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Parish Councils and the Duty to conserve biodiversity

Guidance on the
implications of the
NERC Act 2006



Protecting wildlife for the future



Parish Councils and the Duty to Conserve Biodiversity:

Guidance on the Implications of the NERC Act 2006

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1.0 Introduction

This guidance has been produced with the primary aim of informing parish & town councils and parish meetings of their new duty to conserve biodiversity. (For the purposes of this guidance document, Parish Councils should be taken to include parish meetings and town councils.

We want you, the parish councils, to feel confident enough to pursue ways of incorporating wildlife conservation into your day-to-day work, and to encourage your communities to take action so that together we can secure the best future for our wildlife and natural environment.

There are over 600 parishes across the Berks, Bucks & Oxon region, which unfortunately means that we are unable to take an active role in helping you to account for this new duty. However, it is with this in mind that we produced this guidance, which will give you some pointers on ways to incorporate conservation of biodiversity into the work that you already do, and where you can go for more information. BBOWT have also produced a series of leaflets that deal with how to manage different habitats for conservation, details of which are included in the relevant section of this document.

2.0 Background

2.1 The Natural Environment and Rural Communities Act

The Natural Environment and Rural Communities (NERC) Act came into being when it received Royal assent in March of 2006 having passed through both the House of Commons and the House of Lords as a Bill.

However, whilst the Act was established in March, the main provisions did not come into force until the 1st October 2006.

The Act, as its name implies, has a number of implications for both the natural environment and rural communities of England. According to DEFRA the Act is designed to:

“...achieve a rich and diverse natural environment and thriving rural communities through modernised and simplified arrangements for delivering Government policy. The Act implements key elements of the Government’s Rural Strategy published in July 2004, and establishes flexible new structures with a strong customer focus.”

For more details on the full provisions of the NERC Act you may want to visit the Department of the Environment, Food and Rural Affairs (DEFRA) web-site at: <http://www.defra.gov.uk/rural/ruraldelivery/bill/>

However, whilst the implications of the new Act will affect a number of rural and environmental issues, this guidance document is concerned with one very specific aspect of the new Act.

2.2 The Duty to Conserve Biodiversity

Amongst other things, this new piece of legislation introduces a new duty which requires ‘*public authorities*’ to have regard to the conservation of biodiversity.

The precise wording of this new duty is included at Section 40(1) of the Act, which reads:

“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.”

Whilst there are explanatory notes to accompany the Act, there is currently no formal guidance for public authorities as to what this new duty is, and what it really means.

This guidance document aims to fill this gap and should be seen as an introduction to the duty and its implications, as well as a reference guide for where to go next.

We start by defining some of the key terms included in the duty which help to interpret what it actually means.

2.3 Parish Councils as Public Authorities

The duty expands on previous legislative provisions (such as the Countryside and Rights of Way – CRoW - Act 2000) to explicitly include parish councils as bodies to whom a duty to conserve biodiversity now applies.

The Act defines what it considers to be a *‘public authority’* at Section 40(4), where it includes *‘local authorities’*. It defines the parish councils as local authorities under Section 40(5), in which it also includes County Councils and District Councils.

2.4 Biodiversity

There are numerous text book definitions of what biodiversity means, but essentially it means *‘the variety of life, including habitats and species (both plants and animals) and the way in which these living things interact with one another’*. To all intents and purposes biodiversity is wildlife.

2.5 Conservation

The term conservation may seem self-explanatory; however, the NERC Act makes it clear that, in this context, conservation does not simply mean maintaining the existing biodiversity resource as it is today, it also means restoring or enhancing habitats or the populations of species.

Many of our important habitats in the UK have already suffered from degradation and fragmentation. This is as a result of unsympathetic land management, inappropriate development, changes in recreational use of land, climate change, and many other factors.

In some areas we are lucky enough to have places that are still rich in wildlife. However, conservation not only seeks to protect the really good bits that remain, but it also seeks to re-create links between habitats, to forge networks and reinforce habitat corridors, and in certain areas it aims to enhance the existing resources so that they can realise their former glory.

The reasons for doing this are as many and varied as the reasons for the original losses to our wildlife resources. Our wildlife is increasingly threatened and with development pressure and issues of climate change moving up the political agenda, so will that of the things that are being directly affected.

