversity Conservation Trust. These agreements are now managed by the NSW Biodiversity Conservation Trust. | |
| | Biobanking agreement | Established under the Threatened Species Conservation Act 1995 (TSC Act) . Managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . The Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC(S&T) Reg) provides provisions of the <i>Biodiversity Conservation Act (2016) NSW</i> relating to BSAs apply to biobanking agreements that were in force on the repeal of the TSC Act Those biobanking agreements are taken to be BSAs under the <i>Biodiversity Conservation Act (2016) NSW</i> . | Required |
| | Voluntary conservation agreement (VCA) | Established under the National Parks and Wildlife Act 1974 (NPW Act) Managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . Includes legacy Conditions of consent agreements. | May be required ¹ |
| | Wildlife refuge (WR) | Established under the NPW Act or the now repealed <i>Fauna Protection Act 1948</i> . Agreements established under the <i>Fauna Protection Act 1948</i> are treated as though they were established under the NPW Act. Managed under the NPW Act. | Not required |
| | Registered property agreement (RPA) | Established under the <i>Native Vegetation Conservation Act 1997</i> . Managed under the <i>Biodiversity Conservation Act (2016) NSW</i> . | Not required |

| | | | |
|--|--|---|------------------------------|
| | Nature Conservation Trust agreement (TA) | Established under the Nature Conservation Trust Act 2001 (NSW) and managed under the <i>Biodiversity Conservation Act (2016) NSW</i> Includes legacy Conditions of consent agreements. | May be required ¹ |
|--|--|---|------------------------------|

4. Key roles and responsibilities

4.1. Governance

Figure 1: Agreement assurance governance structure.



The Agreement Assurance Steering Committee (AASC) is an internal committee comprised of NSW Biodiversity Conservation Trust staff who have been appointed by the Director, Regional Delivery.

The NSW Biodiversity Conservation Trust has established an Agreement Assurance function that is led by the Manager Agreement Assurance, to manage the implementation of credible assurance programs that support landholders to meet their obligations and achieve sound biodiversity outcomes on land subject to conservation agreements.

4.2. Roles and Responsibilities

The following table defines the key roles and responsibilities of staff involved with agreement assurance for NSW Biodiversity Conservation Trust private land conservation agreements (Table 2).

Table 2: NSW Biodiversity Conservation Trust staff roles and responsibilities.

| Staff | Roles and Responsibilities |
|---|---|
| NSW Biodiversity Conservation Trust Board | <p>Monitor and evaluate the performance of the NSW Biodiversity Conservation Trust implementation of this policy</p> <p>Monitor and evaluate the agreement assurance function on an ongoing basis via its Programs and Delivery Committee</p> <p>Approve the Agreement Assurance Policy.</p> |
| Chief Executive Officer | <p>Ensure that decision makers understand that they are accountable for managing agreement assurance issues within their sphere of authority</p> <p>Endorse the Agreement Assurance Policy</p> <p>Approves Variations of agreements.</p> |
| Director Regional Delivery | <p>Oversee the agreement assurance function within the NSW Biodiversity Conservation Trust</p> <p>Review the Agreement Assurance Policy and any minor changes</p> <p>Appoints members of the Agreement Assurance Steering Committee</p> <p>Review high-risk instances of landholders not fulfilling their agreement obligations</p> <p>Approve withholding payments or delegate role where authorised</p> <p>Endorse escalation of agreement assurance issues where litigation or legal advice is required.</p> |
| Agreement Assurance Steering Committee | <p>Guide implementation of agreement assurance within the NSW Biodiversity Conservation Trust</p> <p>Provide risk oversight and strategic direction for agreement assurance and resolve items escalated by Regional Delivery managers</p> <p>Review and endorse agreement assurance documents including internal guidance, procedures and templates</p> <p>Monitor progress of management of off-track agreements.</p> |
| Agreement Assurance Manager | <p>Provide advice and support to regional teams to implement agreement assurance</p> |

| | |
|---|---|
| | <p>Report on risks and actions being taken to address agreement assurance issues</p> <p>Report on status and management of off-track agreements²</p> <p>Coordinate legal processes</p> <p>Coordinate training related to agreement assurance responsibilities</p> <p>Continuous improvement of agreement assurance related documentation, processes, and systems.</p> |
| Regional Delivery Managers | <p>Identify, assess and address agreement assurance issues within their sphere of authority</p> <p>Ensure agreement assurance issues are escalated where necessary to the Agreement Assurance Steering Committee</p> <p>Approve agreement improvement programs</p> <p>Enable staff to monitor identified agreement assurance issues, including: establishment, review and update of actions being taken to address the issues</p> <p>Review the rotation or addition of responsible officers to assist with agreement assurance issues.</p> |
| NSW Biodiversity Conservation Trust staff | <p>Refer any potential agreement assurance issues to the relevant Responsible Officer</p> <p>Identify, assess and address agreement assurance issues within their sphere of authority</p> <p>Ensure agreement assurance issues are escalated where necessary to the Regional Delivery Manager</p> <p>Establish and maintain relationships with landholders to encourage and support voluntary fulfillment of agreement obligations and address agreement assurance issues.</p> |

