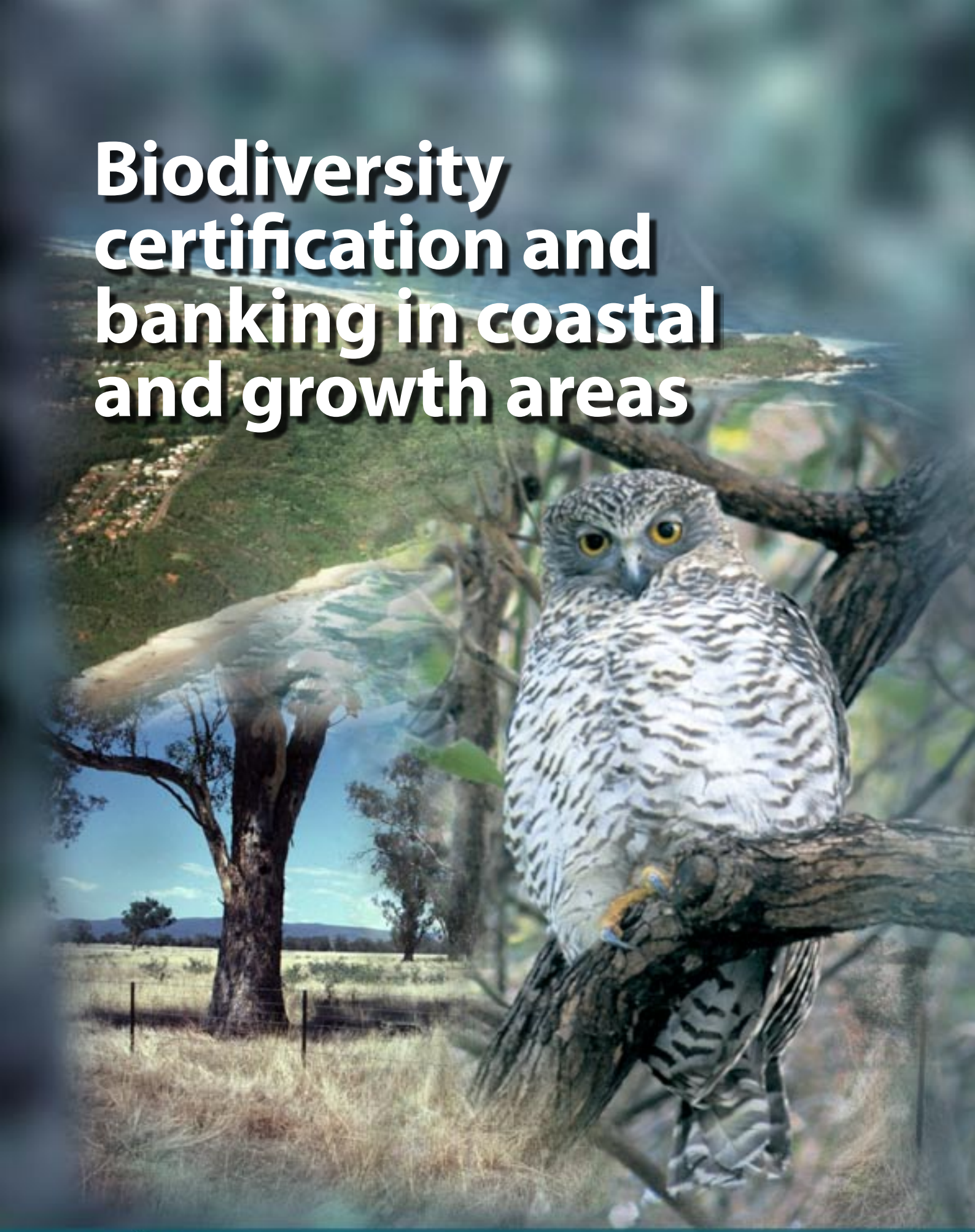
Biodiversity certification and banking in coastal and growth areas



Department of
Environment and Conservation (NSW)

This paper sets out the broad parameters of the new direction and invites comments or suggestions.

Comments or suggestions should be sent to:

Deputy Director General
Environment Protection and Regulation Division
Department of Environment and Conservation NSW

PO Box A290
Sydney South NSW 1232

Email: info@environment.nsw.gov.au

Consultation closes 10 September 2005.

