

**DRAFT BIODIVERSITY CERTIFICATION  
ASSESSMENT METHODOLOGY (DECCW 2010)**

**UDIA NSW SUBMISSION**

**1 INTRODUCTION**

The Urban Development Institute of Australia NSW (UDIA NSW) appreciates the opportunity to provide a submission on the Biodiversity Certification Assessment Methodology.

UDIA NSW is the peak body representing Australia's urban development sector. We have more than 500 members in NSW, representing all aspects of development industry. UDIA NSW is pleased to make this submission on behalf of its members and after consultations with the UDIA NSW Sustainability Committee.

UDIA NSW provides in-principle support to the biodiversity certification process. However, we are concerned that, in the absence of proper implementation and oversight, the methodology could unintentionally increase the costs of development and undermine housing affordability. We are particularly concerned about the breadth of the red flag areas, the unclear and conflicting definitions of low condition vegetation and the constraints on landowner appeals rights.

**2 BACKGROUND**

The process of *Biodiversity Certification of Environmental Planning Instruments* (EPI) has been established pursuant to Part 7AA of the *Threatened Species Conservation Act 1995* (TSC Act).

The *Biodiversity Certification* process is designed to facilitate the “*biodiversity certification*” of EPIs on areas of land within a *Local Government Area* (LGA), or over the whole of an LGA, as long as the Minister for the Environment “*is satisfied that the package of conservation measures set out in an application for biodiversity certification will lead to the overall improvement or maintenance biodiversity values*”.

The *Biodiversity Certification Assessment Methodology* has been prepared by the DECCW pursuant to Division 5 of Part 7AA of the TSC Act (Sections 1.2.6S - 1.2.6X). The *Draft Biodiversity Certification Assessment Methodology* *inter alia*:

- “*establishes the circumstances in which conferring biodiversity certification on land is to be regarded as improving or maintaining biodiversity values*”;
- “*sets out how general biodiversity values are assessed and measured*”;
- “*provides the methodology for assessing and measuring biodiversity certification assessment areas, including in respect to the Environmental Protection & Biodiversity Conservation Act 1999 (EPBC Act)*”;
- “*establishes the rules for calculating the number and types of ecosystem credits and species credits that are required in relation to loss of biodiversity values*”; and
- “*establishes the rules for calculating the number and type of ecosystem credits and species credits for biodiversity certification*”.

## 2 GENERAL COMMENTS

UDIA NSW division supports the concept of “*Biodiversity Certification*” in general terms.

The DECCW claims that “*biodiversity certification delivers better environmental outcomes from urban development, at a lower cost*” and that where “*certification is conferred for development areas, it ‘switches off’ the requirement for Development Applications to address biodiversity issues*”. This approach, it is asserted by the DECCW, “*saves time and money for landowners and local governments. It speeds up land release, and improves house affordability*”.

UDIA NSW is of the opinion that a biodiversity certification process doubtless can achieve those goals.

However, whether the *Biodiversity Certification* process embodied in Part 7AA of the TSC Act, and its implementation by the Minister for the Environment and the DECCW, pursuant to the *Biodiversity Certification Assessment Methodology* promulgated by the DECCW, in fact does achieve those goals, remains to be seen.

It is not inevitable that the application of the *Biodiversity Certification* process or its implementation using the *Biodiversity Certification Assessment Methodology* will result in either improvements in the time of land releases or an improvement in housing affordability. Those outcomes would be dependent upon an appropriate and reasonable balance being achieved by the *Methodology* – a balance which avoids ‘locking up’ substantial tracts of land (and thus reducing yields which increases housing and other development costs) and on the quantum of financial contributions being sought by the DECCW and Minister for the Environment in order to achieve biodiversity certification of EPI.

Given recent experiences, a degree of scepticism on the part of UDIA NSW in this regard is understandable.

## 3 ISSUES of CONCERN

### 3.1 Responsibilities and Appeals

The lack of consultation through the process, including the lack of a requirement for consultation and public exhibition of *Biodiversity Certification* proposals, as well as the constraints on landowner Appeal rights remains a concern for UDIA NSW.

### 3.2 Red Flag Areas

As was the case with the *Biobanking Methodology* UDIA NSW has concerns regarding the definition of *Red Flag Areas* in the *Draft Biodiversity Certification Assessment Methodology*.

Particular concerns include:

- the inclusion of all “*endangered ecological communities*” listed in either the TSC Act or EPBC Act as “*Red Flag*”, provided that they are not in “*low condition*” (see below for concern regarding the “*low condition*” category);
- the inclusion of alleged “*state or regional biodiversity links*” (which by experience are often flights of fancy rather than fact); and

- the definition of “*vegetation in low condition*”.

