

Position Paper

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Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006

UDIA NSW is opposed to the *Threatened Species Amendment (Biodiversity Banking) Bill 2006* unless biobanking is integrated into the planning process and prevents Councils from acquiring further land for biodiversity protection through s94 and conditions on consent. Biodiversity banking places a disproportionate emphasis on homebuyers to fund biodiversity protection for marginal benefit. UDIA NSW estimates that urban development in the Lower Hunter will result in the loss of less than 1,249ha over 25 years. The NSW Auditor-General revealed that 1,450ha of Hunter vegetation was lost through illegal clearing by rural landowners in 2005 alone.

Biodiversity banking under the proposed arrangements can neither provide certainty nor finality. The concept of finality is integral to the development consent process. The biodiversity banking regime as proposed effectively exists outside the NSW planning system. Even if a developer were to purchase credits for a significant portion of the developable area, there is nothing to prevent a Local Council from requiring further land to be reserved for biodiversity protection as part of its s94 contributions plan. Again, when the development application is assessed there is nothing to preclude a council under pressure from residents, requiring yet further land to be ceded as a condition of development for biodiversity protection or indeed refusing the application on the basis of a loss of local amenity. Biodiversity banking as proposed will create a cascade of conditions with no certainty and no finality, jeopardising development feasibilities and further eroding housing affordability. UDIA NSW maintains that biodiversity banking must be complemented by biodiversity certification and exist within the NSW planning system. It needs incentives to offset the cost.

UDIA NSW presents the following recommendations to rationalise biodiversity protection in NSW and provide the urban development industry with the certainty and confidence it needs to facilitate economic growth and deliver new homes for NSW.

RECOMMENDATIONS

UDIA NSW requests that the NSW Parliament:

1. *Present a model for biodiversity protection that:*
 - a) *is integral to the NSW planning process;*
 - b) *is strategic and incorporated into the Metropolitan and Regional Strategies;*
 - c) *does not place a disproportionate emphasis on property development to fund and facilitate biodiversity protection;*
 - d) *acknowledges community and government responsibility to acquire and manage areas of high biodiversity value; and*
 - e) *recognises the holistic definition of sustainability.*
2. *Amend the Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006 to create a planning mechanism that recognises a developer's commitment to trade credits for biodiversity protection. This would operate in a similar fashion to the highly successful BASIX model whereby a certified commitment to comply is appended to the development application (DA) and is audited on delivery.*

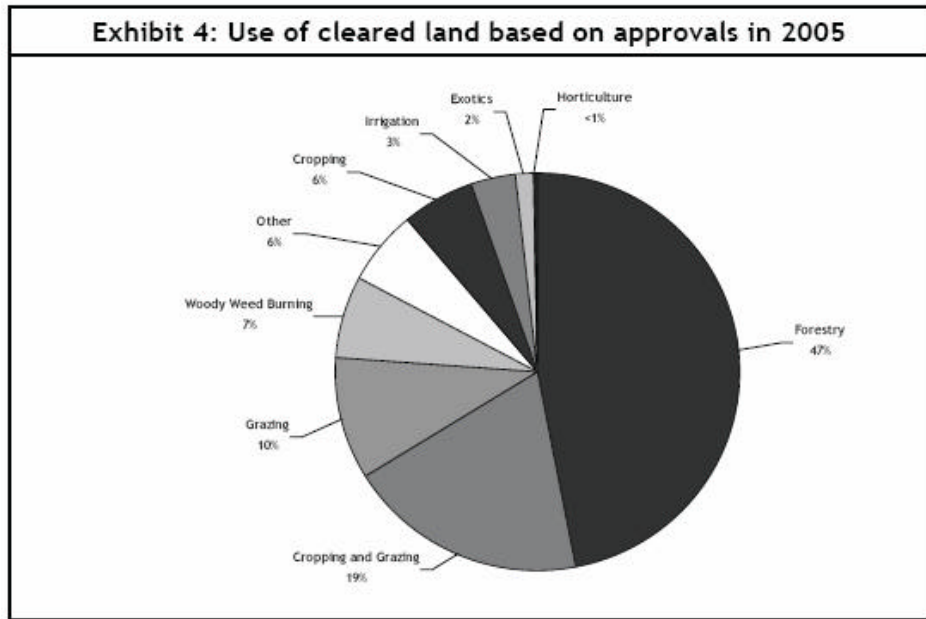
As with BASIX, compliance would 'switch off' the ability of Council to seek further lands for biodiversity protection as part of a contributions plan, planning agreement or condition on development. Compliance would be enforced through auditing of requisite credit trading prior to the release of titles.