Published by:

Department of Environment and Conservation NSW
59-61 Goulburn Street
PO Box A290
Sydney South 1232

Phone: (02) 9995 5000 (switchboard)
Phone: 131 555 (environment information and publication requests)
Phone: 1300 361 967 (national parks information and publication requests)
Fax: (02) 9995 5999
TTY: (02) 9211 4723

Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

DEC 2005/367

ISBN 174137 494 4
July 2005

Printed on recycled paper

Biodiversity certification and banking in coastal and growth areas

Australia is facing unprecedented challenges in conserving its unique biological wealth. In NSW we have been on a path of continued biodiversity loss for many years. Around 80 species of native plants and animals have become extinct in this state over the past two centuries with 1000 more species heading the same way.

The NSW Government is determined to reverse this process and is implementing historic reforms to end broadscale land clearing in rural areas, and to improve threatened species laws.

The challenge is to continue providing the community with housing, jobs and amenities while also conserving biodiversity for the future. To bring our socio-economic objectives and biodiversity conservation objectives into harmony will require better and more effective decision-making.

This paper sets out how the new concepts of "biodiversity certification" and "biodiversity banking" will operate in areas where high population growth and economic development are transforming the landscape and causing irreversible biodiversity loss.

What is biodiversity?

Biodiversity (short for biological diversity) is the total variety of life forms—the different plants, animals and micro-organisms, the genes they contain and the ecosystems they form.

These reforms will create new opportunities for local councils, public agencies, the NSW Nature Conservation Trust, catchment management authorities and landholders to work together to create an overall landscape that is socially, environmentally and economically sustainable.

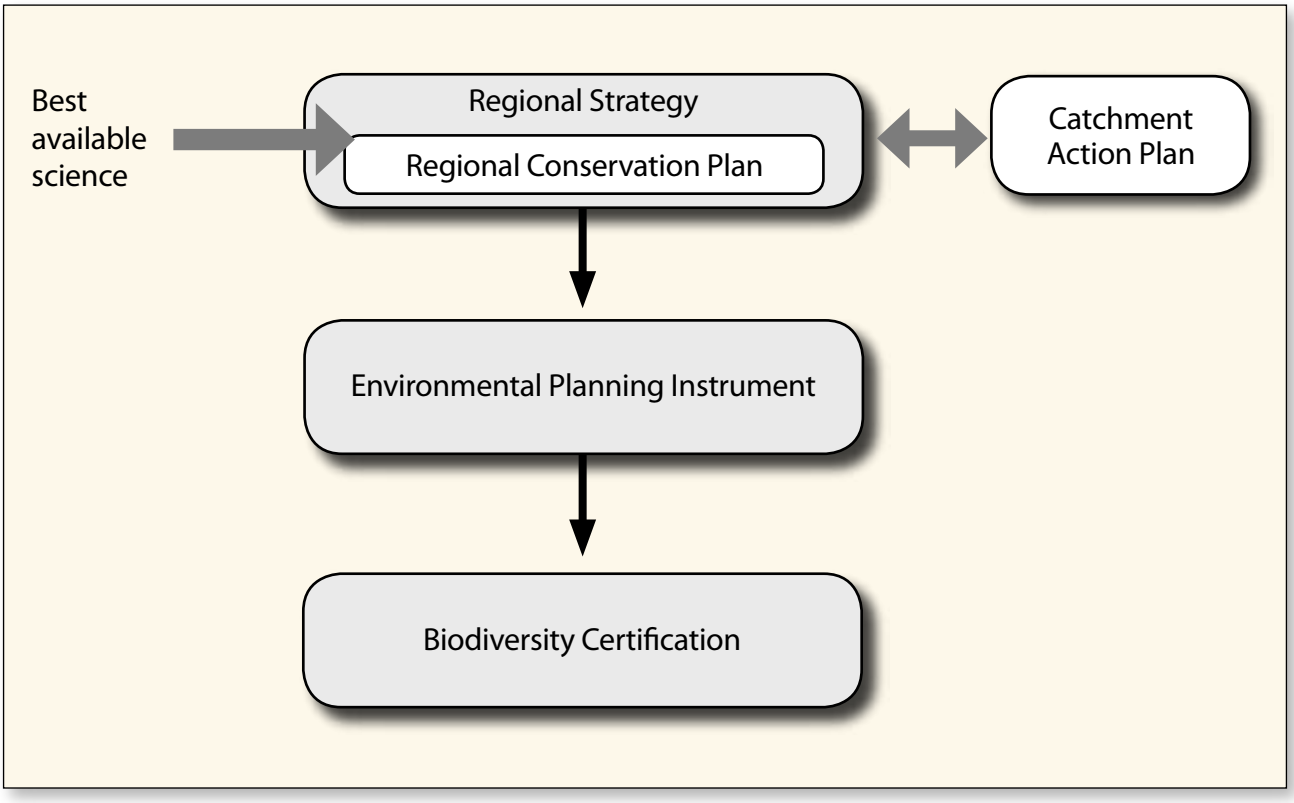
The proposed changes also seek to correct market failure to recognise important biodiversity values in land prices, and to create new opportunities for private sector conservation management of land to complement the State's national parks and other protected areas.