5. Approach to entering into agreements

The NSW Biodiversity Conservation Trust aims to guarantee future agreement assurance by ensuring it enters agreements with fit and proper persons/entities in accordance with the NSW Biodiversity Conservation Trust *Fit and proper person test policy*. Considering such matters as a person's agreement fulfillment record, repute, competence, and financial capability can reduce the risk of prospective agreement holders failing to comply with agreement provisions.

² An off-track agreement is determined dependant on the type of agreement (i.e. time since last annual management payment was released or since last annual report was submitted)

The NSW Biodiversity Conservation Trust has discretion to enter conservation agreements. The NSW Biodiversity Conservation Trust will assess whether a person is fit and proper to enter a Conservation Management Program agreement or Conservation partners grant. The NSW Biodiversity Conservation Trust considers this appropriate given the significant amounts of public funding being invested in such agreements.

The NSW Biodiversity Conservation Trust will generally not conduct a fit and proper person assessment for Conservation partners program agreements unless it has evidence immediately at hand that this may be in question.

The Conservation partners grant Expression of Interest (EOI) process involves a fit and proper person self-assessment.

Agreements will stipulate the need for the NSW Biodiversity Conservation Trust to be informed of a change in ownership and the NSW Biodiversity Conservation Trust will liaise with the new owner to ensure they are aware of their obligations.

5.1. Landholder support program

Where a landholder is in the process of entering a new agreement, NSW Biodiversity Conservation Trust staff will work closely with the landholder to ensure they understand their management obligations and the best management methods to use. NSW Biodiversity Conservation Trust staff will provide opportunities for landholders to seek advice, ask questions and to clarify understandings and expectations.

The focus of the NSW Biodiversity Conservation Trust Landholder support program is to provide support to all our existing landholders during the term of an agreement to assist with fulfilment of agreement obligations. The program provides landholders: connection with the NSW Biodiversity Conservation Trust, assistance building networks, knowledge and capacity, motivation to continue conservation management, and resources to support their land management.

The NSW Biodiversity Conservation Trust recognises that challenges arise, natural disasters occur and sometimes things don't go to plan. NSW Biodiversity Conservation Trust staff aim to be available and flexible to assist agreement holders to respond and manage through these times and link them up with experienced staff in other agencies who can assist in emerging issues. Agreement holders can seek support at any time via the NSW Biodiversity Conservation Trust's email or telephone inquiry channels.

Landholders with NSW Biodiversity Conservation Trust agreements have access to:

- ongoing support from NSW Biodiversity Conservation Trust regional staff
- ecological management guidelines
- links and networking with groups and organisations involved in conservation
- invitations to workshops, webinars and local field days
- regular updates and newsletters from the NSW Biodiversity Conservation Trust
- e-learning modules of our land management course

6. Approach to monitoring agreements

To ensure landholders of existing agreements are fulfilling their defined conservation obligations, the NSW Biodiversity Conservation Trust undertakes reviews of agreements (Figure 2).

Figure 2: Review cycle for conservation agreements.



6.1. Decision support tools

The NSW Biodiversity Conservation Trust applies the decision support tools on private land conservation agreements as part of the agreement review process. The NSW Biodiversity Conservation Trusts decision support tools provide sound logic for decision making based on standard criteria and a transparent and repeatable process to ensure consistency. Decision support tools are an objective method of decision making and the NSW Biodiversity Conservation Trust uses them to guide effort for annual reviews, agreement assurance issues and landholder engagement.

The assessment incorporates the agreement risk score and is determined by an additional factor – opportunity for landholder support.

A site visit is often part of the annual review. A site visit is prioritised if the agreement is in a critical phase for landholder support, a change of ownership has occurred, the agreement is deemed to be off-track, vegetation clearing, or significant disturbance has been identified.

6.2. Desktop review

The NSW Biodiversity Conservation Trust will conduct desktop monitoring of agreements through systems including the NSW Biodiversity Conservation Trust's customer relationship management system, records management system and spatial information system. All landholder agreements are uploaded into NSW Biodiversity Conservation Trust systems, where landholder agreement data can complement and integrate with other monitoring mechanisms.

