

BioBanking

Biodiversity Banking and Offsets Scheme

Guide to establishing a biobank site

Department of
Environment, Climate Change and Water NSW



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More information

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Useful information

Abbreviations and acronyms

DECCW	Department of Environment, Climate Change and Water NSW
EOI	expression of interest
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
LALC	local Aboriginal land council
LPMA	Land and Property Management Authority
Minister	unless otherwise stated, the Minister for Climate Change and the Environment
NP&W Act	<i>National Parks and Wildlife Act 1974</i>
NSW	New South Wales
NV Act	<i>Native Vegetation Act 2003</i>
BioBanking Regulation	Threatened Species Conservation (Biodiversity Banking) Regulation 2008
TSC Act	<i>Threatened Species Conservation Act 1995</i>

Websites

Australian Taxation Office (ATO)	www.ato.gov.au
BioBanking	www.environment.nsw.gov.au/biobanking
Department of Environment, Climate Change and Water (DECCW)	www.environment.nsw.gov.au
Environmental Trust	www.environment.nsw.gov.au/grants/envtrust.htm
Land and Property Management Authority (LPMA)	www.lands.nsw.gov.au

Reference materials available on the BioBanking website

Biobanking agreement application form
Biobanking agreement template
BioBanking Assessment Methodology
BioBanking Assessment Methodology and Credit Calculator Operational Manual
BioBanking and other conservation options for private land
BioBanking Credit Calculator
Biobanking public register
Biobank site expression of interest (EOI) form
Glossary
List of BioBanking Assessors
Overview of the biodiversity credits market
Threatened Species Conservation (Biodiversity Banking) Regulation 2008
Threatened Species Profile Database
Vegetation Benchmarks Database
Vegetation Types Database

1 Introduction

Landowners who establish a biobank site under the Biodiversity Banking and Offsets Scheme (BioBanking), can earn income by managing their land to improve its biodiversity.

This guide contains information about how to establish a biobank site, including an overview of the process and the key matters you should consider when establishing a biobank site.

1.1 How to use this guide

This guide provides information on:

- whether your land is eligible to be established as a biobank site
- how to establish your land as a biobank site
- the benefits and obligations that result from establishing a biobank site
- selling biodiversity credits
- the role of the BioBanking Trust Fund
- what happens after you have established the biobank site.

We recommend you read the whole guide so you understand all the components of the process for establishing a biobank site and the linkages between the components.

Please use this document as a guide only and read it in conjunction with the *Threatened Species Conservation Act 1995* (the TSC Act) and the Threatened Species Conservation (Biodiversity Banking) Regulation 2008 (BioBanking Regulation). If you are unsure about your rights and obligations in relation to establishing and managing a biobank site, please seek legal advice.

1.2 About the BioBanking Scheme

Conservation of threatened animals, plants and ecosystems is one of the greatest environmental challenges Australians face today. The key reason these animals, plants and ecosystems are threatened is that habitats have been degraded and lost.

The aim of BioBanking is to address this habitat degradation and loss. The scheme includes a streamlined process for assessing a development's impact on biodiversity, a rigorous and credible 'offsetting' scheme and an opportunity for landowners to generate income by undertaking management actions to improve the biodiversity values of their land.

The NSW Government established BioBanking under Part 7A of the TSC Act. The BioBanking Regulation and the BioBanking Assessment Methodology complete the legal framework that provides for the creation of biodiversity credits that can be sold on the open market.

Credits are created when a landowner enters into a biobanking agreement to maintain or improve their land's biodiversity values by undertaking management actions.

The land is then known as a biobank site. The agreement is attached to the land title and includes provisions that require current and future landowners to:

- carry out management actions to improve biodiversity values on the site
- not undertake activities that would reduce the biodiversity values of the site.

When a landowner sells their credits, a specified minimum amount from the sale proceeds (a portion or all of the Total Fund Deposit) is paid into the BioBanking Trust Fund. Annual payments are then made to the landowner from the fund. This endowment runs with the land in perpetuity to benefit current and future owners.

Anyone can purchase credits. A developer may purchase credits to offset the unavoidable impacts on biodiversity values of a development site. Governments, corporations and philanthropists may also purchase credits to secure conservation outcomes in perpetuity.

2 What are the benefits of establishing a biobank site?

By establishing a biobank site, you can:

- secure funding for management actions to improve your site's biodiversity values into the future
- conserve the site's biodiversity values into the future
- retain your land in private management and ownership
- make a profit from the proceeds of selling your biodiversity credits
- use the biobank site for other compatible purposes such as ecotourism activities or cultural uses
- be exempt from paying land tax on the proportion of your land designated as a biobank site.