The scheme will be piloted in the Lower Hunter and the Far North Coast regions. The Department of Environment and Conservation will lead the pilot schemes in partnership with local councils, catchment management authorities, the Department of Infrastructure, Planning and Natural Resources, the Department of Primary Industries and other key stakeholders.

This paper sets out the broad parameters of the new direction and invites comments or suggestions. These should be sent to the Deputy Director General, Environment Protection and Regulation Division, Department of Environment and Conservation NSW by **10 September 2005**. Further consultation will occur as the program unfolds.

How the scheme will work

The new approach will be based on positive plans for future sustainable landscapes. The first step will be the development of regional conservation plans for inclusion in the Government's Regional Strategies.



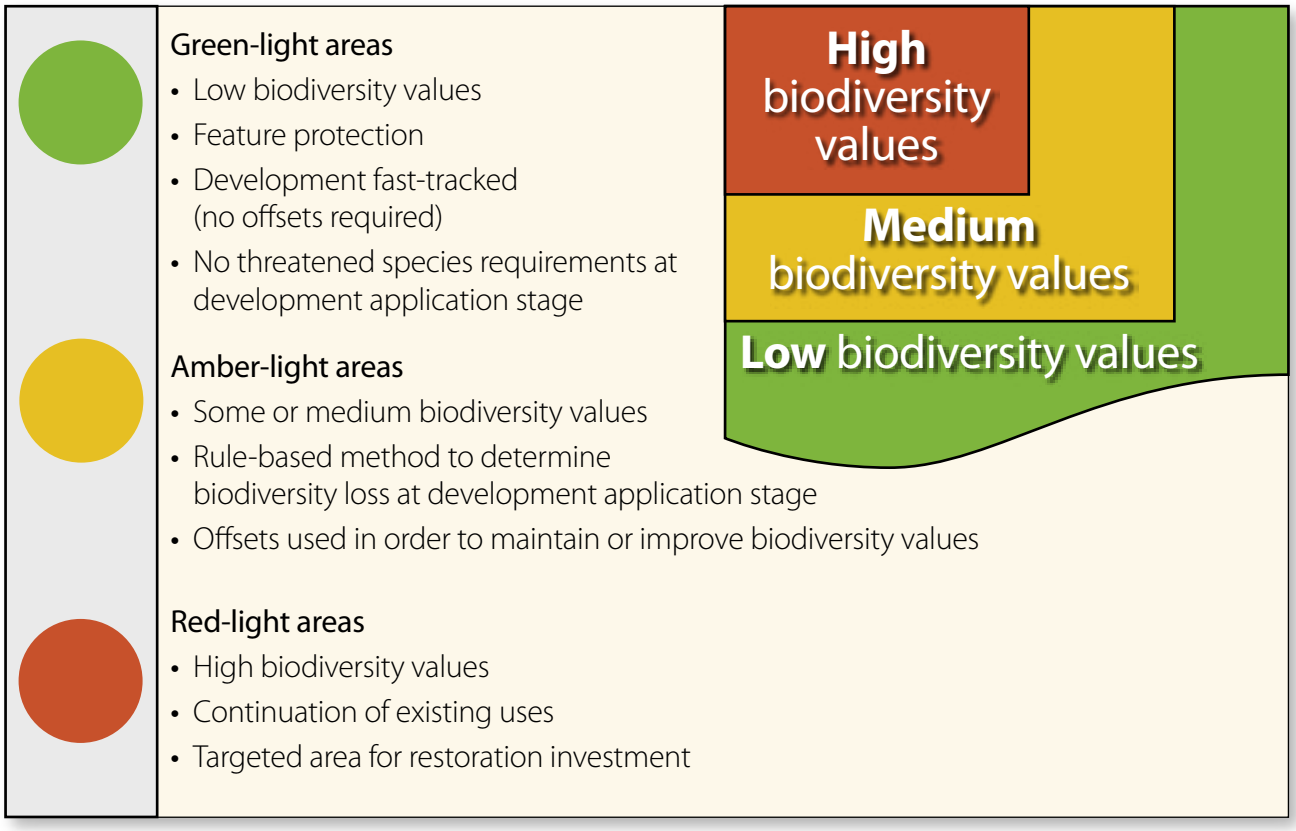
The relationship of regional conservation plans with other key steps in regional and local planning .