Desktop monitoring may include:

- Reviewing the agreement obligations and management plan
- Reviewing previous annual reports for potential issues and trends
- Reviewing any landholder notifications or management change records
- Reviewing any changes in land ownership details
- Reviewing of imagery to detect change in landscape, such as vegetation cover
- Reviewing data updates in relation to such things as biodiversity values, planning rules, registered Aboriginal cultural heritage places, and private native forest agreements issued under the *Forestry Act 2012*.

6.3. Annual reporting and review

Landholders with Biodiversity Stewardship Agreements, some Conservation agreement (Conditions of consent), funded Conservation agreements, and recipients of Conservation partners grants, are required to submit annual reports to the NSW Biodiversity Conservation Trust.

Landholders are reminded of their reporting obligations three months prior to the reporting date and are provided with an annual report template which they are required to complete – including providing documentation and photographs as supporting information.

Annual reports are reviewed by the responsible officer to ensure accuracy and appropriateness of responses against the documentation and other supporting information provided.

Each agreement is assigned an annual review rating (Table 3) based on the fulfillment of the agreement obligations. The annual review rating will provide a rating to which obligations have been fulfilled.

Table 3: Annual review rating

| Annual review rating | Description |
|----------------------|---|
| Satisfactory | The landholder has generally fulfilled the agreement obligations to a satisfactory standard, with only minor opportunity for improvement identified. |
| Improvement required | A minor number of outstanding or incomplete agreement obligations have been identified, which have or the potential to have impact on the biodiversity of the agreement site. |

| | |
|-----------------------|--|
| | Requires active monitoring and landholder support by the NSW Biodiversity Conservation Trust. The landholder is required to fulfill specified agreement obligations. |
| Unsatisfactory | An extensive number of or one or more significant outstanding or incomplete agreement obligations have been identified, which require immediate and substantial action. The NSW Biodiversity Conservation Trust will take appropriate actions to address as allowed under the agreement provisions and legislation to ensure fulfillment of the agreement obligations. |

6.4. Site visit

For agreements that require a site visit, such as new agreements or agreements which have an improvement required or unsatisfactory annual review rating, the NSW Biodiversity Conservation Trust responsible officer will:

- identify opportunities for landholder support to encourage and promote voluntary fulfillment of agreement obligations
- assess the extent to which the landholder is fulfilling the agreement obligations, including management actions
- assess that information provided to the NSW Biodiversity Conservation Trust in the annual report is accurate
- identify any emerging challenges or issues to address.

Site visit findings will be documented within the NSW Biodiversity Conservation Trust systems and as part of the annual review report. Feedback will be provided to the landholder to assist with satisfactory fulfilment of agreement obligations.

6.5. Recommendations

The responsible officer will prepare an annual review report and associated recommendation.

When reviewing an agreement, consideration may be given to personal circumstances which impact a landholder's ability to fulfil their agreement obligations. This may include social and financial circumstances and environmental impacts, such as floods or fire. Such circumstances will be dealt with in a sensitive and confidential manner.

The Regional Delivery Managers are responsible for reviewing recommendations prepared by the responsible officer. The Regional Delivery Manager will implement decisions based on these recommendations where deemed appropriate, including decision-making based on the annual review rating and annual review report.

In all instances landholders will be advised of the outcome of the annual review and provided a copy of the Annual review report. Recommendations may include:

- Where fulfillment of agreement obligations is satisfactory:
 - Release of annual management payment (AMP) (BSA and funded CA)

- Where improvement is required, or fulfillment of agreement obligations is unsatisfactory:
 - Consideration of agreement assurance mechanisms outlined in Appendix 1
 - Advise landholder of mechanisms being applied to assist with improvement or satisfactory completion of outstanding agreement obligations.

7. Risk analysis framework

The risk analysis framework guides the NSW Biodiversity Conservation Trust in addressing agreements where the landholder is not fulfilling their agreement obligations. It is used to:

- identify trends which may require a planned or programmed approach
- determine urgency of response
- guide decision making of the level and type of response.

The risk analysis is based on:

- the likelihood of a landholder not fulfilling their agreement obligations such as, not satisfactorily completing management actions or undertaking them in a manner not consistent with the agreement or improvement program requirements.
- The severity of these actions causing or potentially causing a loss of conservation values or negative impact on biodiversity on the agreement site.
- The size of the financial investment/funding attached to the agreement.
- Previous instances of the landholder not fulfilling their agreement obligations.
- Whether an agreement is off-track³ or likely to become off-track.

