



Biodiversity Banking

UDIA NSW Submission to the
Joint Select Committee on
*Threatened Species
Conservation Amendment
(Biodiversity Banking) Act
2006*

March 2007



UDIA NSW supports the biodiversity banking in principle as it offers certainty to both threatened species protection and urban development. UDIA NSW would therefore like to offer the following comments and recommendations:

RECOMMENDATIONS

RECOMMENDATION 1

UDIA NSW recommends that the guidelines for implementation and the associated Regulations adopt a biometric tool and assessment process that is fair and reasonable for the purposes of genuine triple bottom line accounting.

RECOMMENDATION 2

UDIA NSW recommends that a mechanism be created to enable maintenance payments to be made from interest only to preserve the capital in perpetuity.

RECOMMENDATION 3

UDIA NSW recommends that biodiversity banking be accompanied by a marketing strategy emphasising the incentives for participation.

RECOMMENDATION 4

UDIA NSW recommends that the NSW Government provide comfort to those participating in the biodiversity banking trial period.

RECOMMENDATION 5

UDIA NSW recommends that the biometric tool used to generate credit values be transparent, accountable and able to replicate transactions in a standardised manner at a fair market price.

RECOMMENDATION 6

UDIA NSW recommends that biodiversity banking allow riparian corridors and bushland restoration to contribute towards the scheme.

RECOMMENDATION 7

UDIA NSW recommends that investment banks and traders be encouraged to participate in biodiversity banking to apply the rigor and security need for the market.

RECOMMENDATION 8

UDIA NSW recommends that adequately resource and expedite biodiversity certification to remove uncertainty regarding the status of remnant vegetation, contingent on accurate mapping and ground-truthing to provide legitimacy to the scheme.

RECOMMENDATION 9

UDIA NSW recommends that a reciprocal arrangement between the NSW and Commonwealth Government be established to remove potential duplication between the Environmental Protection and Biodiversity Conservation Act 1999 and the Threatened Species Conservation Act 1995. The arrangement would recognise compliance with State legislation as satisfying the intent of Commonwealth requirements with regard to biodiversity protection.

GENERAL COMMENTS

1. Promise

The present system of offsets lacks consistency as the rules governing the process are imprecisely defined and subject to government officer discretion. Accordingly, outcomes vary considerably between sites and officers.

Biodiversity banking therefore presents an advantage in that it proposes a highly structured, standardised, market oriented process that is easily replicable across a wide range of experiences and developments. This enables a developer to quantify their risks and expenses in advance and factor those elements into a development feasibility. This degree of certainty provides greater confidence for developers and financiers when committing to the complex process of creating new communities. It also provides assurances for funding maintenance on those lands that retain and improve biodiversity to ensure that satisfactory outcomes are achieved in the long term.

2. Fundamentals

Nevertheless, UDIA NSW recognises that the biodiversity banking shares the same fundamental flaw as offsets. Biodiversity banking rewards landowners that degrade their land while penalising good stewardship of estates. While there are regulations against clearing, it does not prevent the systematic degradation of bushland through overgrazing. Alternatively, landowners that observe sound land management practices and those that revegetate their lands may at rezoning necessarily need to seek more biodiversity credits than a landowner that has degraded their land.

Creating surplus credits for retaining vegetation on-site is insufficient compensation for loss of developable area. It is considered unlikely that biodiversity banking would generate a greater return than development.

UDIA NSW therefore seeks greater recognition of good land management practices, bushland restoration and revegetation of land by the biodiversity banking process. It is unfair to burden a developer who may have managed land for a decade with a further requirement to purchase biodiversity credits while poor performance is excused and indirectly rewarded.

3. Banking within context

Decisions regarding the protection of biodiversity should ideally be undertaken in a strategic manner as part of a regional strategy, which balances the environmental, social and economic objectives of a region within a broader planning process. UDIA NSW contends that it is neither reasonable nor appropriate to exact significant biodiversity outcomes on a site once its primary intended use has been designated as urban development. Environmental outcomes on residential or commercial zoned land should be within the context of that use and will necessarily reflect a higher recreational value.

The objectives of biodiversity banking should necessarily be contextualised. It is unreasonable to expect land of national park quality to be retained or purchased through credits in exchange for urban development.

A decision by the Government to rezone land for residential, commercial or retail purposes changes the primary purpose of that land from rural to human settlement. The objective is therefore human settlement. Biodiversity banking is a means of facilitating that process and not an end in itself.

Retention of biodiversity on-site offers its own advantage in terms of amenity and is often used as a marketing tool to attract residents when presented within the context of the development. However, undue emphasis on biodiversity protection can interfere with the settlement pattern and frustrate competing sustainability outcomes such as walkable neighbourhoods and transit profitability.

Accordingly, there are sufficient checks and balances within the existing planning system to retain biodiversity within the context of the triple bottom line. Biodiversity banking should not be employed as a mechanism to exact environmental outcomes where a predominance of social and economic outcomes is perceived by the Department of Environment and Conservation (DEC).