How the plans will be developed?

The biodiversity values within the region will be described using available data. Areas where field work might be needed to complete gaps in existing information will be identified. Councils, catchment management authorities, other agencies, landholders and conservation groups will then be consulted to help fill these gaps and to check the plan's "fit" with local knowledge.

A draft regional conservation plan identifying "green-light", "amber-light" and "red-light" areas based on the level of biodiversity values will then be prepared. Conservation priorities and alternative scenarios will be assessed based on the identified biodiversity values. This stage will also ensure that the draft plan is consistent with the Regional Strategy. Further consultation will ensure the plan fits with social and economic objectives.

The finalised plan will then be presented to the NSW Ministers for the Environment and Primary Industries for approval before inclusion in the Government's Regional Strategies. In approving the plan, the Ministers will need to consider the balance between the green, amber and red-light areas, and their social and economic consequences. They will also need to be satisfied that the overall outcomes will be the "maintenance or improvement of biodiversity values".



Regional conservation plans will identify green, amber and red-light areas.

Biodiversity certification

Certification can only apply to a formally drafted **environmental planning instrument (EPI)**. An EPI is a legal plan created under the Environmental Planning and Assessment Act to regulate land use.

There are a number of different types of EPIs, but the most relevant to biodiversity certification will be a local environmental plan (LEP) prepared by a local council. Regional conservation plans will provide clear, locally specific advice on how new EPIs such as LEPs should be constructed so that they can receive biodiversity certification.

Once a LEP or other EPI is compatible with the regional conservation plan it can be submitted to the NSW Ministers for the Environment and Primary Industries for **biodiversity certification.**

The Ministers will also issue guidelines to assist the preparation of EPIs for biodiversity certification. These will address certification of EPIs where there is no relevant regional conservation plan.

Once satisfied that the EPI and other relevant measures will lead to the overall improvement or maintenance of biodiversity values (including threatened species, populations, ecological communities and their habitats) in the area covered by the EPI, the Ministers will certify the EPI.

The certification will generally last for ten years (with possible extension) and in certain cases conditions can be imposed by the Ministers, for example restricting certification to particular threatened species.

	Green-light areas	*Amber-light areas*	*Red-light areas*	*Uncertified areas*
Suggested zoning	Residential, Business or Industrial	Residential, Business, Industrial or Rural	Environmental Protection or existing zoning	Existing zoning
Minimum requirements reflected in zoning	Retention of identified features (eg riverine corridors, local biodiversity corridors rocky outcrops etc)	Retention of identified features (eg riverine corridors, local biodiversity corridors rocky outcrops etc)	Biodiversity values must be maintained on site (or improved if targeted for restoration investment)	Existing requirements
Development application stage	No threatened species assessment	Rule-based assessment to quantify offsets to maintain or improve biodiversity values	Assessment to ensure maintenance or improvement in biodiversity values onsite	Assessment of significance, SIS and concurrence requirements