3 Can you establish a biobank site on your land?

You may be able to establish a biobank site if:

- your property contains native vegetation or threatened species, populations, ecological communities or their habitats
- you are committed to improving your site's biodiversity values and managing it for conservation in perpetuity.

Matters to consider before deciding to establish a biobank site are listed in section 4.2.

Please also read the information sheet, *BioBanking and other conservation options for private land* (available on the BioBanking website), to ensure you make an informed choice about which conservation program or mix of programs is right for your land. The information sheet also explains how your participation in one program may affect your participation in other programs.

3.1 Is your land eligible to become a biobank site?

Biobank sites can be established on most land in NSW subject to the requirements of the TSC Act and the BioBanking Regulation. Classes of land that are ineligible to become a biobank site under clause 11 of the BioBanking Regulation are:

- land reserved under Part 4 or Part 4A of the *National Parks and Wildlife Act 1974* (NP&W Act), for example, national parks and nature reserves
- flora reserves and special management zones within the meaning of the *Forestry Act 1916*
- land already used as a biodiversity offset under a property vegetation plan approved under the *Native Vegetation Act 2003* (NV Act)
- land which is subject to ongoing biodiversity conservation measures as a condition of a development consent or approval granted under Part 3A, 4 or 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (this includes land subject to a conservation agreement entered into under the NP&W Act for the purpose of compliance with such a condition)
- land where biodiversity conservation measures are being, or are required to be, carried out under an offset arrangement which was made to comply with requirements imposed by or under any Act
- land where past, present or proposed uses of the site or surrounding sites are inconsistent with biodiversity conservation or will prevent management actions from being carried out or biodiversity gains from being achieved, for example, land seriously contaminated by chemicals or land over which the Roads and Traffic Authority holds rights to build future roads.

You can establish a biobank site on land that comprises separate parcels of land, whether or not the parcels are adjacent to each other, provided all the parcels have the same owner(s).

All your property does not have to be included in your biobank site. You decide which areas are included and excluded.

3.2 Can a biobank site be established on publicly owned land?

A biobank site can be established on Crown land when the land is under the control and management of:

- a government department
- a public authority that is not a government department
- local government.

A biobanking agreement on Crown timber lands requires the consent of the minister administering the *Forestry Act 1916*.

A biobank site can also be established on Commonwealth land. In this situation, the Commonwealth is bound by the biobanking provisions of the TSC Act and the BioBanking Regulation.

Public landowners that establish biobank sites need to adhere to the Competition Principles Agreement signed by the NSW Government and the Australian Government.

A biobank site can also be established on land held under a Western Lands lease. Similar conditions apply as for public lands.

3.3 Are you prepared to undertake management actions on your land?

If you decide to establish a biobank site you must agree to undertake management actions to improve the site's biodiversity values. The biobanking agreement sets out the management actions you are required to undertake (see section 4.4). Some management actions are standard for every biobank site, such as grazing for conservation, control of weeds, management of human disturbance and retention of dead timber. Other management actions will be specific to the populations or habitats of the threatened species on the site.

3.4 Will you pass the 'fit and proper person' test?

To assess if you are likely to fulfill your obligations under a biobanking agreement, you have to pass the 'fit and proper person' test. All individuals who, and entities such as corporations which, enter into a biobanking agreement must pass this test.

Clause 15 of the BioBanking Regulation outlines the matters that may be considered when determining whether an individual or entity is a fit and proper person to enter into a biobanking agreement. A fit and proper person:

- has not contravened, and has a good record of compliance with, the relevant legislation such as the TSC Act, EP&A Act, NP&W Act and the NV Act (see clause 15(4) of the BioBanking Regulation for the full list of relevant legislation)
- is of good repute in relation to character, honesty and integrity
- is competent to manage the conservation work required under the proposed biobanking agreement
- has not been convicted of an offence involving fraud or dishonesty over the previous ten years

- has not been an undischarged bankrupt over the previous three years, or for a corporation, has not been the subject of a winding-up order or has not had a controller or administrator appointed to manage it over the previous three years
- has demonstrated their financial capacity to comply with the obligations of the proposed biobanking agreement
- will not undertake management actions in partnership with a person or an entity deemed to not be a fit and proper person.

In the case of a corporation, some of these considerations extend to its directors and managers.