The agreement assurance issues most likely to attract priority focus from the NSW Biodiversity Conservation Trust are those that seriously affect the conservation value or negative impact on biodiversity on agreement sites, indicate a misuse of public funds, occur repeatedly by the same person, or in patterns or trends.

³ An off-track agreement is determined dependant on the type of agreement (time since last annual management payment was released or since last annual report was submitted)

Figure 3: Risk analysis of private land agreements to conservation and ecological outcomes.

| Risk Matrix | | | | | | |
|--|----------------|---------------|------------|----------|-----------|-----------|
| Likelihood of event occurring | Almost Certain | Medium | High | High | Very High | Very High |
| | Likely | Low | Medium | High | Very High | Very High |
| | Possible | Low | Medium | Medium | High | High |
| | Unlikely | Negligible | Low | Medium | Medium | High |
| | Rare | Negligible | Negligible | Low | Medium | Medium |
| | | Insignificant | Minor | Moderate | Major | Extreme |
| Severity on conservation or ecological outcomes | | | | | | |

7.1. Agreement risk score

The agreement risk score is designed to assess the relative risk of agreements and rank them. The risk score is a key component of decision support tools that guide the NSW Biodiversity Conservation Trust effort for agreement assurance and associated landholder engagement.

The risk score is influenced by the probability of agreement assurance issues, potential impact on conservation values or negative impact on biodiversity and need to establish or maintain a relationship.

The likelihood of agreement assurance issues occurring is assessed using data on known agreement assurance issues (past or current) and past annual reviews obtained from NSW Biodiversity Conservation Trusts agreement monitoring and stage of agreement lifecycle.

The severity of impact to conservation or ecological outcomes is determined by considering the type of agreement and complexity of management, known or predicated conservation values, size of agreement site and other factors influencing the site.

The need to establish or maintain a relationship with the landholder is also assessed by considering date since last site visit, previous interactions, social factors influencing the site and capacity building project opportunities.

8. Approach to agreement assurance

The NSW Biodiversity Conservation Trust aims to support landholders of existing agreements to ensure they are fulfilling their defined conservation obligations. The NSW Biodiversity Conservation Trust aims to achieve this by:

- encouraging landholders through engagement and support
- monitoring agreements data, information, and annual reviews
- applying an agreement assurance response that is proportionate, appropriate and consistent
- evaluating and monitoring the agreement assurance function

8.1. Promoting and encouraging agreement assurance

We encourage landholders to meet their agreement obligations using tools including:

- direct engagement with landholders
- improvement programs
- annual reviews and management plan reviews
- notification letters
- guidance published on our website
- invitations to workshops, webinars and local field days
- promoting benefits of private land conservation and biodiversity conservation to industry and community
- rotating or assigning additional responsible officers between agreements, where appropriate.

We aim to provide practical and constructive guidance to encourage landholders to meet their agreement obligations. We also work with other networks and organisations that can help promote important information to guide landholders, including Local Land Services and Landcare.

8.2. Agreement assurance mechanisms

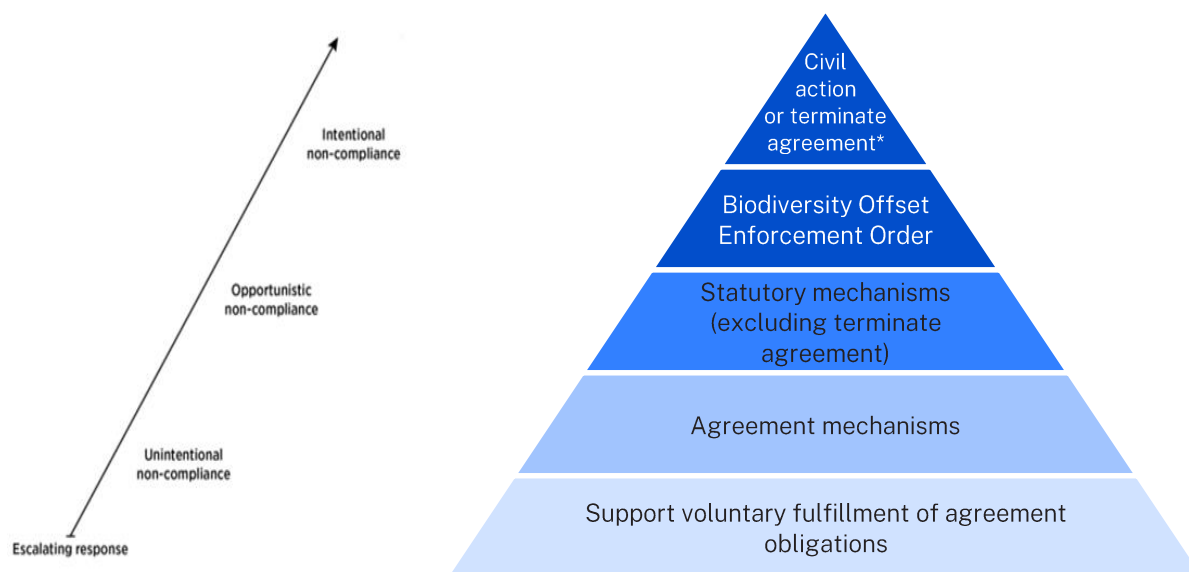
A range of agreement assurance mechanisms (Appendix 1) are available to the NSW Biodiversity Conservation Trust to assist when landholders are not fulfilling their agreement obligations, including management actions. These mechanisms follow a flexible escalation pathway (Figure 4) determined by the annual review rating and risk analysis. Figure 4 and Appendix 1 outline the escalation pathway and mechanisms available to the NSW Biodiversity Conservation Trust to address agreement assurance issues.

