Urban Taskforce
AUSTRALIA

Biobanking

Submission to the Department of Environment and Climate Change

Submission prepared by the Urban Taskforce 31 January 2008

Urban Taskforce Australia Ltd. ABN: 21 102 685 174 | GPO Box 5396 Sydney NSW 2001
T 612 9238 3955 | F 612 9222 9122 | Level 12, 32 Martin Place Sydney NSW | Level 6, 39 London Circuit, Canberra ACT
admin@urbantaskforce.com.au | www.urbantaskforce.com.au

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Mr Robert Humphries of Eco Trades Pty Ltd in the preparation of this submission.

The **Urban Taskforce** is an industry organisation representing Australia's most prominent property developers and equity financiers. Our membership also includes key infrastructure providers, economists, planners, architects and lawyers involved in property development. We provide a forum for people involved in the development and planning of the urban environment to engage in constructive dialogue with both government and the community.

Executive Summary

Recommendation 1:

Any errors in the databases that underpin the assessment methodology need to be fixed as soon as possible or new information needs to be presented for consideration, and where accepted, included in the databases.

Recommendation 2:

That the definition of low condition in both the biometric tool and biobank tool be amended along the following lines:

> Low Condition is woody vegetation that is less than 50% of the lower benchmark for canopy OR greater than 25% exotic cover in the under-storey.

Recommendation 3:

In order to be consistent with the general streamlined approach of the biobanking process, it is suggested that the documentation required to address the factors included in the assessment methodology to vary a red flag be a brief and simple document of no more than a few to several pages and be assessed as part of a single application along with rest of the biobanking statement application.

Recommendation 4:

All vegetation benchmarks must be reviewed and updated before the scheme commences, preferably to vegetation type level.

Recommendation 5:

That the NSW Government continue negotiations with the Commonwealth Government as a matter of urgency. It is essential that the biobank assessment methodology be included in the Commonwealth/NSW bilateral agreement. This should ensure that no action made permissible under the biobanking regime will be regarded as "matters of national environmental significance" within the meaning of the EPBC Act.

Recommendation 6:

The assessment methodology should be varied so that credit trading regions/vegetation types are only required to have an 80 per cent match with the suite of predicted species.

Recommendation 7:

Incentives to "trade up" should be incorporated into the assessment rules.

Recommendation 8:

The legislation should be amended to provide an exemption for the requirement to obtain:

- a s91 licence under the *Threatened Species Conservation Act*;

- consent under the *Native Vegetation Act*;
- consent under the *Rivers and Foreshores Protection Act*; or
- a s132C licence under the *National Parks and Wildlife Act*,

if the activity is being undertaken in accordance with a biobanking agreement.

1. Introduction

The Urban Taskforce believes that biodiversity banking is a breakthrough strategy to deal with the conservation issues which impact property development projects.

This innovation will help to overcome the repeated conflict between property development and conservation so there are improved outcomes for threatened species overall.

Biodiversity banking has been very successful in achieving balanced conservation outcomes in the USA as land owners and developers can now value the conservation attributes of their land. So instead of being seen as a liability, the conservation of a threatened species can now be valued by landowners and developers.

The development industry requires greater certainty in relation to the planning approval process in NSW, especially where it involves any conservation issues. This biodiversity banking proposal put forward by the Department of Environment and Conservation is innovative and workable for the development industry as it provides that certainty upfront. Our members are keen to trial biodiversity banking in their development projects.

For this to be possible the biobanking and offset scheme must be practical, simple to use and workable for all participants and does not present any barriers or disincentives to the broadest participation possible.

In this regard our submission is aimed at ensuring that the final scheme:-

- is equitable to all participants (developers, biobank owner/managers and biobank brokers);
- provides for a robust and viable market (no hurdles or disincentives to participation); and
- delivers on its stated objectives of encouraging private land owners to contribute to maintaining and improving biodiversity in NSW.

The submission is structured around:-

- the assessment methodology and factors affecting the calculation of credits at both impact and biobank sites,
- barriers to participation by the development industry,
- barriers to participation by private biobank owner/operators; and
- issues regarding scheme commencement.

2. Assessment Methodology

2.1 Testing of final assessment methodology

We acknowledge that the Department has made a number of significant changes to the "assessment methodology" as a result of the findings and comments received during the pilot scheme process. However, it's important to note that key stakeholders, including representatives of the Urban Taskforce, have not had the opportunity to use the software or test the results of real development proposals or biobank sites against the revised assessment methodology.

As the outputs of the assessment methodology are one of the most fundamental aspects of the proposed scheme, it is essential that key stakeholders have the opportunity to "test" the new software

before the scheme becomes operational to ensure that the amendments have had the desired effects and are not producing unreasonable outcomes.

We are aware that the Department has been advised of many errors in the "percentgae cleared figures" in the data sets used for the biobank pilot and for property vegetation plans under the *Native Vegetation Act*. These errors have the potential to significantly affect whether a proposal passes or fails the "Improve or Maintain" test (IoM test). It also affects the spread of regions that credits can be purchased from. We are unaware as to whether these corrections have been made.