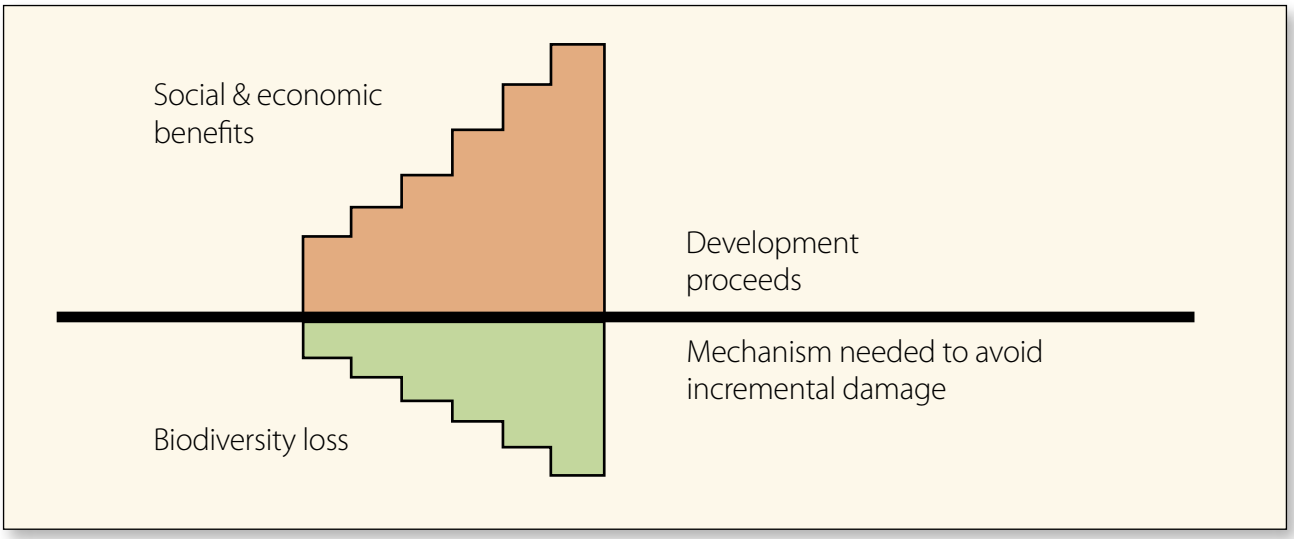
Guidelines for zoning in an environmental planning instrument Subject to some finer-level survey to verify the biodiversity values, the green, amber and red areas should be reflected in EPIs as above.

Biodiversity banking

The new threatened species laws introduced last year signal a more sophisticated approach to biodiversity conservation. Under the old approach there was a wide expectation that despite reasonable steps to minimise biodiversity loss at particular sites, social and economic gains would, in the end, outweigh biodiversity losses.

The risk from a conservation perspective is that a "tyranny of small decisions" leads to a downward spiral of continuing incremental biodiversity loss.

To address this problem under the new scheme, the Minister for the Environment, before granting certification under the new laws, must be satisfied that there will be a maintenance or improvement in biodiversity values. Where anticipated development will cause some biodiversity loss in "amber-light" areas gains will be needed in other appropriate areas within the region to offset the loss.



A mechanism is needed to avoid incremental biodiversity loss as development proceedes.

Offsetting

Offsetting is not a new concept in NSW. As part of the development consent process, restoration of remnant bushland or setting aside land for conservation is often negotiated as an offset against the biodiversity loss resulting from the development. Both locally and overseas there has been growing momentum for systematic biodiversity offsets.

Conservation banking is one form of offsetting. It started in the early 1990s in the United States, has evolved considerably since then, and current schemes are delivering genuine restoration and recovery.

The NSW Government has already successfully used market-based processes to achieve environmental outcomes. These have included the Hunter River Salinity Trading Scheme and the South Creek Nutrient Offset Pilot in Western Sydney.

A biodiversity banking scheme includes a defined methodology to quantify offsets and then pooling the resources to achieve better outcomes more efficiently. Through such a scheme, priority could be given to offsets in areas requiring restoration or secure management under the regional conservation plan. Biodiversity banking will be more efficient for developers and more transparent for the community than current ad-hoc offset arrangements. It will also deliver better conservation outcomes.

