

Biodiversity conservation agreements on Crown land

Policy IND-0-261 Version 2

Policy Statement

This policy sets out how the NSW Department of Planning, Housing and Infrastructure – Crown Lands (Crown Lands) will consider applications or proposals to enter into biodiversity conservation agreements (BC Agreements).

BC Agreements are established under part 5 of the *Biodiversity Conservation Act 2016* and include biodiversity stewardship agreements, conservation agreements and wildlife refuge agreements.

When assessing any use of Crown land for this purpose, consideration is to be given to the alignment of that use with *Crown land 2031* priorities and how that use is authorised under the *Crown Land Management Act 2016* (the CLM Act) and other related legislation. This includes consideration of opportunities to deliver on multiple priorities to support greater diversity of contemporary and concurrent uses of Crown land, as well as the significant spiritual, social, cultural and economic importance of Crown land to the Aboriginal people of NSW.

The use of Crown land for environmental conservation may align with key priorities under *Crown land 2031*, particularly where the activation of Crown land for a BC Agreement enhances both Aboriginal and environmental outcomes.

It is recommended applicants note the range of considerations associated with assessing the suitability of Crown land for a BC Agreement prior to making an application to Crown Lands.

Scope

This policy applies to Crown land subject to the provisions of the CLM Act and must be applied when the department is:

- considering entering into a BC Agreement on Crown land; and/or
- assessing requests from third parties – including other Government entities, lessees of Crown land or Crown land managers – for the consent of the minister responsible for administering the CLM Act to enter into BC Agreements.

Following Crown Land's consideration of an application for a BC Agreement under this policy, there may be subsequent processes and approvals required depending on the type of BC Agreement being considered. Further information about these processes and BC Agreements more broadly can be found at <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform>.

Considerations

BC Agreements on Crown land may be suitable where the use of the land for conservation and biodiversity delivers public value for the people of New South Wales. However, due to the long-term, and in some cases perpetual, nature of BC Agreements, Crown Lands must balance the considerations outlined in this policy with the potential constraints on future use to ensure the public value of Crown land is maximised.

A case-by-case analysis of each site will be required. The following provides an outline of key considerations Crown Lands will apply when assessing the suitability of a site.

Where land is reserved or dedicated

The purpose of reserved or dedicated Crown land will be a material consideration in assessing the suitability of a site for a BC Agreement. Relevant provisions of the CLM Act must be complied with when considering whether the reserve purpose or dedication supports entering into a BC Agreement.

As per the *Biodiversity Assessment Method 2020*, in order to create credits under the Biodiversity Offset Scheme, management actions under the BC Agreement must be additional to any existing conservation obligations over the land. Section 11.9.3 of the *Biodiversity Assessment Method 2020* outlines the required reduction in the number of credits that can be generated for different types of public land. These provisions, and any others, may be taken into consideration when assessing the suitability of an application to enter into a BC Agreement over Crown land.

Perpetual leases including Western Lands leases

BC Agreements on land subject to a perpetual lease, including Western Lands leases, will be considered provided the purpose of the lease does not preclude conservation agreements.

Leased and licensed land

As leases and licences are either for a set term, or are terminable at will by the department, it will generally not be appropriate to enter into perpetual BC Agreements over Crown land that is under a lease or licence.

Objects and principles of the *Crown Land Management Act 2016*

In considering whether to enter a BC Agreement on Crown land, the outcomes of allocating the land for a BC Agreement must be considered in light of the objects and principles of the CLM Act.¹

Native title and Aboriginal land claims

Crown Lands may seek legal advice on a case-by-case basis on the impact of native title and Aboriginal land claims. Applicants may be required to provide evidence of consultation with native title holders and/or Local Aboriginal Land Councils, and Crown Lands may also undertake independent consultation.

In relation to native title, a BC Agreement will only be considered where all the following apply:

- a. the BC Agreement would be permitted by legislation, including the *Native Title Act 1993 (Cth)*
- b. entry into the BC Agreement would not result in a compensation liability for the state
- c. the BC Agreement would not affect the department's ability to deliver on responsibilities and obligations under an Indigenous Land Use Agreement (ILUA)²
- d. the BC Agreement would not otherwise affect the native title rights and interests without the prior written agreement of the native title holders to those affects
- e. native title holders do not object to the department entering into the BC Agreement
- f. the department, at its discretion, forms the view that the impact of the BC Agreement would have a 'low impact',³ as defined in the *Native Title Act 1993* on land where native title has not yet been determined.

Where land is subject to a claim under the *Aboriginal Land Rights Act 1983* a BC Agreement will only be considered where:

- a. the claimant Aboriginal Land Council and the Local Aboriginal Land Council (if different to the claimant Aboriginal Land Council), have provided written support to the BC Agreement, and
- b. the BC Agreement would not affect the department's ability to deliver on responsibilities and obligations under an Aboriginal Land Agreement.

¹ The objects and principles of the *Crown Land Management Act 2016* are outlined in sections 1.3 and 1.4 respectively.

² A voluntary agreement between a native title group and others about the use of land and waters.

³ Low impact future acts in accordance with section 24LA the *Native Title Act 1993 (Cth)*.

Crown Lands will also consider whether the BC Agreement provides that it terminates immediately on the grant of an Aboriginal land claim, as an additional mechanism to minimise the impacts of BC Agreements on Aboriginal land claims. Due to the perpetual nature of BC Agreements and their potential impact on future Aboriginal land claims, this consideration will be particularly important where the land is not currently subject to a land claim.

Revenue sharing arrangements

Revenue and risk sharing arrangements between Crown Lands and applicants will be considered on a case-by-case basis when entering into BC Agreements.

Roles and responsibilities

Crown Lands:

- review and brief the minister (or any relevant delegate) responsible for administering the CLM Act in relation to applications to enter into BC Agreements
- investigate the native title and Aboriginal land claim implications of any BC Agreement
- enter into BC Agreements on behalf of the minister responsible for administering the CLM Act in accordance with this policy.

Applicants proposing to enter into BC Agreements:

- provide true and accurate information when applying for minister's consent
- provide any necessary consents required by this policy in relation to Aboriginal land claims or native title under the *Aboriginal Land Rights Act 1983* and *Native Title Act 1993 (Cth)*
- respond in accordance with reasonable timelines and requirements set by Crown Lands.

If the Applicant is a mining company or other entity that Crown Lands at its discretion considers has the capacity and capability to undertake native title investigations, then Crown Lands may require the Applicant to undertake investigations in relation to the native title implications of the BC Agreement

Delegations

This policy does not change, remove or add delegation to any officer. Specific delegations exist for the CLM Act and financial delegations also apply, which must be adhered to.

Legislation

Biodiversity Conservation Act 2016

Crown Land Management Act 2016

Aboriginal Land Rights Act 1983

Native Title Act 1993

Related policies

Not applicable.

Superseded documents

IND-O-261 Version 1

Revision history

Version	Date Issued	Notes	By
1.0	05/02/2020	New policy to assist staff, Crown land managers and others regarding consideration of BC Agreements	A/Deputy Secretary
2.0	18/09/2024	Revised and updated as necessary	Deputy Secretary

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