In this regard, it is requested that the Department release the assessment methodology software as soon as possible and full documentation of the revised data bases underpinning the assessment methodology including:-

- the vegetation types database and percentage cleared for each Catchment Management Authority;
- the revised benchmarks for each vegetation type;
- the list of "red flag" species/communities; and
- the species "response to management" database.

All of these databases must be publicly available in order:

- for participants in the scheme to make informed decisions regarding the suitability of particular properties to register as biobank sites; or
- that consultants can advise developer clients as early as possible in the planning and development process whether participation in the biobanking scheme is likely to be a viable alternative to the current environmental assessment process (i.e. whether any red flag species are present or whether a particular development is likely to pass the IoM test).

The information currently included on the Departments biometric and threatened species websites (threatened species profiles) is not a full documentation of these data sets. It is only a summary of ecological information and recommended management actions.

Recommendation 1:

Any errors in the databases that underpin the assessment methodology need to be fixed as soon as possible or new information needs to be presented for consideration, and where accepted, included in the databases.

2.2 Definition of "low condition" and application of "poor condition"

We support the inclusion of the new category of "poor condition".

However, the definition of "low condition" which triggers the first stage of a "red flag" area is still problematic and will unnecessarily result in numerous applications to "vary red flags" that could be avoided by a simple reworking of the definition. This change will not result in areas of high biodiversity values being lost.

Currently the definition of "low condition" for woody vegetation is "less than 25% of the lower benchmark for canopy species AND greater than 50% of the understorey is exotic."

In practice there are many areas in both rural and urban environments that have been grazed for generations or used as urban parkland respectively, that have low biodiversity values. Under the current definition, these areas will continue to be "red flagged" and each will require an "application to vary" that would more than likely be approved. This unnecessary use of applications to vary red flags should be avoided with only the minority of cases requiring an application to vary red flags.

Recommendation 2:

That the definition of low condition in both the biometric tool and biobank tool be amended along the following lines:

> Low Condition is woody vegetation that is less than 50% of the lower benchmark for canopy OR greater than 25% exotic cover in the under-storey.

The use of the "OR" instead of "and", will avoid situations where the canopy is intact but the under-storey is 100% exotic being classified as mod-good condition, which is quite typical and common in both an urban and rural context, or where the over-storey is completely absent and a modified understorey is present but which is not greater than 50% exotic also being classified as mod-good.

Under this revised definition, Low Condition would still be considered part of a native community and must still be offset in accordance with the credit calculator, i.e. areas classified as low condition under this new definition would not be lost without an appropriate offset, however, the offset requirements would be significantly less.

Also see comments relating to "benchmarks" that are linked to this recommendation.

2.3 Process to apply to vary a red flag

The revised assessment methodology includes a process and criteria to vary "red flags" in situations where strict avoidance is unreasonable or unnecessary. We support this change however the regulations provide no indication of the amount of justification required to meet these criteria or timeframes for decision making if an application is made.

We understood that the Department is proposing that applications for biobanking statements be determined within 28 days as a general guarantee of service.

Recommendation 3:

In order to be consistent with the general streamlined approach of the biobanking process, it is suggested that the documentation required to address the factors included in the assessment methodology to vary a red flag be a brief and simple document of no more than a few to several pages and be assessed as part of a single application along with rest of the biobanking statement application.

2,4 Benchmarks

The Department has already acknowledged that the current vegetation type benchmarks are too broad and were mostly only developed to the broader vegetation class level rather than vegetation type. It is understood that when the benchmarks were originally compiled, they were also developed to represent the full range of natural conditions that a particular vegetation class/type may occur across its distributional range, including condition following bush fires.

As a result, the benchmarks encompass a broad range of values for each of the site attributes including near or as near as possible to pristine condition as well as quite modified and degraded condition. In many cases, the range in scores for individual attributes includes "0", which means no matter what condition the vegetation is in, it will always be "within benchmark".

The consequence of this is that a modified development site is assessed as being "within benchmark" and accordingly is given a high biodiversity score, resulting in the need for more credits to offset impacts.

Similarly, a potential biobank site that is highly modified by past grazing and firewood collection activities is also classified as being "within benchmark", given a high biodiversity score and does not generate many credits as it is deemed to have little potential or ability to improve in condition.

Ultimately these broad benchmarks increase the "offset ratio" required to pass the IoM test and consequently the cost of participation in the scheme.

It is acknowledged that the inclusion of "permitted loss" and bonus scores for biobanks in good condition in the assessment methodology offsets this impact to some degree by allowing more credits to be generated at a biobank site.

The ability to use "other benchmark" information that more accurately reflects local environmental conditions for particular vegetation types collected from local reference sites is supported. However, if participants are forced to collect local benchmark information to more accurately reflect the current condition of their development site or biobank site, this has the potential to significantly add to the cost of participation.

Ideally, the benchmarks for all vegetation types should be reviewed before the scheme commences.

Recommendation 4:

All vegetation benchmarks must be reviewed and updated before the scheme commences, preferably to vegetation type level.