The available mechanisms are broken into four types:

- Support voluntary fulfillment – mechanisms to support landholders to fulfill their agreement obligations.

- Agreement mechanisms – mechanisms which are associated with clauses or management actions within the agreement.
- Statutory mechanisms – mechanisms available to the landholder and/or the NSW Biodiversity Conservation Trust under the *Biodiversity Conservation Act (2016) NSW*.
- Regulatory mechanisms – mechanisms available to the NSW Biodiversity Conservation Trust under the *Biodiversity Conservation Act (2016) NSW* to attempt to remedy issues with an agreement or agreement site.

Figure 4: Escalation pathways.



* Under the *Biodiversity Conservation Act (2016) NSW*, the NSW Biodiversity Conservation Trust can terminate an agreement in exceptional circumstances, however this would only occur if all other appropriate agreement assurance mechanisms have been exhausted.

The NSW Biodiversity Conservation Trust recognises that outcomes are most effective when awareness is raised, and behavioural change is encouraged. The use of different mechanisms should be proportional to the risk and seriousness of the behaviour.

Landholder support will continue to be provided by the NSW Biodiversity Conservation Trust for all agreement landholders.

8.3. Conservation partner grant agreement assurance mechanisms

The following agreement assurance mechanisms are available to the NSW Biodiversity Conservation Trust to assist when landholders are not fulfilling their grant obligations:

- Support voluntary fulfillment of obligations
 - Landholder engagement
 - Notification letter
 - Improvement program
- Agreement mechanisms
 - Withhold full or part payment
 - Landholder required to repay funds to the NSW Biodiversity Conservation Trust.

9. Referral to other agencies

During NSW Biodiversity Conservation Trust activities, such as reviews, inspections, or landholder engagements, NSW Biodiversity Conservation Trust staff may become aware of potentially unlawful activities on or near an agreement area. The NSW Biodiversity Conservation Trust will refer such matters to the appropriate regulatory authority. This may include, unauthorised clearing of native vegetation, harm to threatened species, harm to Aboriginal objects or places, other potential offences.

10. Agreement assurance monitoring and reporting

10.1. Evaluation and accountability

The NSW Biodiversity Conservation Trust has systems to record and manage all data and information relating to agreement assurance issues and the NSW Biodiversity Conservation Trust's responses to such matters. The NSW Biodiversity Conservation Trust will periodically analyse this information and data to determine if there are trends, themes or risks in agreement assurance that may be able to be addressed through preventative measures such as revised agreement conditions or updated technical support.

This will support continuous improvement of the policy and the agreement assurance function to ensure it is effective and credible. The NSW Biodiversity Conservation Trust Board will monitor and evaluate the performance of the NSW Biodiversity Conservation Trust implementation of this policy and the agreement assurance function on an ongoing basis via its Programs and Delivery Committee.

10.2. Measuring and reporting

The NSW Biodiversity Conservation Trust measures the performance of its agreement assurance framework so that it can:

- report on its performance
- learn from its past performance and continually improve the effectiveness and efficiency of its future approach to the agreement assurance function
- identify emerging agreement assurance issues
- review and develop agreement assurance mechanism as required.

In particular, the NSW Biodiversity Conservation Trust measures:

- the number and type of agreements which are on-track or off-track
- the period of time an agreement has been off-track
- the number of off-track agreements that have transitioned to on-track

The NSW Biodiversity Conservation Trust will also monitor agreement assurance outputs such as improvement programs, payments withheld, notices or enforcement orders issued.