Our wildlife has already suffered, and it will continue to be negatively impacted upon unless we all take a stand now. That is why we think this new duty is so important.

2.6 Interpretation of the Duty

BBOWT does not interpret the duty as imposing a new function on parish councils. Instead it is intended that authorities should now maximise opportunities for conserving wildlife resources as a part of what they already do.

In other words you must now consider whether the activities that you are already involved in could also include provisions to help conserve biodiversity.

2.7 Existing functions of Parish Councils

Parish Councils have a number of functions, powers and duties, many of which are backed up by statutory provisions. For a comprehensive list of the functions of Parish Councils visit the National Association of Local Councils website at: www.nalc.gov.uk.

We recognise that not all functions of parish councils are well suited to assisting nature conservation, so what we have done is identify what we consider to be four key areas of work where there is most potential for incorporating provisions for wildlife.

3.0 First things first – Data Gathering

Before you can start to conserve the wildlife in your Parish or think about incorporating conservation into your existing activities, it is essential to know what biodiversity resources that exist in your area.

Some parts of your parish may already be recognised as being particularly rich in wildlife, whereas other areas may present opportunities for improving what is already there so that it too can become rich in wildlife.

Areas that are already recognised as being important for nature conservation may be designated. Other sites may not be officially designated, but may contain protected species or important habitats and/or species that also make an area important in terms of nature conservation.

Below we explain the difference between the various nature conservation designations, and some of the terms that you may come across when dealing with species.

3.1 European Sites

- Special Areas of Conservation (SAC)
- Special Protection Areas (SPA)

These sites are protected by European legislation, and protection of them for their nature conservation value is very stringent. Any plans or projects that may impact upon these sites have to undergo a very strict set of tests to prove that they will not have an adverse impact on the site.

3.2 National Sites

- Site of Special Scientific Interest (SSSI)

These sites are protected through national law and are representative of the most important habitats that can be found in the UK. There is a strict system that governs what you can and cannot do in relation to these sites.

3.3 Local Wildlife Sites

- Biological Notification Site (BNS)
- County Wildlife Site (CWS)
- Wildlife Heritage Site (WHS)

When designating SSSIs, only a representative sample of sites was chosen. This means that there were still lots of very important sites which were not protected. Many of these sites are now designated by the more comprehensive network of local wildlife sites. These sites go by many different names, but they are essentially all the same, and whilst they are not protected by law they are protected by policies through the planning system.

3.4 Protected Species

When people talk about protected species they mean species that are protected by law.

In the UK we have two main kinds of species protection. Some species are protected by our own UK Law. The main piece of legislation covering species protection in England is the **Wildlife & Countryside Act 1981**.

The other kind of protection that individual species can benefit from is European protection. This applies to species that are considered to be threatened in Europe and so the EC have included provisions for protecting them in a European Directive. These European provisions are then enacted into UK law by transposing them into regulations. **The Conservation (& Natural Habitats &c) Regulations 1996**, transpose into UK law the **European Habitats Directive 1994**, which lists a number of species that require this additional level of protection.

If a species is listed in either of these two pieces of legislation then it is said to be a protected species, and as such it may be rare or threatened and therefore require conservation.

3.5 Other

- Biodiversity Action Plan (BAP) Habitats & Species

These are habitats and species that have been acknowledged as being of principle importance for the conservation of biodiversity in the UK. These habitat types are also protected through planning policies.

For more information about important sites and species go to your local environmental records centre or local authority:

Environmental record centres hold information relating to all the nature conservation designations listed above, as well as hold data relating to species that have been recorded.

Local authorities also have access to the information held by local records centres, so it might also be worth contacting your district, borough or unitary council to see if they can provide you with data, otherwise there is a risk that records centres could be swamped with data requests.

For Oxfordshire and Berkshire contact the '*Thames Valley Environmental Records Centre*' (TVERC), contact details can be found on their web-site: www.tverc.org

For Buckinghamshire contact the '*Bucks and Milton Keynes Environmental Records Centre*' (BMERC) contact details can be found on their web-site: www.bucksmkerc.org.uk

4.0 Parish Councils and Conservation

BBOWT have come up with four main areas where we feel parish councils could make the biggest difference for local wildlife:

- 1) When you are preparing your Parish plan
- 2) When you are commenting on planning applications
- 3) When you are managing land
- 4) When you are creating bylaws

This list is in no way intended to be comprehensive, but we will go through each of these areas of work in turn and look at some examples of how wildlife conservation can be incorporated. It may give you some ideas about other ways of incorporating conservation into your work.

