

Trust for Nature: Biodiversity Offset Program Fact Sheet

Who is Trust for Nature (Victoria)?

Trust for Nature (Victoria) was established in 1972 through the *Victorian Conservation Trust Act*. This enabled people to contribute permanently to nature conservation by donating land or money to a not-for-profit organisation with a focus on private land.

In 1978, Trust for Nature developed 'on title agreements' known as conservation covenants to protect native plants and wildlife. These legally binding agreements allow private landowners to conserve natural habitat on their properties in perpetuity.

Trust for Nature has now negotiated more than 1510 covenants and so protected more than 70,000 hectares.

Trust for Nature's vision is a future in which Victoria's nature is valued, protected and thriving.

Biodiversity offset covenants

Under section 3A of the *Victorian Conservation Trust Act* a landowner can enter into a covenant with the Trust to protect the conservation values on the land.

An offset covenant is a type of conservation covenant which satisfies a permit requirement and requires a landowner to actively manage and improve the quality of vegetation on their land.

An offset covenant with Trust for Nature satisfies security requirements for an offset site under both the:

- *State Guidelines for the Removal, Destruction or Lopping of Native Vegetation 2017* (the Guidelines), and
- *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Trust for Nature's role in offsets

Securing the site

Freehold land can be secured as an offset site by entering into a security agreement with a relevant statutory body such as Trust for Nature.

As the security holder Trust for Nature is a signatory to the deed of covenant and is responsible for monitoring and enforcing the terms of the covenant and the offset management plan (OMP).

Land management guidance

Land management advice and guidance is provided to the landowner as part of Trust for Nature's stewardship program. Trust for Nature does not undertake on-ground management actions for offset sites.

Not a broker or a site assessor

Trust for Nature does not act as a broker except in very limited circumstances. Trust for Nature may choose to act as a broker if no other brokers have been engaged and/or if there is a conservation benefit in doing so.

Whilst Trust for Nature has Vegetation Quality Assessment (VQA) competent staff, Trust for Nature does not act as a site assessor.

First steps – site assessment

A site assessor must be engaged before an offset site can be established. They will review the eligibility of an offset site, and are responsible for producing the OMP which will guide management of the site to meet permit or approval conditions.

Engaging a broker may be useful before or after contacting a site assessor. A broker will be able to give advice on the market viability of a particular offset, and will be able to set up a founding trade or subsequent trades.

A list of DELWP-accredited site assessors and brokers is available on the Native Vegetation offsets website. Other brokers and site assessors may operate for Commonwealth offsets.

Approval process

Trust for Nature (Victoria) is a statutory agency governed by a Board of Trustees under the *Victorian Conservation Trust Act 1972*.

To establish the offset covenant the land must first be assessed by the Trust's regional staff to ensure that it meets eligibility criteria. It must be approved internally by a subcommittee of the Board called the Conservation Committee and

then approved by the full Board of Trustees. The Committee and Board meet quarterly, and between quarterly meetings may also hold one virtual meeting where proposals are considered via an email circular.

The final approval step to establish the offset covenant is approval by the Minister for Environment and Climate Action. Once this approval is received the covenant can be registered on title.

Timeframes

Given the internal and external approval processes required to establish an offset covenant, the timeframe to register an offset site through Trust for Nature can be from 12-18 months. Ministerial approval alone can take from 2-3 months.

It is therefore necessary to allocate enough time to allow for offset site establishment through Trust for Nature. Ensuring that Trust for Nature is provided with sufficient information early on in the process (in our '*preliminary information*' form) helps us to progress internal approval processes whilst other aspects are being finalised.

Please note that if these timeframes are of concern, other methods are available to establish an offset site (such as through a DELWP Section 69 agreement).

We know that covenantors choose Trust for Nature based on strong cultural fit and based on our supportive Stewardship program, but offsets actioned through the Department of Environment, Land, Water and Planning (DELWP) may meet requirements for a shorter timeline.

