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New conservation
legislation may have
a major impact on
development in NSW

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NSW Threatened Species legislation – biodiversity certification and banking

Partner Paul Lalich and Senior Associate Suzanne Westgate report on the new biodiversity certification and mitigation banking scheme that has the potential to change the face of development and biodiversity conservation in NSW.

The NSW Department of Environment and Conservation (*DEC*) has announced the new 'biodiversity certification and banking' reforms under the statutory framework of the *Threatened Species Conservation Amendment Act 2004* (the **Amendment Act**).

The proposed scheme

The scheme proposes to use economic tools to offset the impact of development through a tradeable credit system. While such offsets are not new, the Amendment Act now provides the legislative framework for a biodiversity certification and banking system on a state-wide basis.

The biodiversity values within each region of NSW are to be determined by the DEC using satellite imagery and fieldwork that will identify 'green light', 'amber light' and 'red light' areas. Areas of low biodiversity value with no threatened species requirements will be 'green light' areas, on which development may be fast-tracked and no offsets required. Areas of medium biodiversity values will be classified as 'amber light', in which environmental offsets may be used in order to 'maintain or improve' biodiversity values. Areas of high biodiversity values that are targeted for restoration investment will be classified as 'red light'.

DEC proposes that Regional Conservation Plans (**RCPs**) will then be developed through a process of public consultation to identify the 'green light', 'amber light' or 'red light'

zones in each region. RCPs will then be approved by the Minister and included in the Government's regional strategies. Under the provisions of the Amendment Act, the Minister will be under an obligation to consider the social and economic consequences of such RCPs.

Biodiversity certification

The successful implementation of the scheme will be dependant on support from local councils as councils will need to amend Local Environmental Plans (**LEPs**) or other environmental planning instruments (**EPIs**) to be compatible with the relevant RCP. Once an LEP or EPI has been amended, it can then be submitted to the Minister to achieve 'biodiversity certification'. One of the benefits of carrying out activities in an area for which there is a biodiversity certified LEP or EPI is that an application for development consent in a green light area will not need to include a separate species impact statement.

The proposed scheme also suggests a zoning strategy for green, amber and red light areas to be implemented in LEPs. For example, 'Green light areas' are intended to be residential, business or industrial, whereas for 'red light areas', the suggested zoning is environmental protection.

Biodiversity banking

The proposed biodiversity banking scheme will facilitate the process of 'offsetting' impacts on biodiversity as part of the development consent process.

It is proposed that the banking scheme will include a methodology to quantify 'offsets'. Resources will be pooled in a 'biodiversity bank' to broker the exchange of credits between conservation estate owners

and developers. For example, holders of land with significant conservation value (ie in red light areas) could generate offset credits that may be onsold to a proponent of a development in an amber-light area that may have a negative impact on biodiversity.

Land holders in red light areas will have financial incentives to maintain and conserve the ecological value of their land through the biodiversity banking scheme through conservation agreements and funding provided from the 'bank', to which credits generated from the high biodiversity value of the land may be sold.

Importantly, there are tax advantages available for some 'offsets', including voluntary conservation agreements and the purchase of areas with high conservation values.

The Government proposes that the biodiversity banking scheme will be more efficient for developers by streamlining the assessment of development in NSW, more transparent for the community, will improve biodiversity values and deliver better conservation outcomes.

The scheme is to be piloted in the Lower Hunter and the Far North Coast regions over the next two years. The DEC proposes to develop RCPs across NSW once the pilot schemes have been successfully implemented.

The DEC has invited comments or suggestions for the proposed scheme which are to be made by 10 September 2005.

We will continue to monitor this process. If you have any questions about this, or any other environment and planning issue, please feel free to contact us.

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