4.1 Preparing Parish plans

Parish plans are intended to be a blue-print for the future of your towns and parishes. They should also feed into the future planning process for wider district/borough areas and reflect the views of local communities, so they can be an important and influential tool.

The concept of the parish plan was launched in November 2000 through the Government's Rural White Paper entitled; '*Our Countryside – the Future*', in which it states that the role of a parish plan is to:

"... set out a vision of what is important, how new development can best be fitted in, the design and quality standards it should meet, how to preserve valued local features and to map out the facilities which the community needs to safeguard for the future."

Plans should "identify key facilities and services, set out the problems that need to be tackled and demonstrate how distinctive character and features can be preserved."

We feel that the development of parish plans has a clear role to play in the conservation of biodiversity, as it can set out clearly how parish councils intend to

incorporate this new legal duty, and how it would like the district/borough to account for wildlife when planning for the wider area.

The following summary has been taken from '*Parish plans: Guidance for Parish and Town Councils*' (Countryside Agency, July 2004). It gives an indication of what the Countryside Agency considers to be some of the key issues when considering developing a Parish plan:

- Parish plans are local, action-based plans which address a range of problems and opportunities affecting rural communities.
- They can include social, economic and environmental issues.
- The **whole community** should be involved in producing the Parish plan, with the parish council taking lead responsibility.
- The Parish plan must be **consistent** with related policies set out in the local authority's planning documents and local strategic partnerships.
- The plan should be based on information provided through **survey, research, consultation and community participation**.
- **A grant** to assist with the production of Parish plans is available from the Countryside Agency. **Advice** and **help** with producing the plan and involving the community are available from the rural community council.
- **Parish plans should identify actions** which can be taken forward by the parish council, by other individuals and groups within the community or by other service providers and statutory bodies. These should have a clear focus on Who? What? Why? How? When?

Whilst many Parish councils will have already written their Parish plans, it is important that when writing new plans or reviewing existing plans, this new legal duty is accounted for.

The drawing up of parish plans is a collaborative and consultative process. You will need to find out what the key biodiversity issues are in your parish and then prioritise them. This can be assisted by asking some simple questions, for example:

- **Where are the most valuable wildlife resources of your parish?** For example, designated sites, habitat corridors such as rivers or streams, or opportunity areas for habitat enhancement and/or creation. (See section 3.0 on data gathering).
- **Are they threatened?** For example, are you aware of any plans to sell the land, build on it, or farm it?
- **Can you influence these threats?** For example, could the parish purchase the land or influence the landowner? Is the land already in public ownership? Can you promote management of the site for nature conservation?
- **Can you map your resources?** For example, if you can map designated sites and opportunity areas this will help to visualise where the priority areas are.

This is not a definitive list of the questions that you should ask, but it should give you an idea of some of the issues you should be considering. It is also important that you consider the views of the whole parish. Some members of your community may have lived in the area for a long time, and can provide you with invaluable local knowledge.

Once you have consulted on, and agreed the priorities for your parish you can then vocalise them through the parish plan, by:

a) Setting out a vision for the biodiversity of your parish

- For example, *'Our vision is for a parish rich in wildlife that people can enjoy'*

b) Setting aims for biodiversity conservation

- There may be a number of different aims, some may be more strategic, such as: *'Raising awareness of biodiversity conservation issues within the parish'*. Or they may be more prescriptive, such as: *'Acquire Mr Blogs field and manage it as a wild flower meadow for the parish'*.

c) Setting actions/objectives to achieve the aims

- Set up a wild flower meadow action group
- Raise £XXX to purchase the wild flower meadow

- Establish a management plan for the meadow
- Recruit volunteers for practical conservation tasks

d) Setting timescales and agreeing responsibility

- By establishing timescales for each action/objective, it is much more likely that you will see results, and it will be easier to measure your achievements.
- Certain actions may naturally fall to certain bodies or individuals, but it is worth considering partnership working and engaging with the community.
- Responsibilities should be agreed in advance so that you have a guaranteed commitment to the tasks required.

