

# Seeking mortgagee consent for a biodiversity stewardship agreement

## Frequently asked questions for financial institutions

### What is the Biodiversity Offsets Scheme?

Within the provisions of the *Biodiversity Conservation Act 2016* (NSW), the Biodiversity Offsets Scheme provides a mechanism to avoid, minimise and offset the impacts of development and some types of clearing on biodiversity in New South Wales.

Under the scheme:

- developers, individuals and other groups responsible for projects that will significantly affect biodiversity must first seek to avoid and minimise that impact – and a credit obligation will be imposed for any remaining impacts
- developers can purchase and retire credits offered by landholders on the credit market to meet their credit obligations
- landholders can generate biodiversity credits by agreeing to secure and manage an area of their land to improve biodiversity
- an agreement with a landholder is called a biodiversity stewardship agreement (BSA)
- a BSA is an in-perpetuity agreement between the landholder and the Minister responsible for the *Biodiversity Conservation Act 2016* (NSW)
- credit sales provide funding for ongoing management activities on the land, such as weed and pest management, fire management, and restoration works
- transparent and scientifically robust methods are used to assess biodiversity impacts at development sites and determine biodiversity management at stewardship sites.

### What is a biodiversity stewardship site?

A biodiversity stewardship site is an agreed area of private land from which biodiversity credits are generated. This land is bound by the terms of the biodiversity stewardship agreement (BSA) which clearly defines the area of the biodiversity stewardship site and the agreed site management actions. BSAs are in-perpetuity agreements. If legal

ownership of the land transfers to another landholder, the management actions are also transferred to the new landholder.

## How are management plans created?

A BSA management plan outlines the terms of the agreed management actions a landholder is obligated to carry out at their BSA site. The terms are prepared and agreed upon in consultation with the landholders.

## What funding is involved in a biodiversity stewardship agreement?

All BSAs have ongoing funding in the form of annual payments (which provides income to the landholder), if the landholder implements the management actions identified in the management plan.

## When and why is a mortgagee consent needed?

A mortgagee consent is required when a landholder is interested in putting a biodiversity stewardship agreement on their land and the land is subject to a mortgage.

This written consent legislative requirement is outlined in s5.9 and s5.21 of the *Biodiversity Conservation Act 2016* (NSW).

The *Biodiversity Conservation Act 2016* outlines that the mortgagee consent is required prior to the execution of a BSA or a conservation agreement.

## If the property is sold, what obligations are carried with the change in title?

All BSAs are registered on the title of the land. If the property is sold, the obligations under the agreement are transferred to the new landholder listed on the title of the property. There are no changes to the agreement obligations in the event of property sale, and any funding is also transferred to the new landholder.

## Can properties with agreements be readily sold?

The experience of the department, the Biodiversity Conservation Trust and its predecessor the Nature Conservation Trust, is that properties with conservation agreements are readily sold. In the past, these have been properties without funding under the agreement. The funding provided through a BSA is expected to increase the saleability of a property if the landholder chooses to sell.

## What is the security of annual payments and the source of funds?

Annual management payments are released to the landholder when the landholder has adequately undertaken the required management actions as defined in the agreement and the management plan during the previous management year.

The funds for annual payments to BSA landholders are put aside by the Biodiversity Conservation Trust for the future.

For BSAs, this is through a Total Fund Deposit, which is paid by a landholder or a developer on their behalf into the Biodiversity Stewardship Payments Fund. The fund is managed by the Biodiversity Conservation Trust in accordance with Division 7 of the *Biodiversity Conservation Act 2016*.

## What is the Total Fund Deposit?

The Total Fund Deposit amount (TFD) is the amount of money set in a BSA to cover future land management costs. TFDs are paid into the Biodiversity Stewardship Payments Fund (BSPF) when credits are sold. Through the Biodiversity Conservation Trust, this fund then makes annual payments to the landholder to cover costs of land management under the BSA management plan.

## What is to be included on a mortgagee consent?

Consent from the mortgagee must be in writing. The department has prepared documents which can be used by financial institutions as a template or as a guide as to the content of the consent.

The main points which are required to be outlined in a mortgagee consent include:

- the name of the owner of the property who is entering into the agreement
- the name and address of the property which is entering into the agreement
- the Lot/DPs which are subject to the agreement
- the mortgage number(s)
- written consent from the financial institution for the landholder to enter the agreement.

## Further questions?

If you have further questions about the Biodiversity Offsets Scheme, please use the contact details listed in the letter or contact the Department of Climate Change, Energy, the Environment and Water via [stewardship@environment.nsw.gov.au](mailto:stewardship@environment.nsw.gov.au)

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