3.5 Can you establish a biobank site on land that is subject to a mortgage, lease, charge, covenant or mining interest?

If you want to establish a biobank site on land that is the subject of other interests, you have to obtain the written consent of the interest holder. In some situations, the Minister will also have to consult with the interest holder.

3.5.1 When must you obtain written consent?

You must obtain written consent for a biobanking agreement for land that is:

- leased, including land that is subject to a residential tenancy agreement, from the tenant or lessee
- subject to a mortgage or charge from the mortgagee or chargee
- the subject of a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, from the holder of the lease or claim.

These parties are referred to as property interest holders.

You should inform any property interest holder of your intent to establish a biobank site on your property before applying for a biobanking agreement. All property interest holders are required to give their written consent to the final biobanking agreement.

3.5.2 What property interest holders must the Minister consult with?

Under the TSC Act, the Minister (or a delegated officer within DECCW) is required to consult with certain other persons with an interest in the proposed biobank site, before you can enter into a biobanking agreement. The Minister is required to consult with:

- the person(s) entitled to the benefit of a covenant if the proposed biobank site is subject to a covenant
- the holder of a mining authority or petroleum title, other than those which require written consent (as discussed above), if the land is subject to this type of interest.

Even though consultation is undertaken by the Minister (or a delegated officer) it is recommended that you consult with the property interest holder yourself before submitting your biobanking application.

3.6 Can you establish a biobank site on land owned by more than one person?

You can enter into a biobanking agreement with other people or another legal entity, such as a company, provided that all the landowners are party to the agreement.

When a proposed biobank site comprises separate parcels of land owned by more than one owner, the multiple owners can enter into a biobanking agreement only if they jointly own all the separate parcels. For example, if company A, company B and Ms X propose to enter into a biobanking agreement for land parcels 1, 2 and 3, all three parties must own all three land parcels. Otherwise, separate biobanking agreements will need to be established over the parcels of land with different owners.

When a site is owned by more than one party, the parties should nominate one 'primary landowner' to represent all the landowners during day-to-day dealings with DECCW and credit buyers. However, all landowners have to give written consent to enter into the biobanking agreement, to transfer credits and to make specific other decisions about the biobank site.

3.7 Who can enter into a biobanking agreement?

Only a natural person who owns the land or a legal entity that owns the land can enter into a biobanking agreement. The certificate of title for Torrens Title land shows the names of all landowners. Make sure you use the correct name(s) when applying for a biobanking agreement. For example, a company is a legal entity and can therefore own land, whereas a business name is not a legal entity and therefore cannot own land. A community group that is not an incorporated association is not a legal entity.

You should ensure all documents, including the biobanking agreement, are signed in accordance with the relevant requirements for the legal entity.

3.8 How can local Aboriginal land councils participate in BioBanking?

Local Aboriginal land councils (LALCs) can participate in BioBanking to establish biobank sites, offset developments or both.

Before entering into a biobanking agreement, a LALC must:

- ensure the proposal is consistent with their Community Land and Business Plan
- address all requirements under the *Aboriginal Land Rights Act 1983*.

If your LALC is considering participating in BioBanking, it should obtain independent legal and economic advice.

The Land Alive project offers information and support for Aboriginal landowners to participate in BioBanking. Land Alive can be contacted by phoning (02) 9995 5000 or emailing landalive@environment.nsw.gov.au.

LALCs should also contact the NSW Aboriginal Land Council regarding specific approval requirements and processes.

3.9 What if you have existing obligations to conserve biodiversity on your land?

3.9.1 Private landowners

Existing obligations to manage or conserve biodiversity on the land proposed as a biobank site will be taken into account when calculating the number of biodiversity credits created by the site.

The number of biodiversity credits that can be created is related to the existing biodiversity conservation and management measures being carried out, or required to be carried out, under:

- a restriction on use or public positive covenant under Part 4A of the *Crown Lands Act 1989*, except in the case of a restriction or covenant imposed in connection with a purchase application made before 10 March 2009
- a conservation agreement under the NP&W Act, except in the case where the agreement proposal was submitted to the Minister before 10 March 2009
- a trust agreement under the *Nature Conservation Trust Act 2001*, except in the case where the agreement proposal was submitted to the Nature Conservation Trust before 10 March 2009
- an agreement between you and a public authority whereby you receive funding for the purpose of conserving biodiversity.

Biodiversity credits will only be created for additional management actions to those already required under existing obligations.

The reduction in credits, also known as credit discounting, is calculated in accordance with the BioBanking Assessment Methodology. Examples of the percentage reductions are outlined in tables 11 and 12 of the methodology. The discount applied to credits will be undertaken on a case-by-case basis during the application process.