The parish plan is your opportunity to raise the profile of the issues that are most important to your parish. Access to good quality natural environment is an essential part of ensuring health and wellbeing for sustainable communities. Make sure your District, Borough or Unitary Authority knows how important it is to you.

For more information on parish plans:

Guidance and advice on the background to parish plans, the procedure for producing them and examples of parish plans, can be found on the DEFRA website at: <http://www.defra.gov.uk/rural/communities/parish-planning.htm>

4.2 Commenting on planning applications

The right to be consulted

An important function of parish councils is the role that you play in the planning system. We have already covered one of the roles of parish councils in respect of one aspect of forward planning (i.e. production of parish plans). However, another more recognised way of influencing planning is through the development control process.

Under the Town & Country Planning Act 1990 (Schedule 1, para 8), parish councils have the right to be notified of planning applications affecting land falling within their parish boundary.

This means that, if the parish council has informed the local planning authority (LPA) of their desire to be consulted, they will be informed when an application is submitted, and will be briefed on the nature of the development proposed.

It is then up to the parish council to decide how they wish to respond to the consultation, i.e. whether you support or object to an application, or whether you just wish to make comments. This is where you have the chance to make a difference for wildlife.

The development plan & the importance of policy

All planning applications are decided by the LPA by assessing them against the current development plan for an area. Each district, borough or unitary authority will have what is known as a local plan, which forms part of the development plan. In 2004 changes to the planning system mean that all local authorities are now working on something called a local development framework (LDF), which will eventually replace the local plan.

The adopted local plan or LDF will contain area and subject-specific policies, including topics such as wildlife and the natural environment, that help guide future development and assist planning officers and planning committees when making decisions on planning applications.

It is therefore essential that the policies contained within the local plan or LDF are as robust and comprehensive as possible, so that when they are used in support of an application or they are used as the basis of an objection, they will stand up to scrutiny.

Biodiversity & the development plan

Biodiversity is what is known as a material consideration in planning, which means it is something that planning officers and planning committees have to take into account when they are making a decision on a planning application. This means that it is a subject that will have policies relating to it in the local plan or LDF.

Ideally, each local plan or LDF will have strongly worded policies that reflect the local authority's commitment to wildlife & nature conservation, and that you can use to support arguments against inappropriate developments.

However, to ensure that the policies are worded strongly enough, and will therefore be useful when appraising individual planning applications, it is vital that they are right in the first place. Make sure that you are aware of when the local authority is consulting on documents that contain development control policies, and check that you support their biodiversity policies (these may go by many names, but can generally be found under the heading of natural environment or something similar). If you do not think it is worded strongly enough, then write and tell the LPA.

Commenting on individual applications

From a biodiversity perspective there are two main questions that you need to ask when you are looking at a planning application:

- a) Will the proposed development result in harm to the wildlife of your parish? Or,***
- b) Will the proposed development result in benefits for the wildlife of your parish?***

The questions may seem simple, but they may require some digging before you can answer them. Firstly you will need to find out if any ecological appraisals

were submitted with the application. If there are any, then this should hopefully answer these two questions for you.

If the application does not have any accompanying ecology report then you may wish to find out more. Check information on the biodiversity resources of the application area (check with your local environmental record centre), does it look like an area that is wildlife-rich will be affected (e.g. is there a designated site? Is there a known bat roost in the area?)? Or does the development boundary fall in an area where there are opportunities for enhancement or creation of habitats? (See the section on biodiversity information for more help on this subject).

If you have unanswered questions that you feel need to be addressed before a decision can be reached on the application, then contact the planning officer who is dealing with the case and discuss it with them.

When you have decided whether you wish to **support or object** to a planning application, you should send your comments to the case officer at the LPA. Grounds for support or objection should be based on material considerations, so find the relevant policies in your adopted local plan or LDF, and use them to support your representations.

If you wish to object to a planning application because you feel it would result in harm to the wildlife resource of your parish, e.g. an area of land that is designated as a County Wildlife Site, you may write something along the lines of:

*“Village Parish council wish to **object** to the development forming the subject of this planning application (ref: XX/XXXX).*

The development would result in the direct loss of habitat that has been recognised for its value to nature conservation by its designation as a County Wildlife Site. As such we feel that it would contradict policy XXXX of the District’s adopted local plan.”