3. Encourage the NSW Government to adequately resource biodiversity certification to remove uncertainty regarding the status of remnant vegetation.

1. Misplaced Priorities

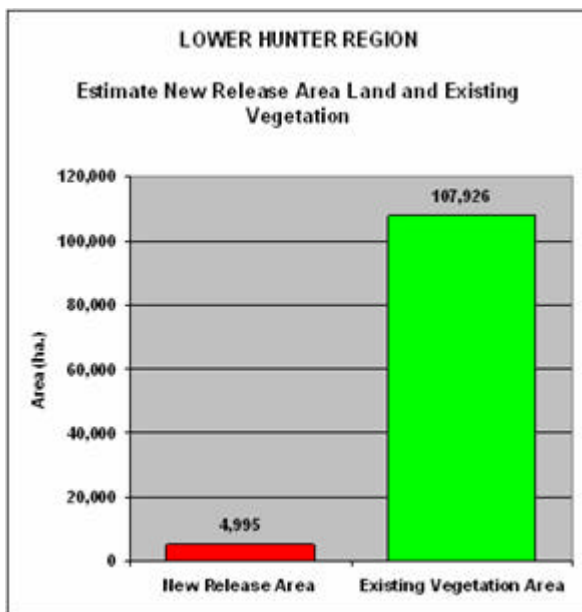
UDIA NSW maintains that a further requirement for the urban development industry and homebuyers to fund and facilitate biodiversity conservation is disproportionate to the actual impact on biodiversity. Biodiversity Banking places a financial burden on the development industry to fund biodiversity

protection. However, the Auditor-General's Performance Audit on *Regulating the Clearing of Native Vegetation* (July 2006), states that of the 74,000ha of native vegetation that was cleared in 2005, 30,000ha of that figure was illegal clearing. The report confirms that, "most of the illegal clearing was on the previously uncleared western edge of farmland in the State."



Source: Department of Natural Resources May 2006

The chart above demonstrates the extent of legal clearing undertaken in NSW in 2005 under the *Native Vegetation Act 2003*. Most importantly, the chart does not attribute any of this clearing to urban development. The evidence clearly indicates that biodiversity protection is principally a matter for primary producers not homebuyers.



The figure to the left demonstrates that the maximum possible impact that the new release areas identified in the Draft Lower Hunter Regional Strategy could have on existing vegetation in the Lower Hunter is 4,995ha, which represents approximately 5% of the existing vegetation area over a period of 25 years.

Experience in the Hunter demonstrates that 50% of the developable area (4,995ha) is lost through biodiversity protection, floodplain management and mine subsidence using existing planning controls. This leaves a maximum developable area of 2,498

ha or if entirely forested then 2% of the existing vegetation area over a period of 25 years.

However, it would be reasonable to assume that most of the land identified for urban development in the Draft Lower Hunter Regional Strategy by the Department of Planning would be cleared farmland. Assuming that half of the remaining land comprises remnant vegetation this results in a maximum of 1,249ha or 1% of the existing vegetation in the Lower Hunter being susceptible to clearing for housing over 25 years. The NSW Auditor-General revealed that 1,450ha of Hunter vegetation was lost through illegal clearing by rural landowners in 2005 alone. UDIA NSW therefore contends that biodiversity banking will only have a marginal impact on biodiversity protection and risks duplicating a planning system that is already producing significant biodiversity outcomes (i.e. 50% loss of developable area).

2. Uncertainty about Certainty

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. Sustainability is defined as the maintenance of stock capital including environmental, social and economic assets.

The Minister for the Environment acknowledged existing challenges in his second reading speech of the Bill on 8 June 2006:

“By participating in the scheme, developers will save time and have more certainty and our threatened flora and fauna will be better preserved”.

UDIA NSW welcomes the Minister’s intent but does not believe that the legislation as proposed can achieve the Government’s aims. UDIA NSW contends that the legislation delivers neither certainty nor finality.