Specialised entrepreneurial and not-for-profit 'conservation brokers' may emerge, as has occurred in the United States. This form of biodiversity banking encourages private investment in conservation that can be secured through a conservation agreement or covenant in advance of the environmental impact of the development. For example, a not-for-profit organisation might pay a landholder to set aside part of their property for conservation and make payments to the landholder to manage its conservation values in perpetuity (such as through controlling weeds and feral animals, excluding stock and undertaking revegetation). The not-for-profit organisation would generate offset credits that could be on-sold. The price of credits to developers will also cover ongoing service payments to landholders to carry out conservation actions to improve the biodiversity value of their land.

The framework provides that a development which in itself maintains or improves biodiversity values is not required to participate in the banking scheme. In addition, if able to implement suitable offsets more cost-effectively than through the scheme manager, the developer has the option of undertaking these instead (the scheme manager verifies that the developer is meeting the same performance and reporting requirements).

How will biodiversity banking operate?

A NSW biodiversity banking scheme will be based on the best available science, with a rule-based methodology under conditions of strict accountability and transparency. The detailed operation of the scheme will be designed with input from key stakeholders. The following provides an overview.

Amber-light areas of medium biodiversity value

Where a biodiversity banking scheme has been established as part of biodiversity certification, developers in amber-light areas will be required to participate in the scheme.

When development is proposed in these areas:

1. A rule-based assessment methodology will be used to quantify anticipated biodiversity losses. The score achieved using these tools (possibly multiplied by an offset ratio) would indicate the number of "biodiversity credits" that would be needed for the development to achieve a "maintain or improve" biodiversity values.

2. The developer could:

- reconfigure the project to eliminate the losses,
- add secure offset works to the project at a suitable location (either on- or off-site) to bring the net package to a "maintain or improve" outcome, or
- transfer responsibility for undertaking or negotiating offsets by purchasing the requisite number of credits from the scheme manager or an approved conservation broker. The contribution amount for the credits would be sufficient to implement adequate offset actions including the transaction and ongoing maintenance costs for the offset works.

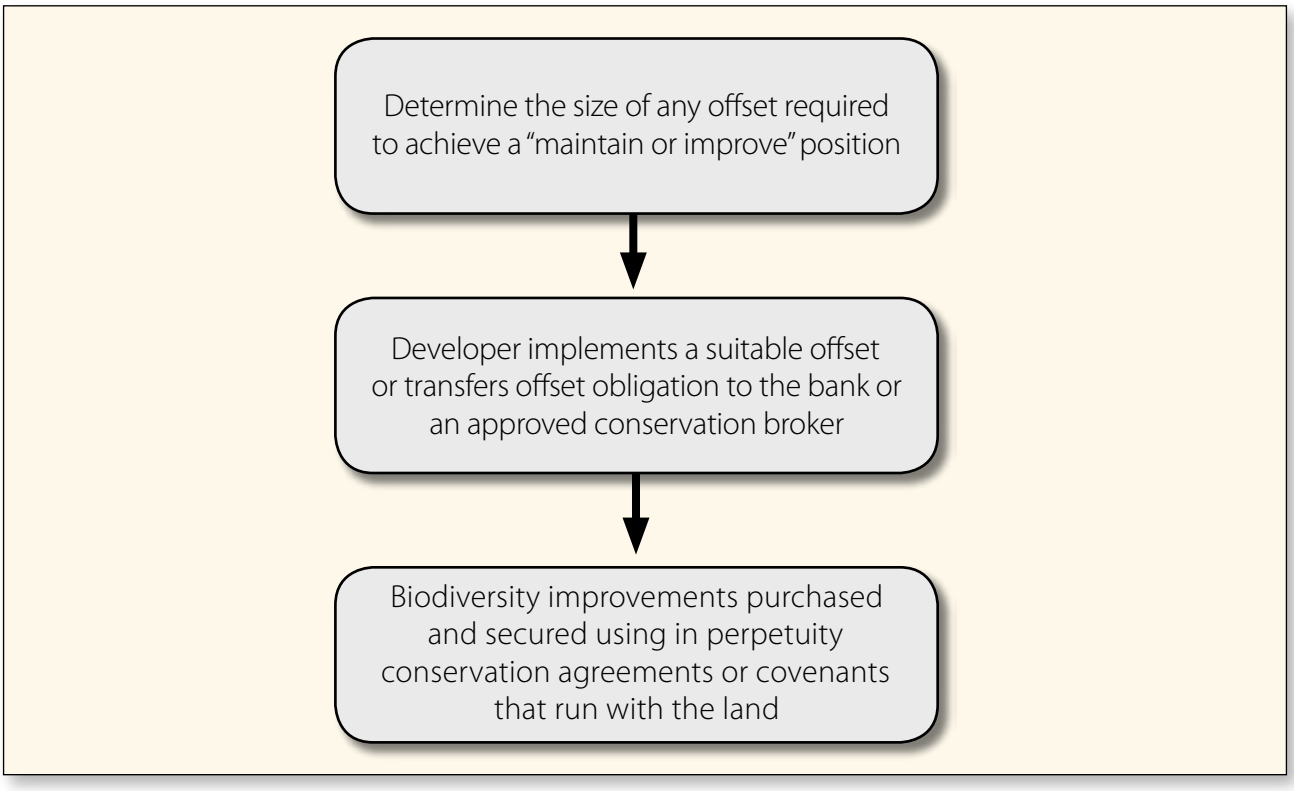
3. The scheme manager:

a. creates credits by negotiating with landholders to improve biodiversity values at suitable locations,

b. then sells these credits and aggregates the funds received to invest in more cost-effective measures to build towards the objectives in the regional conservation plan,

c. works closely with private landholders (through the Nature Conservation Trust or the local catchment management authority), and

d. reports on the bank's programs with a balance sheet showing cash and credit flows as well as progress towards the regional conservation plan.



Overview of the biodiversity banking scheme.

Red-light areas of high biodiversity value

Red-light areas identified in the regional conservation plan will continue to be owned, controlled and managed by existing landholders.

Existing-use rights will not be affected, although new development will be limited to ensure there is no loss of on-site biodiversity values. These limitations will include restriction on the further subdivision of land, configuring of projects to minimise loss and ensuring that any use of the land is compatible with the maintenance of on-site biodiversity values.

Most importantly, the biodiversity banking scheme will provide landholders with financial incentives to reward management efforts that improve biodiversity values in the area.

This will work as follows:

1. The scheme manager will publish a yearly investment strategy that aims to achieve the restoration objectives set out in the regional conservation plan.
2. The scheme manager may enlist assistance from the catchment management authorities or the Nature Conservation Trust to negotiate and bring forward tender proposals from landholders. The scheme manager would rank these restoration proposals according to their value (e.g. $/unit of improvement) and then purchase the most cost-effective proposals that meet the investment priorities.
3. Approved proposals would be secured through in-perpetuity conservation agreements and funding provided from the scheme's bank.

Approved conservation brokers may either operate in a similar way to catchment management authorities and the Nature Conservation Trust by bringing forward proposals from landholders to the scheme manager or, alternatively, sell credits verified by the bank directly to developers. The credits created in this way would be verified by the scheme manager and secured through an in-perpetuity conservation agreement.

There are potentially significant tax advantages available to landholders who enter perpetually voluntary conservation agreements.

Summary of the legislation behind the scheme

The *Threatened Species Legislation Amendment Act 2004* enables the Minister for the Environment to confer biodiversity certification on an environmental planning instrument (EPI) if satisfied that the EPI and other relevant measures will lead to the overall improvement or maintenance of biodiversity values (including threatened species, populations, ecological communities and their habitats) and must have regard to:

- the likely social and economic consequences of implementation of the plan,
- the most efficient and effective use of available resources for conservation,
- the principles of ecologically sustainable development,
- conservation outcomes resulting from formal reservation of land for conservation, or from entering into conservation agreements, or from other actions to secure the protection of land for conservation purposes,
- conservation outcomes outside the plan— including strategies, plans, agreements and other instruments.
- objects of the *Threatened Species Act 1995*

Conditions can be imposed on the EPI certification, including conditions that limit certification to specified threatened species, populations and communities or to a specified part of the land to which the EPI applies.

To be eligible for certification, the EPI must be put on public exhibition so that members of the community can comment on the intention to obtain biodiversity certification. This process may be part of the exhibition required in the preparation of the EPI under the Environmental Planning and Assessment (EP&A) Act.

Biodiversity certification of an EPI will generally remain in force for up to ten years and can be extended provided that certain conditions are met. The Minister will be required to reassess the EPI following any review of the EPI and/or the rezoning of any land to determine whether certification should be maintained or modified.