If you are supporting or commenting on a planning application because it has the potential to result in benefits to the wildlife resource of your parish, then you may want to submit comments which highlight the importance of habitat enhancement and creation. For example:

*“Whilst Village Parish council **do not wish to object** to this planning application (ref: XX/XXXX), **we do have recommendations** that we feel should be accounted for before a decision is made on the application.*

The development boundary is located in an area that has been identified as a opportunity area for habitat enhancement/creation. As such, we feel strongly that due to the nature and scale of the proposed development, the LPA should seek a financial contribution to assist with the delivery of this enhancement/creation. Funds should be secured through a planning obligation (Section 106 agreement). This would bring the proposal in-line with Policy XXXX of the Borough's Local Development Framework.”

Development, by its very nature, will result in physical change to the environment. It can seldom be reversed, so think about the potential impacts and use your influence to **secure the best future for the wildlife of your area.**

For more information on how to influence the planning system to help wildlife see:

‘Take Action for Wildlife Guidance Notes’ on the planning pages of the BBOWT web-site– www.bbowt.org.uk. These guidance also include a number of other useful contacts and sources of information.

‘Wildlife and Development’ - available to download for free from the publications section of the English Nature web-site: www.english-nature.org.uk

4.3 Managing Parish land

Many parish councils own and manage land on behalf of the community. This is supported by a number of the powers and duties that form the functions of parish councils.

The table below outlines some of the functions of Parish councils that relate to the acquisition and management of public land, and highlights the relevant powers and duties.

Function	Powers and Duties
Burial grounds, cemeteries and crematoria	Power to acquire and maintain.
Commons and common pastures	Powers in relation to enclosure, as to regulation and management, and as to providing common pasture.
Drainage	Power to deal with ponds and ditches.
Highways	Power to plant trees and to maintain roadside verges.
Land	Power to acquire by agreement, to appropriate, and to dispose of land.
Open spaces	Power to acquire land and to maintain open spaces.
Recreation	Power to acquire land or to provide recreation grounds, public walks, pleasure grounds and open spaces and to manage and control them.

(Adapted from a table published on the NALC web-site at: www.nalc.gov.uk)

The extent to which biodiversity conservation can be factored into the management of a site will depend greatly on the nature and scale of the landholding.

Minimal intervention sites

For some areas it may be more appropriate to introduce minimal intervention methods of management, and to think about more wildlife friendly methods of management. This would perhaps be more suitable for churchyards, or maintaining roadside verges, i.e. sites where you might not want lots of conservation volunteers or relatively intrusive conservation techniques to be

employed due to the sensitivity of the site, or possibly for health and safety reasons.

On sites such as this you may simply want to think about the little things that can make a big difference. Bat and bird boxes can provide a safe-haven for creatures that are suffering from urban squeeze, and thinking about the chemicals you use to keep weeds and pests at bay as well altering the grass-cutting regime can have real positive results for plants and invertebrates.

'Big Gain' Sites

These are the sites where you can potentially make the big differences and add significantly to the wildlife resource of your parish.

For suitable sites that the parish already owns, you may want to think about what the site is currently used for and whether the existing uses are compatible with managing the site for nature conservation, or whether there are parts of the site that could be managed for wildlife if the whole site is not suitable.

Parish councils may only spend public money on projects or actions for which there are statutory provisions. The NERC duty now means that parish councils may spend funds on conserving biodiversity. This means that parish councils could, if it was deemed appropriate, now identify areas that would benefit from management for nature conservation, and think about bringing them into public ownership so that they could be managed to increase the wildlife value. This may include the acquisition and/or management of Local Nature Reserves or Pocket Parks for the community.

Different landholdings will have different issues, not least of which will be the fact that they are home to different habitats and species, and will therefore need different management. BBOWT has produced a series of leaflets (known as the Conservation Handbook) which provide more guidance and advice on how to manage different habitats for wildlife. If you would like more information on how to manage a particular habitat to increase its wildlife value, please contact the Wildlife Information Service at BBOWT using the contact details shown below.