10.3. Continuous improvement

The NSW Biodiversity Conservation Trust is committed to enhancing its agreement assurance approach through continuous improvement. This will be achieved through ongoing monitoring and evaluation of the agreement assurance framework.

The NSW Biodiversity Conservation Trust will:

- evaluate the appropriateness and effectiveness of escalation pathways and agreement assurance mechanisms.
- periodically review its risk analysis framework based on new science, policy, and the availability of information on agreement assurance issues and compliance levels
- periodically review agreement obligations to ensure that specific, measurable, attainable, realistic, and timely
- when systematic issues within agreements are identified, such as agreement clauses or management actions, agreement templates will be reviewed and updated as required.
- ensure staff are well informed and trained in current agreement assurance methods.
- develop agreement monitoring methods, including technology-based solutions where practicable.

Appendix 1: Agreement assurance mechanisms table

| Program | Agreement | Agreement assurance mechanism | | | | | | | | | | | | | | | | |
|---------------------------------------|---|-------------------------------|---------------------|---------------------|---------------------------------|-------------------------------|---------------------------------------|----------------------------------|-------------------------------|--------------------------|--|--------------------------------------|--|--|---|---|--|-------------------|
| | | Support voluntary fulfilment | | | Agreement mechanism | | | | Statutory mechanism | | | | | | | Regulatory mechanism | | |
| | | Landholder engagement | Notification letter | Improvement program | Require updated management plan | Withhold full or part payment | Notice on default or Notice to remedy | Remedy Breach at Landholder cost | Withhold full or part payment | Variation (By Agreement) | Suspension of biodiversity credits (Only if considering cancellation of credits) | Cancellation of biodiversity credits | Vary or terminate agreement (if credits cancelled) | Terminate Agreement (With owners' agreement) | Terminate Agreement (Without owners' agreement) | Biodiversity Offset Enforcement Orders (Retire credits) | Biodiversity Offset Enforcement Orders (Owner to rectify breach) | Civil Proceedings |
| Biodiversity Offset Program (BOP) | Biodiversity Stewardship Agreement | ✓ | ✓ | ✓ | ✓ | ✓ | ✗ | ✗ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| Conservation Management Program (CMP) | Fixed Price Offer | | | | | | | | | | | | | | | | | |
| | Revolving Fund (funded) | ✓ | ✓ | ✓ | ✗ | ✓ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✓ |
| | Conservation tenders | | | | | | | | | | | | | | | | | |
| | Co-investment partnership | | | | | | | | | | | | | | | | | |
| Conservation Partners Program (CPP) | Conservation Agreements (non-income generating) | | | | | | | | | | | | | | | | | |
| | Conservation Agreements (conditions of consent) | ✓ | ✓ | ✓ | ✗ | ✗ | ✓ | ✓ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✓ |
| | Revolving Fund (non-income generating) | | | | | | | | | | | | | | | | | |
| | Wildlife refuge | ✓ | ✓ | ✓ | ✗ | ✗ | ✗ | ✗ | ✗ | ✓ | ✗ | ✗ | ✗ | ✓ | ✓ | ✗ | ✗ | ✓ |

Appendix 2: Description of agreement assurance mechanisms

| Mechanism | Type | Agreement/program Type | Description |
|---------------------------------------|-------------------------------|--|---|
| Landholder engagement | Support voluntary fulfillment | All | If it is determined that an agreement obligation has not been fulfilled satisfactorily, the NSW Biodiversity Conservation Trust) will engage the landholder to raise awareness and assist in a way forward. |
| Notification letter | Support voluntary fulfillment | All | A notification letter may be issued to the landholder outlining agreement obligations or management actions not satisfactorily fulfilled or attempts at landholder engagement has been unsuccessful. |
| Improvement program | Support voluntary fulfillment | All | An improvement program may be drafted for consideration by the landholder. An improvement program is aimed at guiding a landholder to priorities and management actions which must be achieved to fulfill agreement obligations. This program is by negotiation with the landholder. |
| Require updated management plans | Agreement condition | Biodiversity Stewardship Agreement (BSA) | If at the time of a management plan review it is determined that updated management plans are required, the NSW Biodiversity Conservation Trust may advise the landowner of this requirement in writing. |
| Notice on default or Notice to remedy | Agreement condition | Conservation Management Program (CMP) Conservation Partners Program (CPP) ⁴ | If the landowner breaches any term of the agreement, the NSW Biodiversity Conservation Trust may give notice to the landowner specifying the breach; and requiring that the breach be remedied within a reasonable time after the date of the notice. |
| Remedy breach at landholders' cost | Agreement condition | Conservation Management Program (CMP); and Conservation Partners Program (CPP) ⁵ | The NSW Biodiversity Conservation Trust may, but is not obliged to, do anything that the NSW Biodiversity Conservation Trust considers necessary to remedy any default by the landowner of the agreement (including having an Authorised Entrant, or any employee, agent, or contractor of the NSW Biodiversity Conservation Trust, enter the Land to remedy the default). If the NSW Biodiversity Conservation Trust elects to take any steps to remedy a default by the owner all costs incurred by the NSW Biodiversity Conservation Trust will be a liquidated debt and must be paid by the owner to the NSW Biodiversity Conservation Trust on demand. |
| Withhold payment | Agreement condition | Biodiversity Stewardship Agreement (BSA) | <u>Withhold payment for site splitting.</u> |

