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## Case Study: 27.4 Legal instruments: Great Eastern Ranges initiative

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## Case Study: 27.4 Legal instruments: Great Eastern Ranges initiative

### **Abstract**

The Great Eastern Ranges (GER) Initiative aims to establish a conservation corridor inland of the east coast of Australia, stretching 3600 kilometres from north to south. The corridor is primarily defined by the Great Dividing Range and the Great Escarpment of eastern Australia (Mackey et al. 2010).

### **Keywords**

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## Case Study 27.4 Legal instruments: Great Eastern Ranges Initiative

The Great Eastern Ranges (GER) Initiative aims to establish a conservation corridor inland of the east coast of Australia, stretching 3600 kilometres from north to south. The corridor is primarily defined by the Great Dividing Range and the Great Escarpment of eastern Australia (Mackey et al. 2010).

There is no legislation in Australia that specifically recognises connectivity conservation, although biosphere reserves that inherently incorporate connectivity conservation are recognised under the federal *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). A recent Draft National Wildlife Corridors Plan (National Wildlife Corridors Advisory Group 2012) recommended a National Wildlife Corridors Act, but this would only have provided a legal process for community nomination and government declaration of national wildlife corridors, not the tools for achieving this. The proposed legislation was subsequently abandoned in favour of a non-legislative process (Government of Australia 2012).

In practice, the Australian States and Territories have traditionally undertaken responsibility for environmental management, and one of the legal challenges is that the corridor runs through four jurisdictions—the States of Victoria, New South Wales and Queensland, and the Australian Capital Territory—each with its own environmental legislation. The Federal Government may, however, make legislation relating to ‘external affairs’ (*Australian Constitution*, s. 51[xxix]). This allows it to implement Australia’s obligations under international nature conservation conventions (*Commonwealth v Tasmania* [1983] 158 CLR 1), including the CBD. The EPBC Act identifies a number of ‘matters of national environmental significance’, including species and ecological communities listed as threatened at a national level. Any activity likely to have a significant impact on these matters must be assessed and approved by the Federal Government, in addition to obtaining approvals required under State law (EPBC Act, Part 3, Division 1). What this means is that the Federal Government may impose stringent conditions on development approved at the State level, and even veto it completely.

Another legal challenge is posed by the variety of land tenures. In New South Wales, while 59 per cent of the corridor is public land, including 39 per cent in protected areas, 41 per cent is privately owned. In Queensland the corridor incorporates significant areas of privately leased public land and private land (Pulsford et al. 2012). Privately controlled gaps between protected areas provide a challenge to the development of the corridor. These areas are the ones that have been the primary interest of the initiative so far.

Activity is focused on the State of New South Wales, although new GER alliances have formed recently in the other jurisdictions. The initiative in New South Wales is led by a lead partners’ group (three conservation NGOs, a semi-independent statutory body and the NSW Government environmental agency). Eight GER regional partnerships have been set up, covering different sections of the corridor. These involve from 10 to 35 organisations, including NGOs, industry groups, governmental agencies, local government, Indigenous groups and academic institutions. Each regional partnership has its own approach to planning and implementation. Various strategic planning processes are being utilised even though they have not been specifically designed for connectivity conservation. For example, the priorities for on-ground conservation investment in one area are being informed by two regional multi-species/ecological community recovery plans that set out the actions necessary for maximising long-term survival in the wild. Recovery plans can be harnessed to achieve connectivity objectives because enhancing habitat connectivity is a key strategy for maintaining species’ dispersal

capacity and viability in the context of climate change (DECCW 2010:42). In another section of the corridor, strategic biodiversity conservation planning is coalescing around strategic assessment, under the EPBC Act, of proposed coalmines that are likely to have a significant impact on matters of national environmental significance.

When it comes to implementation of on-ground conservation actions on private land, NGOs must necessarily rely on voluntarism. Even where government plays a role, it emphasises voluntary instruments rather than regulatory ones (OEH 2013).

The voluntary instruments used include outright purchase of land by conservation NGOs and management agreements with landholders. Agreements that bind both the existing and the future owners of the land in perpetuity remain the holy grail of private land conservation. In Australia, however, unlike the United States, NGOs cannot usually enter into such arrangements. They are only available to statutory bodies, under legislation, although NGOs may enter into cooperative arrangements. These statutory bodies may also employ ‘revolving funds’, allowing them to purchase land and then sell it subject to the attachment of a covenant upon sale, investing the proceeds in further purchases.



**Garth Dixon OAM, at his ‘Warrwillah’ property near Canberra, who signed in perpetuity conservation agreement with the NSW National Parks and Wildlife Service in the Kosciuszko to Coast section of the Great Eastern Ranges Initiative**

Source: Ian Pulsford

Landholders who enter into perpetual covenants, or purchase land already subject to them, are usually motivated by an environmental ethic rather than specific incentives, although they are rewarded with tax benefits and, in New South Wales, relief from local government rates. At the other extreme, there are agreements and registration schemes that are primarily symbolic, lasting only as long as the landholder chooses. The aim is to secure an initial commitment in the hope of extending the length and depth of this over time.

In between these extremes, practice varies. The aim of obtaining an enforceable commitment providing long-term security must be balanced against landholder reluctance if incentives are insubstantial, even in a context where enforcement action is unlikely. One approach requires agreements for at least five years where required management interventions are modest (for example, grazing management) but a minimum of 15 years where restoration (revegetation, fencing for stock exclusion and weed management) is involved. If the only objective is feral animal control, or weed suppression by a landholder after weed removal by the other party to the agreement, there may be few formalities and no legally binding commitments.

A voluntary rather than regulatory approach is essential to securing the cooperation of private landholders in ongoing active management. A regulatory backdrop, however, controlling proposed development that threatens existing connectivity is an essential precursor. In the GER, this is provided by State controls over development and clearance of native vegetation and Commonwealth regulation of proposals that have a significant impact on matters of national environmental significance. In addition, local government planning schemes may seek to protect corridors through zoning or through environmental overlays that have to be considered in determining development applications. The existence of direct regulation fundamentally improves the bargaining position of those seeking to negotiate management agreements with landholders. These regulatory processes were established long before the emergence of connectivity conservation, with its emphasis on voluntarism. Connectivity conservation is not their objective, but they are important building blocks in achieving it.

— David Farrier, Faculty of Law, University of Wollongong, Australia

## Conclusion

Connectivity conservation is a 21st-century approach to managing landscapes and ecosystems. In today's rapidly changing world and in the future, it is not possible for protected areas on their own to adequately conserve biodiversity. It is only by working to understand and effectively manage protected areas as part of the surrounding and interconnecting landscapes that we will ensure that the greatest possible number of species and ecosystems can move and adapt as climate and other conditions change. Connectivity conservation has many benefits for people and nature, and provides a natural solution for helping to mitigate the effects of climate change. Connectivity conservation is underpinned by a sound scientific basis. The concept is now sufficiently mature that a global management and governance framework has been developed by the IUCN for people to work together over large regions. These approaches are being implemented all over the world including many initiatives that reach across jurisdictional borders. This framework begins to address the need for connectivity conservation to be supported by many legal instruments and tools that already exist in most national legal systems. A two-pronged approach is needed: making better use of existing instruments and strengthening existing frameworks with new and innovative tools and processes as feasible. Readers may refer to two principal source documents (Lausche 2011, Lausche 2013) and their extensive reference lists of articles, reports and websites for more detailed analyses of these topics and additional reading on law and connectivity conservation.