For more information on managing habitats for conservation see:

'The Conservation Handbook' (leaflets) – Available from the *'Wildlife Information Service'* at BBOWT: wildinfo@bbowt.org.uk, or call: (01865) 775476

Information on Pocket parks and their value to both communities and wildlife can be found on the following useful web-site: www.pocketparks.com

4.4 Creating bylaws

Parish councils have a function that relates to the creation of bylaws. As one of the few bodies with a power to make bylaws, you should now consider whether as part of this function you could have an impact on the conservation of biodiversity.

Bylaws can be a useful tool in nature conservation, for example, if you have a site where you think the wildlife is being threatened by a conflicting interest, such as use of the site by off road vehicles, then you may want to consider the possibility of regulating the conflict through the use of bylaws.

English Nature, DEFRA and the Department for Communities and Local Government (DCLG) have all produced guidance on producing bylaws in some form or another. It is worth looking at all of them to see which you find most applicable to your situation.

In the document *'Local Nature Reserves in England: a Guide to their Selection and Declaration'*, English Nature present a suite of model bylaws. These are primarily aimed at sites that have already been designated for their nature conservation interest; however, they can be easily adapted to suit other situations where nature conservation and protection of wildlife interests are important and/or difficult.

DCLG has published on its web-site (www.communities.gov.uk), a number of model bylaws. The intention is that authorities (including parish councils) can download these model bylaws and adapt them to local circumstances. *'Model Bylaw 2 – Pleasure Grounds, Public Walks and Open Spaces'*, includes a whole section entitled: *'Protection of the Ground, its Wildlife and the Public'*. By taking a

model bylaw such as this and expanding on the provisions included within it, you could develop a practical and enforceable tool for protecting and enhancing the wildlife within your parish.

DEFRA, have also published downloadable model bylaws for '*Commons and Town &/or Village Greens*', '*Country Parks and National Parks*' and guidance on the procedure for making bylaws. (<http://www.defra.gov.uk/wildlife-countryside/issues/bylaws/index.htm>). There is a lot of other useful information about bylaws on the DEFRA web-site.

For more information on creating bylaws to help conserve wildlife see:

'Local Nature Reserves in England: a Guide to their Selection and Declaration', available to download for free from the publications section of the English Nature web-site: www.english-nature.org.uk

The Department of Communities and Local Government (DCLG) web-pages dedicated to model bylaws on the DCLG web-site: www.communities.gov.uk

The DEFRA web-pages dedicated to bylaws on the DEFRA web-site: www.defra.gov.uk

5.0 Conclusion

This guidance is not intended to be a prescriptive list of all the things that parish councils now need to do. However, you do now have a duty to conserve wildlife, and you need to start thinking about the best ways to do it.

The new duty should not be seen as an onerous one, it is an exciting opportunity to rethink the way you work. By improving your natural environment you are not just helping to conserve biodiversity, you will also be improving the sustainability and quality of life of your parish community.

We want this guidance to be as useful as possible, so we are hoping to make it something that will evolve with time. If you have any suggestions on other key areas of work undertaken by parish councils that could assist in addressing this new legal duty then please contact us and let us know by e-mailing: conservation@bbowt.org.uk

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This document has been produced by the Berkshire, Buckinghamshire & Oxfordshire Wildlife Trust (BBOWT)

If you would like a copy of this PDF document then please contact the **Wildlife Information Service** of the Berks, Bucks & Oxon Wildlife Trust (BBOWT):

- Write: The Lodge, 1 Armstrong Road, Littlemore, Oxford, OX4 4XT
- E-mail: wildinfo@bbowt.org.uk
- Tel: 01865 775476
- Visit: www.bbowt.org.uk

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The Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT) is one of 47 county-based Wildlife Trusts working across the UK. This makes us the largest UK network of organisations dedicated exclusively to conserving all our habitats and species. With more than 600,000 members and 2,400 nature reserves, the partnership is a considerable force for conservation at national, regional and local levels.

Established in 1959, BBOWT has now grown to be the largest and most influential voluntary conservation organisation in the region concerned with all aspects of nature conservation.

The Trust has almost 23,000 memberships (about 35,000 individuals plus almost 10,000 children), over 1,500 volunteers and 57 professional staff. We own or manage 88 nature reserves, totaling over 1,500 ha.

Our vision is to create a region rich in wildlife and appreciated by all