⁴ Excludes Conservation partner grant

⁵ Excludes Conservation partner grant

| | | | |
|------------------------------------|--|---|--|
| | | | The Minister (or delegate) may withhold payments due if ownership of the Land has been split, and the Deed has not been varied to allocate obligations, and entitlement to payment, between the new owners. |
| Withhold payment | Agreement condition | Conservation Management Program (CMP) | The NSW Biodiversity Conservation Trust is entitled to withhold, delay, or not make payments if they believe that: - the owner has not fulfilled their agreement obligations; or - ownership of the land has split and the Deed has not been varied to allocate obligations, and entitlement to payment, between the new owners; or - a funded management action has not been completed by the payment date. |
| Withhold payment | Agreement condition | Conservation partner grants | If any of grant terms and conditions are not fulfilled, the NSW Biodiversity Conservation Trust reserves the right to withhold or reclaim in part or in whole the funding at its discretion. |
| Withhold payment | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 7 s.6.34(3)(a)</i> | Biodiversity Stewardship Agreement (BSA) | The Minister (or delegate) may withhold payments if management actions have not been carried out in accordance with the agreement. |
| Variation (By agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 2 s.5.11(1)(a)</i> | Biodiversity Stewardship Agreement (BSA) | A BSA may be varied by a subsequent agreement between the Minister (or delegate) and the owners (for the time being) of the biodiversity stewardship site concerned. The variation must not have a negative impact on the biodiversity values protected by the agreement or that other measures required by the Minister (or delegate) have been taken by the owner of the biodiversity stewardship site to offset any such negative impact. |
| Variation (By agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 3 s.5.23(2)</i> | Conservation Management Program (CMP); and Conservation Partners Program (CPP) ⁶ | A conservation agreement (CA) may be varied by a subsequent agreement between the NSW Biodiversity Conservation Trust and all the owners of the land at the time of the variation. The area to which the CA applies may be increased or reduced by any such variation of the agreement. |
| Variation (By agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 4 s.5.30(2)</i> | Wildlife refuge agreement | A wildlife refuge agreement may be varied by a subsequent agreement between the NSW Biodiversity Conservation Trust and all the owners of the land at the time of the variation. The area to which the wildlife refuge agreement applies may be increased or reduced by any such variation of the agreement. |
| Suspension of biodiversity credits | <i>Biodiversity Conservation Act (2016) NSW Part 6</i> | Biodiversity Stewardship Agreement (BSA) | If the Environment Agency Head (or delegate) considers there may be reasons for cancelling a biodiversity credit, the Environment Agency Head (or delegate) may suspend the biodiversity credit pending an investigation into the matter. |