The Minister also has the power to suspend or revoke certification if the EPI fails (or will fail as result of any proposed amendment to the EPI) to conserve threatened species, populations and ecological communities or there has been a failure to adequately comply with a direction to review the EPI.

The effect of biodiversity certification is that a development or an activity under the EPI will be deemed not likely to significantly affect threatened species for the purposes of Parts 4 and 5 of the EP&A Act, thereby removing the need to address the test of significance for threatened species normally required of any development, and the need for preparation of a species impact statement or to seek concurrence or consultation.

A public register is to be kept containing copies of notice of grant, extension, suspension and revocation of certified EPIs.

Key points from the Government's policy

- It is possible to have good development that provides the community with housing, jobs and amenities *and* to also protect biodiversity. A robust framework and sound decision-making process is required to bring essential conservation and socio-economic objectives into harmony.
- Threatened species conservation will be considered—and even more importantly satisfactorily resolved—at the beginning of the planning process when the local environmental plan, regional environmental plan or other planning instrument is being prepared.
- The legislation will provide the direction and the opportunities for the Government, local councils, catchment management authorities and the broader community to focus on achieving landscape-wide conservation within their local areas.
- Agreements will draw on the substantial conservation information databases created through Comprehensive Regional Assessments. Regional biodiversity agreements will be central to the Government's strategic planning for areas of high population growth. Each regional biodiversity agreement process will commence with the collection of all current knowledge about the biodiversity values of the area under assessment. Areas where field work might be needed to complete gaps in existing data will be identified. Such work will be done in an open way, involving local government councils, key stakeholders and local communities and will identify the key biodiversity assets needed for long-term conservation of threatened species and biodiversity.

Summary of anticipated outcomes of biodiversity banking

It is expected that biodiversity banking will provide financial incentives to private landholders for the improvement of biodiversity values. This will help to streamline assessment of development in the social and economic interests of the State (in green and amber areas) at the same time as stabilising biodiversity loss.

The benefit of using the banking approach is to pool funds and allow for the coordinated protection of priority areas at a landscape scale. This will result in more targeted conservation action, instead of the current piecemeal approach.

	Anticipated outcomes
Environment	• Greater environmental benefits using pooled funds which the bank spends in target priority areas, rather than piecemeal protection resulting from individual negotiations • Conserve areas of higher value than the areas lost—due to the bank's efficiency of aggregating contributions and using targeted offset works and site selection in accordance with regional priorities, and also where long-term benefits are more likely • Banking scheme will provide offset framework setting out consistent and transparent rules
Developers	• Better certainty of processes and outcomes for approvals along with simplified requirements under biodiversity certification in amber and green areas • Faster process than current arrangements • Development can proceed providing community with housing, jobs and amenities while also protecting biodiversity • Provides incentives for sustainable development in low-risk areas • Creates opportunity to diversify into commercial conservation management.
Landholders	• Provides a system to reward land management that enhances biodiversity values • Market incentive generates greater interest in managing land for conservation • Many landholders will have the flexibility of having areas managed for conservation as well as development areas and/or development envelopes on their property • Areas of high conservation value would already have strict requirements which would have meant development was unlikely. These areas can now benefit from active conservation
Community	• Future landscape incorporates biodiversity conservation • Will have meaningful opportunity to influence broad landscape outcomes rather than individual conflicts over development • Allow new development to proceed efficiently with economic and social benefits to the community • Protection of biodiversity in areas not incorporated in reserve system • Bank provides a mechanism to ensure urban development doesn't lead to a worse environment
Local government	• A more efficient and effective way for local councils to ensure that their local environmental plans are eligible for biodiversity certification rather than by single-LGA planning instruments • Less resource-intensive approval process for local government • A new opportunity for local government and other stakeholders to deal with conservation through strategic and transparent land-use planning • Integration of land-use planning with market-based mechanism to drive development in areas that will have lower impacts and with private landholder conservation networks
Catchment management authorities	• Source of funding for authorities to provide biodiversity incentives for landholders • Increases ability for authorities to deliver on priority environmental and community outcomes identified in the catchment action plan and consistent with the conservation plan
Government	• Providing the community with housing, jobs and infrastructure while also conserving biodiversity for the long term

Department of
Environment and
Conservation (NSW)