3.9.2 Public landowners

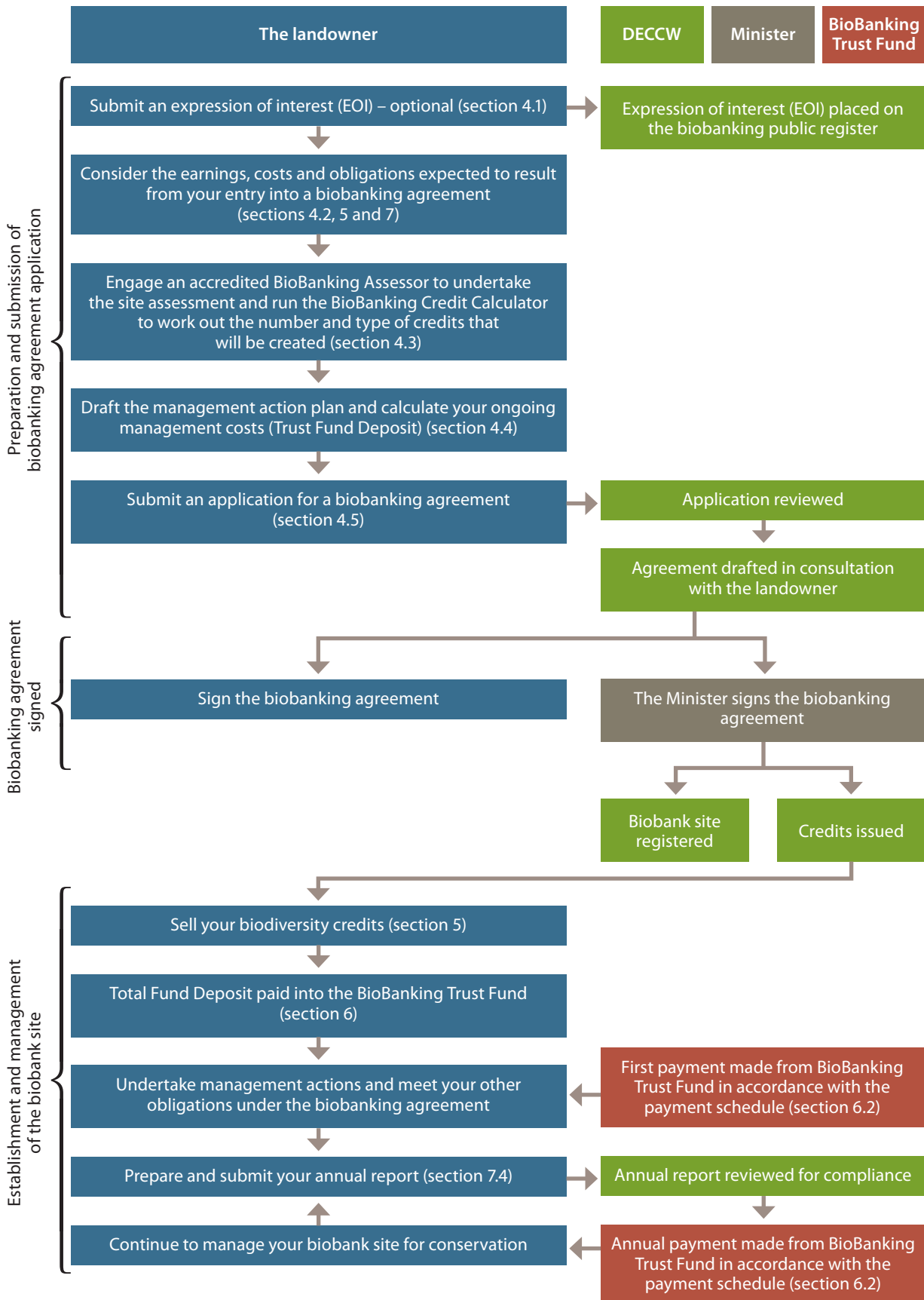
Public landowners only receive credits for performing management actions over and above their existing responsibilities to manage the land for biodiversity conservation under any Act (in addition to being subject to the same conditions as for private landowners).

Existing responsibilities required under any Act can be identified by taking into account:

- legislation and regulations relating to the management of the land
- management plans for the land
- existing policy and practices relating to the land.

Public land managers should contact the department to obtain further advice on the likely credit reduction based on existing responsibilities.