⁶ Excludes Conservation Partners Program grant

| | | | |
|--|--|--|---|
| (Only if considering cancellation of credits) | Division 4 s.6.25 | | Reasons may include any management action in respect of which biodiversity credit was created has not been, or is not being, carried out in accordance with the BSA. |
| Cancellation of biodiversity credits | <i>Biodiversity Conservation Act (2016) NSW Part 6 Division 4 s.6.23</i> | Biodiversity Stewardship Agreement (BSA) | If the Environment Agency Head (or delegate) is of the opinion that any management action in respect of which the biodiversity credit was created has not been, or is not being, carried out in accordance with the BSA. |
| Vary or terminate agreement (if credits cancelled) | <i>Biodiversity Conservation Act (2016) NSW Part 6 Division 4 s.6.24(5)</i> | Biodiversity Stewardship Agreement (BSA) | If a biodiversity credit is cancelled, the Minister (or DCCEEW ¹ delegate) may vary or terminate the relevant BSA (with or without the consent of the owner of the biodiversity stewardship site) to make it clear that any obligation to carry out a management action that arises only because of the creation of that credit ceases to have effect. |
| Biodiversity credit enforcement orders | <i>Biodiversity Conservation Act (2016) NSW Part 11 Division 5 s.11.25 (1)</i> | Biodiversity Stewardship Agreement (BSA) | <u>Order requiring biodiversity stewardship site owner to retire biodiversity credits.</u> The Minister (or delegate) may direct a person who is the owner of a biodiversity stewardship site (or a former owner) to retire biodiversity credits of a specified number and class (if applicable) within a time specified in the order. Only if the Minister (or delegate) is satisfied that, because of any act or omission by the person, one or more biodiversity credits were created in respect of a management action that was not, or is not being, carried out in accordance with the relevant BSA. |
| Biodiversity credit enforcement orders | <i>Biodiversity Conservation Act (2016) NSW Part 11 Division 5 s.11.26</i> | Biodiversity Stewardship Agreement (BSA) | <u>Order requiring owner to rectify breach of Biodiversity Stewardship Agreement.</u> The Minister (or delegate) may direct a person who is the owner of a biodiversity stewardship site to carry out at the person's cost, within a period specified in the order, such work or other actions as the Minister (or delegate) considers necessary to rectify any breach of a Biodiversity Stewardship Agreement. |
| Terminate Agreement (With agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 2 s.5.10(2)(a)</i> | Biodiversity Stewardship Agreement (BSA) | The Minister may terminate a Biodiversity stewardship agreement with consent of the Minister and all the owners (for the time being) of the biodiversity stewardship site concerned. The Minister must not consent to the termination of a Biodiversity Stewardship Agreement unless such measures as may be required by the Minister are taken by the owner of the biodiversity stewardship site to offset any negative impact of the termination on the biodiversity values protected by the agreement. <u>Terminating a BSA is generally not supported by the NSW Biodiversity Conservation Trust and would only be considered in exceptional circumstances to address an agreement assurance issue if all other appropriate mechanisms have been exhausted.</u> |

| | | | |
|--|--|---|---|
| Terminate Agreement (With agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 3 s.5.23(3)</i> | Conservation Management Program (CMP); and Conservation Partners Program (CPP) ⁷ | The NSW Biodiversity Conservation Trust conservation agreement may be terminated by a subsequent agreement between the NSW Biodiversity Conservation Trust and all the owners of the land at the time of the termination. <u>Terminating a CMP or CPP agreement is generally not supported by the</u> NSW Biodiversity Conservation Trust and would only be considered in exceptional circumstances to address an agreement assurance issue if all other appropriate mechanisms have been exhausted. |
| Terminate Agreement (With agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 4 s5.30(3)(a)</i> | Wildlife Refuge agreement | A wildlife refuge agreement may be revoked (terminated) by a subsequent agreement between the NSW Biodiversity Conservation Trust and all the owners of the land at the time of the termination. All wildlife refuge agreement revocations will be signed by the NSW Biodiversity Conservation Trust CEO. |
| Terminate Agreement (Without agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 2 s5.10(2)(b) s6.24(5)</i> | Biodiversity Stewardship Agreement (BSA) | <u>Terminating a BSA is generally not supported by the</u> NSW Biodiversity Conservation Trust and would only be considered in exceptional circumstances to address an agreement assurance issue if all other appropriate mechanisms have been exhausted. |
| Terminate Agreement (Without agreement) | <i>Biodiversity Conservation Act (2016) NSW Part 5 Division 3 s.5.23</i> | Conservation Management Program (CMP); and Conservation Partners Program (CPP) ⁸ | <u>Terminating a CMP or CPP agreement is generally not supported by the</u> NSW Biodiversity Conservation Trust and would only be considered in exceptional circumstances to address an agreement assurance issue if all other appropriate mechanisms have been exhausted. |
| Civil proceedings | <i>Biodiversity Conservation Act (2016) NSW Part 13 Division 2 s.13.15 (1)</i> | Biodiversity Stewardship Agreement (BSA) | <u>Court order to remedy or restrain a breach of a Biodiversity Stewardship Agreement.</u> 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. s.13.15(3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach. |
| Civil proceedings | <i>Biodiversity Conservation Act (2016) NSW Part 13 Division 2 s.13.15(2)</i> | Conservation Management Program (CMP) Conservation Partners Program (CPP) ⁹ | <u>Court order to remedy or restrain a breach of any private land conservation agreement.</u> The Minister, or a person acting with the written consent of the Minister, may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of any private land conservation agreement. |

⁷ Excludes Conservation Partners Program grant

⁸ Excludes Conservation Partners Program grant

⁹ Excludes Conservation Partners Program grant

| | | | |
|--|--|---------------------------|--|
| | | Wildlife Refuge Agreement | |
|--|--|---------------------------|--|