With respect to the latter there are two significant issues (which had previously been raised as problematic with respect to the *Biobanking Methodology*):

- the inappropriateness of dividing vegetation into only one of two categories – “*low condition*” (which in fact is very poor condition) and “*moderate to good condition*” (which is everything else); and
- the definition of “*low condition*” vegetation which includes *inter alia*:
  - “*woody native vegetation with native over-storey percent foliage cover less than 50% of the lower value of the over-storey percent foliage cover benchmark for that vegetation type*”; and
  - a requirement *inter alia* that “*more than 90% of the groundcover vegetation is cleared*” before an area is considered to be in “*low condition*”. In this latter case, for example, an area of land where 80 to 80-85% of the “*groundcover vegetation is cleared*” would be regarded as in “*moderate to good condition*”. That is anomalous.

With respect to woody native vegetation, it is to be noted that many of the lower benchmark “*over-storey percent foliage cover*” values, even for woodland and forest, are extremely low. Those provided by the DECCW include forest and woodland vegetation with a lower benchmark value of (for example) 5%.

That would mean, according to the definition of “*low condition*” vegetation in the *Assessment Methodology* that a patch of an EEC which is supposedly a woodland or forest which has just a 2.5% tree canopy, or less, will constitute “*low condition*” value vegetation. For an EEC, therefore, with an upper benchmark of (say) 40%, all stands of that community with a canopy cover of 2.5% – 40% would constitute “*moderate to good condition*” vegetation, whilst the “*low condition*” vegetation would be confined only to that vegetation with a 0 - 2.5% canopy cover.

These benchmarks and the establishment of what is “*low condition*” by the DECCW appear to be:

- highly arbitrary;
- unrealistic; and
- heavily weighted in favour of encompassing the overwhelming majority of vegetation within the “*moderate to good condition*” category.

### 3.3 Threatened Species Predictions

The *Draft Methodology* asserts that in many instances threatened species will be “*predicted*” as occurring in an area subject to biodiversity certification “*based on the vegetation types and the CMA subregion in which the land proposed for biodiversity certification occurs*”.

This approach is of concern because CMA subregions are relatively large, and threatened species are by no means evenly distributed through such subregions. Therefore, the use of the CMA subregion as a base for determining the likelihood of certain threatened species being present, on the basis of prediction, is extremely unreliable.

A further concern is the cumulative impact of requirements for both threatened species credits and ecosystem credits, given that the relevant threatened species will (by and large) be relied on the ecosystems in any case. It seems entirely unreasonable that biodiversity credits are ascribed to a piece of vegetation which *inter alia* provides habitat for a threatened species and then additional biodiversity credits are required for the threatened species which are dependent upon the ecosystem being protected. This approach merely adds to the biodiversity cost of development, without achieving any additional biodiversity outcome.

### 3.4 Calculation of Species Credits

The calculation in Chapter 6.3 (equation 8) of the number of species credits required for land which is proposed by *Biodiversity Certification* is weighted according to the “*ability of the species to respond to improvements in local area condition*”.

There is no justification provided in the *Methodology* for a further multiplier of x10 in equation 8.

This multiplier appears to be an inbuilt 10:1 offset ratio, which is additional to the offsetting which is incorporated into the score provided with respect to “*the ability of the species to respond to improvements in local area condition*”. That is a multiplier on a multiplier.

### 3.5 Credits for Conservation Measures

The methodology states (in Chapter 7.1.1) that:

*“planning scheme conservation measures cannot be generated for land that is, or was previously, zoned E2, E3 or E4 (or the equivalent zones where the EPI is not based on the Standard Instrument)”.*

This approach from the *Methodology* is problematic because it fails to recognise the costs to developers (and therefore to the community at large) involved in:

- the retention and long-term management of land for biodiversity conservation purposes in E2, E3 and E4 lands;
- the ongoing benefits both for biodiversity and for the community in general of management of those lands; and
- the reduction in yield which will occur in an areas affected by the EPI by the removal from development opportunities of lands zoned E2, E3 and E4.

A further concern is that only 25% of the ecosystem credits and species credits are available “*for planning scheme conservation measures*” (Chapter 7.2.1 of the *Methodology*), notwithstanding that those lands would be the subject of significant controls on their use and could result in significant reductions in development yields. The retention of lands pursuant to that approach may also increase developer costs (for example by requirements for peripheral road systems which are more expensive), and would thus contribute to a worsening in the ‘house affordability’ situation.

It is the position of UDIA NSW that the discounting of “*planning scheme conservation measures*” by a factor of 1:4 is unreasonable, and has not been justified or properly documented in the associated *Methodology*.

A further concern is that “*retained areas*” are excluded from the provision of ecosystem credits or species credits, notwithstanding that some of those areas (eg flood-prone lands, watercourses and associated riparian buffers, steep lands and other such lands) may well provide a biodiversity conservation benefit and/or may be used for biodiversity improvements by appropriate management measures.