Founding trades

Trust for Nature typically approves offset covenants where a proponent has been identified who will enter into a credit trade agreement with the landowner. The amount paid to the landowner under the trade agreement by the proponent provides sufficient funds to cover setting up, managing and monitoring the offset site for the 10 year active management period. This is called a *founding trade*.

If there is no founding trade (an advanced offset), if the proponent and landowner are the

same entity (a first party offset), or if the founding trade is too small to cover all the costs, the landowner must pay the management funds themselves or wait for a sufficiently large trade to set up the site.

The amount of money held in trust is based on an independent assessment of management costs (arranged by the landowner) in accordance with Trust for Nature's Management Cost Estimate (MCE) guidelines.

Trust for Nature retains at least 200% of the estimated management costs as the security amount for the 10 years of management actions. Upon registration of the covenant on title, a standard payment of 25% of the security amount is made. This leaves Trust for Nature with at least 150% of the MCE to be paid out to the landowner over the remainder of the 10 year offset management period.

When there is no founding trade (an advanced or first party offset) and the landowner is responsible for providing the funds, the initial 25% of the security amount typically paid back to the landowner upon registration is waived. Trust for Nature retains 150% of the estimated management costs as security.

If a founding trade price significantly exceeds the estimated management costs, the landowner can apply to have the excess amount released upon registration of the covenant.

Landowner payments and interest

Trust for Nature holds landowner payments in trust for the landowner, and pays them out for the 10 year active management period to a standard payment schedule.

Landowner payments are held in a low-risk interest bearing account. The funds are actively managed in term-deposits managed by an investment fund manager independent to Trust for Nature.

Provided the landowner is compliant with their offset covenant they will receive their annual payments each year, as well as any interest earned on the funds held in trust (minus a small administration and funds management fee). Annual landowner payments are made in the month the offset was registered and the interest is paid out following the end of each financial year.

Reporting and compliance

One of the landowner's obligations in maintaining an offset site is the annual reporting of their completed management actions.

The Trust provides the landowner with a tailored reporting template to review their management works against performance targets and objectives in the OMP. Annual reports are due at least 2 months before the anniversary of the registration of the deed on title.

The Trust assesses compliance based on the annual report prepared by the landowner, the landowner's response to any further information requested by the Trust relating to compliance, and site inspections.

Once the Trust is satisfied that the landowner's actions are compliant, the Trust will pay the landowner the annual management payment as outlined in the payment schedule in the Deed of Covenant.

If the Trust believes that the landowner has failed to comply with the Deed of Covenant, the Trust may withhold payment to the landowner until the relevant requirement has been complied with to the Trust's satisfaction.

The Trust works with the landowner to rectify any situation that is in breach of the OMP or the covenant deed. In the event of complete landowner non-compliance, the Trust may complete any necessary works and claim compensations from the landowner.

In the event of an environmental catastrophe, the Trust works with all parties to mediate an acceptable outcome.

Subsequent credit trades

If a State offset covenant is established, there may be additional credits generated for the landowner when the offset site is registered. Trades of these additional credits can be made through a DELWP accredited offset broker, or can be self-managed by the landowner through the Native Vegetation Credit Register.

If a serious compliance issue arises Trust for Nature will notify DELWP (and the broker) to freeze the landowner's credits so trades cannot be made.

Can you establish an offset site on an existing conservation covenant?

Land which has been voluntarily secured with a conservation covenant is not excluded from entering into a State offset arrangement. However, if the conservation covenant was entered into through an incentive program, as a condition of a planning permit, or through an offset arrangement it may be ineligible to be used as an offset site.

For Commonwealth offsets, the existence of the voluntary covenant may negatively affect the amount of 'gain' that can be attributed to the site by the site assessor.

If in doubt about eligibility please contact Trust for Nature.

A conservation covenant can never be removed, unless it is being replaced by another Trust for Nature covenant like an offset covenant. If a landowner is considering establishing an offset site through DELWP over an area that is already covenanted it is important to ensure that the proposed security agreement does not conflict with the terms of the Trust for Nature covenant.