UDIA NSW therefore seeks a financial and regulatory environment that is sympathetic to the creation of new communities which are designed and assessed in accordance with genuine triple bottom line principles. The Productivity Commission defined sustainability as the maintenance of stock capital including environmental, social and economic assets. The best mix of capital assets is undefined but implies trade-offs between capital types to achieve goals.

It is understood that 80% of the biodiversity contained in the Lower Hunter is protected in National Parks and public lands. This involved a trade in favour of natural capital reducing the economic capital potential and changing the value of the social capital that such areas possess. Alternatively, the creation of communities will involve a trade in favour of social and economic capital. It is disingenuous to present the argument that every increase in social and economic capital cannot be at the cost of natural capital, and vice-versa.

However, Section 127ZL(3) of the *Threatened Species Conservation Act 1995* as amended states that:

The Director-General must refuse to issue a biobanking statement in respect of a development that does not improve or maintain biodiversity values.

The pursuit of biodiversity banking model proposed by the Act therefore favours a model often advocated by non-Government organisations. This model purports that social and economic outcomes should not be achieved at the expense of the environment and if possible should enhance the environment. This is not the model sponsored by the Productivity Commission. It is not a model for a state that claims to be 'open for business.'

Failure of the DEC to implement biodiversity banking in a reasonable and appropriate manner consistent with the terms of genuine triple bottom line accounting will deter developers from participating, critically weakening the proposed programme. Biodiversity banking is not a method to extract biodiversity outcomes where insufficient funds were available to purchase land for reservation or where biodiversity certification was unable to preclude development. For this reason, UDIA NSW recommends that the guidelines for implementation and the associated Regulations adopt a biometric tool and assessment process that is fair and reasonable for the purposes of genuine triple bottom line accounting.

RECOMMENDATION 1

UDIA NSW recommends that the guidelines for implementation and the associated Regulations adopt a biometric tool and assessment process that is fair and reasonable for the purposes of genuine triple bottom line accounting.

SPECIFIC COMMENTS

UDIA NSW is conscious that the regulations accompanying the *Threatened Species Conservation Amendment (Biodiversity Banking) Act 2006* have not been drafted and that the Ministerial Reference Group assisting that process has yet to be convened. UDIA NSW's comments are therefore contain some assumptions and are a product of discussions with the Department of Environment and Conservation (DEC) and UDIA NSW members.

1. Operation of scheme in perpetuity

Once the urban development potential of an area is exhausted, trade in credits will decrease. It is expected that funds for the purpose of maintaining biobanking sites will be created as a margin extracted from the credit transfer. As transfers cease, so too payments will cease into any Trust created to maintain the biobanking sites.

UDIA NSW therefore recommends that the maintenance trust be funded from "interest only" if the capital is to be maintained in perpetuity. To create sufficient interest, the funds will have to be consolidated rather than divided into individual accounts. The creation of small accounts has been a contributing factor to the inability of Councils to spend their s94 contributions on infrastructure. Compartmentalising of s94 into individual accounts recently left \$800 million unspent creating a deficit of new infrastructure, as the amounts were insufficient to account for inflation.

A mechanism will therefore be needed to proportionally allocate the interest component to the various biobanking sites. How will this be managed and undertaken?

RECOMMENDATION 2

UDIA NSW recommends that a mechanism be created to enable maintenance payments to be made from interest only to preserve the capital in perpetuity.

2. Supply and demand

Biodiversity credits are a commodity and subject to the laws of supply and demand. The price of credits will therefore fluctuate according to market demand and availability of supply. UDIA NSW understands that there are very few proposed vendors of biodiversity banking credits which creates risk where credits may be withheld from the market to drive up prices.

UDIA NSW recommends that biodiversity banking be sufficiently marketed to encourage participation. Incentives must therefore be promoted and guaranteed by DEC.

RECOMMENDATION 3

UDIA NSW recommends that biodiversity banking be accompanied by a marketing strategy emphasising the incentives for participation.

3. Post Trial

Section 127ZZN of the Act states that:

The Minister is to cause a review of the operation of the biobanking scheme to be carried out as soon as possible after the period of 2 years after the biobanking assessment methodology is first published in the Gazette.

What is the status of credits, planning consents and biobanking sites if the review does to support the continuance biodiversity banking?

RECOMMENDATION 4

UDIA NSW recommends that the NSW Government provide comfort to those participating in the biodiversity banking trial period.

4. Credits

The calculation of credits using the biometric tool is the principle uncertainty associated with biodiversity banking. It is understood that the biodiversity banking proposal was in part inspired by the success of salt trading in the Hunter Valley and wetland protection in Florida. Each of these experiences involved the trading of a well defined product within a clearly delineated market.

In the US, wetland mitigation banking has not been particularly successful in commodifying wetland habitat values. Recent assessment methodology hinges on wetland functionality, which has been difficult to measure and has resulted in the premature retirement of credits.

The transfer of communities is altogether more complex and requires consideration of issues such as:

- i. Composition;
- ii. Condition; and
- iii. Geographical expanse.