3. Developer particpation

3.1 Commonwealth & NSW Bilateral Agreement

If threatened species and communities that are listed under the Commonwealth's *Environmental Protection and Biodiversity Act* (EPBC Act) occur on land that is the subject of a biobank assessment, developers who choose to participate in the biobanking scheme may also be required to obtain Commonwealth approval. This would remove all the attractiveness and benefits of participating in the biobanking scheme.

Recommendation 5:

That the NSW Government continue negotiations with the Commonwealth Government as a matter of urgency. It is essential that the biobank assessment methodology be included in the Commonwealth/NSW bilateral agreement. This should ensure that no action made permissible under the biobanking regime will be regarded as "matters of national environmental significance" within the meaning of the EPBC Act.

3.2 Trading Regions and requirement to match ALL "predicted" species

To offset the impacts on vegetation types at a development site, credits may be purchased from any vegetation type that is the same or greater percentage cleared and supports the same suite of predicted threatened species.

For common, widespread vegetation types that support a typical widespread suite of threatened fauna species, these trading regions may be quite large. Whilst the ability to be able to trade in these broad regions is attractive, in practice this would rarely be a reality because development proposals that impact on these types of threatened species and non-endangered communities would be unlikely to use the biobank provisions as they are relatively straight forward assessments and generally would not require detailed species impact statements or offsets.

However, for more restricted vegetation types, such as endangered ecological communities that are small and degraded, the trading regions can be unnecessarily restrictive particularly when it is mandatory to match 100 per cent of the predicted species. This restriction is often because one or two

of the predicted species cannot be matched with the impact site even though all of the remaining predicted threatened species are matched and a range of other predicted species are present.

Given that the predictions of what threatened fauna species may occur at a development site are "conservative", it would appear reasonable:

- to only match 80 per cent of the predicted species at the biobank site in addition to any species specific requirements; and
- to ensure that the vegetation type is the same "percentage cleared" or greater.

This change would make biobank sites generally larger, more viable and therefore more likely to support the suite of predicted species. It would still provide a "close" match for the range of biodiversity values being impacted and provide more flexibility and attract greater participation by the development industry in biobanking.

Recommendation 6:

The assessment methodology should be varied so that credit trading regions/vegetation types are only required to have an 80 per cent match with the suite of predicted species.

3.3 Incentives to trade "up" to provide increased protection to values at higher risk.

Whilst the trading rules specify that an offset must be on a "like for like basis or better", the assessment methodology provides no incentives to trade to a conservation value that is "better" and in most cases prevents this from happening because a "better" (more highly cleared vegetation type or one of higher conservation priority) is quite often of a different structural form and does not support the same suite of predicted species.

Recommendation 7:

Incentives to "trade up" should be incorporated into the assessment rules.

4. Approval to undertake management actions at biobank sites

The legislation provides an exemption for biobank sites to obtain approval under the *Environmental Planning and Assessment Act* to undertake management actions in accordance with the biobank agreement (Section 127J).

However, most actions at a biobank site would not require *Environmental Planning and Assessment Act* approval (e.g. weed control, feral animal control, ecological burning, fencing etc). It would therefore be appropriate for the legislation to also provide an exemption for the requirement to obtain:

- a s91 licence under the *Threatened Species Conservation Act*;
- consent under the *Native Vegetation Act*;
- consent under the *Rivers and Foreshores Protection Act*; or
- a s132C licence under the *National Parks and Wildlife Act*,

if the activity is being undertaken in accordance with a biobanking agreement.

Recommendation 8:

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5. Competition in the supply of biobanking credits

We are aware that the regulations (and proposed amendments to the exhibited regulations) do not exclude all public authorities responsible for the care and management of public land from participation i.e. the Department of Lands and local councils.

We support the capacity for these organisations to be involved in the biobanking scheme, however we also believe that these organisations should not enjoy a competitive advantage over private business in the marketplace. This issue is adequately dealt with by the competitive neutrality principles of the Competition Principles Agreement signed by the NSW Government and the Commonwealth.

These principles essentially require that the prices charged for the biobanking credits reflect:

- full Commonwealth, State and Territory taxes or tax equivalent systems;
- debt guarantee fees directed towards offsetting the competitive advantages provided by government guarantees; and
- those regulations which private sector businesses are normally subject, such as those relating to the protection of the environment and planning and approval processes, on an equivalent basis to private sector competitors.

The NSW Government has published a statement on competitive neutrality: *NSW Competitive Neutrality Complaints Handling Policy Summary* which explains how private businesses can take action to ensure that public authorities adhere to the competitive neutrality principles.

Private businesses who believe that a State public authority is acting outside of the principles are entitled to make a complaint to the Independent Pricing and Regulatory Tribunal (IPART). Complaints against local councils are initially referred to the relevant council for consideration; following that, the NSW Department of Local Government will review a matter if the complainant is not satisfied with the response from the council. There is a further capacity for the IPART to then become involved.

6. Further information

The Urban Taskforce is available to further discuss the issues outlined in this submission.

Please contact:

Aaron Gadiel
Chief Executive Officer
Urban Taskforce Australia
GPO Box 5396
SYDNEY NSW 2001

Ph: (02) 9238 3955
E-mail: admin@urbantaskforce.com.au