Offset stewardship program

Trust for Nature has a comprehensive offset stewardship program where regional staff visit each offset site at least five times in the establishment and first ten years of the offset. This includes:

- The site visit prior to offset site establishment, where regional staff assess the suitability of the site against Trust for Nature's covenanting criteria.
- Triennial visits once the offset site is established, with regional staff typically visiting in years 1, 4, 7 and 10.

The regional staff are a point of contact for land management advice to landowners. Regular visits are an opportunity for landowners to ask questions and troubleshoot management issues, and for the Trust to monitor management actions and their outcomes.

After the 10-year active management period of the offset which requires more intensive stewardship, the site moves to Trust for Nature's standard stewardship program.

A Covenant Management Plan will be developed to assist landowners with maintaining the condition of their offset site in perpetuity. This plan is reviewed every five years with a site visit, and land management guidance remains available.

Offset site establishment fee

As a not-for-profit organisation which does not receive government funding for delivering its offset service, Trust for Nature must recover the full cost of establishing and providing perpetual stewardship services for offset sites.

The payment of the Trust for Nature fee to establish an offset site is generally the responsibility of the proponent. The proponent is required to sign a Trust for Nature fee proposal (based on the current Fee Schedule) and submit this to Trust for Nature prior to Trust for Nature commencing work.

The Trust for Nature fee and the landowner payment will be documented in a Credit Trading Agreement (CTA). Trust for Nature will invoice the proponent for the Trust for Nature fee and landowner payment once the CTA is signed by all parties.

In some instances a landowner may prefer to pay the Trust for Nature fees instead of the proponent. Where there is no founding trade (an advanced offset or a first party offset), the landowner will also be responsible for the fees. The landowner will then be required to sign the Trust for Nature fee proposal prior to work commencing.

If offset site establishment is halted partway, Trust for Nature will invoice the proponent or landowner who has signed the fee proposal for work completed to date.

State offsets - notes

Whilst all offset sites under the Guidelines need to comply with the DELWP Site Assessor Guidelines, there are some specific requirements for Trust for Nature offset sites:

Trust for Nature deed of covenant

The deed of covenant is equivalent to the DELWP 'Landowner Agreement' or 'Section 69 Agreement'. Trust for Nature drafts a deed of covenant and provides this to the site assessor for QA submission. Trust for Nature also

arranges for landowner signing of the deed of covenant once it receives QA approval.

Survey plan

This is equivalent to DELWP's 'Site Plan' with some key differences. See Trust for Nature's Survey Plan Guidelines.

Multiple titles

Trust for Nature requires one deed of covenant per title, whereas DELWP allows multiple titles to be covered by the one landowner agreement. As such, one deed of covenant, OMP and survey plan must be prepared for each title.

OMP templates

The OMP must align with the landowner agreement. Trust for Nature offset sites require a slightly different OMP template to be used to align with the Deed of Covenant.

Offset site code – unique identifier

For Trust for Nature offset sites this code is generated by Trust for Nature. E.g. VC_TFN-09432_01.

Commonwealth offsets - notes

There are some key items to note when establishing a Commonwealth offset site with Trust for Nature:

OMP

Trust for Nature has developed template language regarding Trust for Nature's roles and responsibilities that must be used for all OMPs for Trust for Nature offset covenants.

Trust for Nature and the landowner must be given the opportunity to review the OMP and provide feedback prior to it being submitted to DCCEEW for approval.

Once approved by DCCEEW, Trust for Nature will attach the OMP in a schedule to the offset covenant to be registered on the land title.

Quality assurance

A Commonwealth-only site does not need to go through DELWP Quality Assurance unless it is also intended to satisfy State offset requirements.

Commonwealth OMP variations

Any variations to the OMP are to be requested through DCCEEW in consultation with Trust for Nature and in accordance with the DCCEEW permit approval conditions.