The concept of finality is integral to the development consent process. The biodiversity banking regime as proposed effectively exists outside the NSW planning system. Even if a developer were to purchase credits for a significant portion of the developable area, there is nothing to prevent a Council from requiring further land to be reserved for biodiversity protection as part of its s94 contributions plan. Again, when the development application is assessed there is nothing to preclude a council under pressure from residents, requiring yet further land to be ceded as a condition of development for biodiversity protection or indeed refusing the application on the basis of a loss of local amenity. Biodiversity banking will create a cascade of conditions with no certainty and no finality, jeopardising development feasibilities and further eroding housing affordability. UDIA NSW maintains that biodiversity banking must be complemented by biodiversity certification and exist within the NSW planning system. Biodiversity banking needs to provide incentives such as effective and guaranteed certainty to offset the increased cost.

UDIA NSW proposes that biodiversity banking be adopted subject to its operation being integral to the NSW planning process. UDIA NSW recommends that the *Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006* be amended to create a planning mechanism that recognises a developer’s commitment to trade credits for biodiversity protection. This would operate in a similar fashion to the highly successful BASIX model whereby a certified commitment to comply is appended to the development application (DA) and is audited on delivery.

As with BASIX, compliance would ‘switch off’ the ability of Local Councils to seek further lands for biodiversity protection as part of a contributions plan, planning agreement or condition on development. Compliance would be enforced through auditing of requisite credit trading prior to the release of titles.

BASIX succeeded because it was mandatory, performance based, objective, self-assessed and applied equally across NSW. Councils can neither add new conditions for energy and water efficiency or raise benchmarks above those required by BASIX. BASIX succeeded because it offered certainty and finality. For biodiversity banking to succeed it must achieve the same.

3. Acting Strategically

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.

Furthermore, UDIA NSW has learnt that biodiversity certification is no longer a priority at the Department of Environment and Conservation. UDIA NSW is concerned that amendments to remove the bureaucratic morass that is the eight-part-test, is being compounded by the introduction of legislation which will add a new level of compliance and cost.

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). UDIA NSW contends that it is neither reasonable nor appropriate to exact significant biodiversity outcomes on a site that's primary intended use is 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. 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 biodiversity certification to remove uncertainty regarding the status of remnant vegetation.

4. A New Tax

Biodiversity banking will have a detrimental effect on housing affordability in NSW in exchange for a marginal environmental benefit. Biodiversity Banking essentially proposes an indirect tax on homebuyers to fund additional biodiversity conservation regardless of the fact that the majority of areas of high biodiversity value already enjoy protection in National Parks and associated reservations.

The development industry facilitates the construction of new communities on land designated for urban development. It is unreasonable to require the development industry and homebuyers to pay for the protection and maintenance of environmental land.

The acquisition of biodiversity credits is conservatively estimated to be \$30,000 per hectare. This figure does not account for the cost of acquiring a Biodiversity Banking Statement or associated negotiations and legal fees.

Biodiversity credits are a commodity and subject to the laws of supply and demand. The price of credits will therefore fluctuate given the 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. Biodiversity banking is an indirect tax to supplement Government expenditure on biodiversity protection. It is a tax with marginal returns that can only further erode affordability in NSW. UDIA NSW contends that incentives associated with increased regulatory efficiency must be provided to offset the increased cost or NSW housing affordability will be further compromised especially in regional NSW.

5. Conclusion

UDIA NSW requests that the NSW Parliament amend the *Threatened Species Conservation Amendment (Biodiversity Banking) Bill 2006* to create a planning mechanism that recognises a developer's commitment to trade credits for biodiversity protection. This would operate in a similar fashion to the highly successful BASIX model whereby a certified commitment to comply is appended to the development application (DA) and is audited on delivery.

As with BASIX, compliance would 'switch off' the ability of Council to seek further lands for biodiversity protection as part of a contributions plan, planning agreement or condition on development. Compliance would be enforced through auditing of requisite credit trading prior to the release of titles.

Furthermore, UDIA NSW recommends that Parliament encourage the NSW Government to adequately resource biodiversity certification to remove uncertainty regarding the status of remnant vegetation in accordance with the *Threatened Species Legislation Amendment Act 2004*. Biodiversity Banking lacks a strategic component and should be complemented by Biodiversity Certification to inform acquisition decisions by the Government, developers and biodiversity banking investors.

UDIA NSW maintains that a suitable model for biodiversity protection is one that:

- a) is integral to NSW planning process;
- b) is strategic and incorporated into the Metropolitan and Regional Strategies;
- c) does not place a disproportionate emphasis on property development to fund and facilitate biodiversity protection;
- d) acknowledges community and government responsibility to acquire and manage areas of high biodiversity value; and
- e) recognises the holistic definition of sustainability.



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