There is a question of whether the biometric tool will be able to reconcile differences between communities where ecological studies are often predicated on a reductionist approach seeking ever greater sub-classifications and sub-species. Genetic provenance alone deters the exchange of almost identical species between neighbouring valleys.

It is difficult to conceive of an environmental trading process being able to commodify disparate ecological communities of varying size and condition in markedly different locations. Notwithstanding that some threatened species may migrate between areas or their presence may be difficult to quantify due to their threatened status and therefore elusive presence.

The present offset process is evidence of this difficulty and attempts to overcompensate for perceived losses where credit ratios are sought for between 1:4 and 1:20 creating a serious disincentive for developers. Ideally, the biometric tool would also account for land value and its related zoning when generating credits.

RECOMMENDATION 5

UDIA NSW recommends that the biometric tool used to generate credit values be transparent, accountable and able to replicate transactions in a standardised manner at a fair market price.

It is understood that the Florida programme was concerned primarily with wetland restoration. Accordingly, it is feasible that bushland restoration should still be able to generate credits if there is a reasonable evidence of success and a comprehensive, publicly reviewed management plan. Similarly, riparian corridors of outstanding ecological significance within the Australian landscape should be permitted to contribute to the scheme.

RECOMMENDATION 6

UDIA NSW recommends that biodiversity banking allow riparian corridors and bushland restoration to contribute towards the scheme.

5. Market manager

The trading of commodities such as biodiversity credits would be best managed by the private sector with appropriate separation from the NSW Government. UDIA NSW recommends that ethical investment banks and traders be encouraged to participate in biodiversity banking to apply the rigor and security needed for the market.

The creation of investment products therefore suggests the need for insurance. Who will manage the bank and who will insure it?

RECOMMENDATION 7

UDIA NSW recommends that investment banks and traders be encouraged to participate in biodiversity banking to apply the rigor and security need for the market.

6. Biodiversity Certification

The *Threatened Species Legislation Amendment Act 2004* promised a range of reforms to increase legibility and certainty for urban development. Biodiversity certification was passed by Parliament as a measure to reverse the more onerous aspects of the threatened species legislation. Yet UDIA NSW understands that only 12 Councils out of 152 have prepared Local Environmental Plans for Biodiversity Certification.

Certainty for the development industry cannot be assured at the development application stage. Biodiversity banking needs to exist in a strategic framework and be informed by the mapping coincident with biodiversity certification. The Regional Strategies as strategic planning instruments are fundamentally compromised by the absence of areas illustrated for future protection biodiversity (red, amber and green). Land required for biodiversity protection should be identified prior to rezoning to inform acquisition decisions by the Government, developers and biodiversity banking investors.

UDIA NSW and its members are committed to sustainability, which includes environmental conservation. UDIA NSW therefore recommends that the NSW Government adequately resource and expedite biodiversity certification to remove uncertainty regarding the status of remnant vegetation. This would be contingent on accurate mapping and ground-truthing to provide legitimacy to the scheme.

RECOMMENDATION 8

UDIA NSW recommends that adequately resource and expedite biodiversity certification to remove uncertainty regarding the status of remnant vegetation, contingent on accurate mapping and ground-truthing to provide legitimacy to the scheme.

7. Legislative duplication

The *Threatened Species Conservation Act 1995* currently overlaps with the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*. A reciprocal arrangement is required to provide certainty and finality to the planning process in relation to urban development in NSW. The arrangement would acknowledge primacy of the State legislation where an applicant satisfies the requirements of the *Threatened Species Conservation Act 1995*.

RECOMMENDATION 9

UDIA NSW recommends that a reciprocal arrangement between the NSW and UDIA NSW recommends that a reciprocal arrangement between the NSW and Commonwealth Government be established to remove potential duplication between the Environmental Protection and Biodiversity Conservation Act 1999 and the Threatened Species Conservation Act 1995. The arrangement would recognise compliance with State legislation as satisfying the intent of Commonwealth requirements with regard to biodiversity protection.

8. Timing

UDIA NSW is uncertain at what stage biodiversity banking should occur. Planning Agreements have already established a precedent where anecdotal evidence suggests that such agreements are being informally linked to the development application process. UDIA NSW would be concerned if approvals were contingent on participation in the presently voluntary biodiversity banking process.

CONCLUSION

Biodiversity banking in principle offers greater certainty to both threatened species protection and urban development. However, there are many outstanding concerns regarding the proposal. UDIA NSW is particularly concerned that biodiversity banking will be employed as a mechanism to exact environmental outcomes as the expense of social and economic objectives.

UDIA NSW seeks a financial and regulatory environment that is sympathetic to the creation of new communities which are designed and assessed in accordance with genuine triple bottom line principles. The Productivity Commission defined sustainability as the maintenance of stock capital including environmental, social and economic assets. Biodiversity banking should operate within this context.

Failure to implement biodiversity banking in a reasonable and appropriate manner consistent with the terms of genuine triple bottom line accounting will deter developers from participating, critically weakening the proposed programme. Biodiversity banking is therefore promising provided the detail delivers real incentives.