4 How do you establish a biobank site?



4.1 How do you submit an expression of interest (EOI)?

Submission of an EOI is the first step you should take if you are considering establishing a biobank site. It does not entail any obligations and is free of charge. The more accurate information you provide about your site's biodiversity values, the more likely you are to attract a potential credit buyer.

The public register allows you to test demand for your expected credits and find potential credit buyers before you formally enter into a biobanking agreement.

A 'Biobank site expression of interest' form is available on the BioBanking website. The first section of the EOI form requires your contact information and basic information about your biobank site.

Other sections of the form ask for the site's vegetation formations, vegetation types and threatened species. You may be able to fill in this section yourself or you may need some professional assistance, as BioBanking uses a vegetation classification system with 16 vegetation formations, 99 vegetation classes and about 1600 vegetation types. An accredited BioBanking Assessor, another ecological consultant or your local catchment management authority (CMA) may be able to help. There may be a small fee for this information.

If you spend a small amount of money now to determine the vegetation types on your property, you may have a better chance of attracting a purchaser. It will also help you to obtain comparable quotes from BioBanking Assessors when you are ready to undertake a full assessment. If a BioBanking Assessor knows the vegetation types on your property, they can more accurately provide you with a quote for a full assessment, as they will be able to determine the extent of the field surveys required.

Other sources of information about your property's biodiversity values include biodiversity survey reports in environmental impact assessments available from your local council; the *Wildlife Atlas* published online by DECCW; and CMA catchment blueprints, which outline priorities for each region.

You have the option of accompanying the EOI form with a BioBanking Agreement Credit Report prepared by an accredited BioBanking Assessor. Such a report includes the number and type of biodiversity credits likely to be created by the proposed biobank site. However, the number and type of credits created is only verified by DECCW after you have applied for a biobanking agreement, not at the EOI stage. You should consider the costs of a full assessment before undertaking this step.

At this stage, you might also seek professional advice about whether the credits are likely to be in demand and what management actions you might need to undertake.

DECCW will check your EOI before placing it on the public register.

4.2 What do you need to consider when deciding to establish a biobank site?

Establishment of a biobank site is a serious decision that has long-term implications. You should carefully evaluate the benefits, costs and obligations that the process entails, as you would for any new opportunity or business enterprise. You should consider:

- whether you are willing to enter into a biobanking agreement that is placed on the title and is binding on future landowners, whereby the agreement is binding on both you and anyone who owns the land in the future
- the number and type of credits likely to be created, by either using the BioBanking Credit Calculator or obtaining advice from an accredited BioBanking Assessor
- the likely market value of the credits, including whether demand exists for them (an EOI may help determine this or you may wish to seek specialist advice)
- the likely cost of managing the site in accordance with the biobanking agreement
- taxation implications (seek advice from an accountant or taxation specialist if needed)
- legal implications (seek legal advice if you are unsure about entering into a biobanking agreement or whether you can enter into an agreement)
- the views of anyone who might be affected by your decision to establish a biobank site including family members, neighbours and property interest holders
- activities that you may want to undertake on your biobank site, such as ecotourism (check with DECCW as to whether these activities will be allowed)
- other matters relevant to your decision.

4.2.1 What are the tax implications of establishing a biobank site?

The business and financial structure for each biobank site is likely to be unique. The exact way in which taxation law will affect you will entirely depend on your individual circumstances.

All landowners are likely to be subject to capital gains tax and income tax, but not all will be subject to the GST.

A fact sheet about the tax implications of establishing a biobank site will be available on the BioBanking website. The information in the fact sheet is not legal advice and is intended as a guide only.

Private class rulings from the Australian Taxation Office (ATO) provide additional guidance on GST and income tax. These rulings are available on the BioBanking and ATO websites.

DECCW strongly advises you to seek independent legal and taxation advice before you enter into a biobanking agreement. Remember to factor the costs of complying with and reporting about these legal and taxation requirements into the costs of establishing and administering your biobank site.

4.2.2 Do you have to register for GST?

Whether or not you have to pay GST will depend on the nature of your involvement in BioBanking. If you are treating BioBanking as part of your business, you might have to comply with GST rules.

If you enter the scheme as a private landowner who wants to participate for altruistic or philanthropic reasons, you might not have to comply with GST rules.

You need to register for GST if, by participating in BioBanking, you are undertaking an 'enterprise' and your annual income for management actions is \$75,000 or greater (or \$150,000 if you are a non-profit organisation). If you do not meet the monetary threshold but you are undertaking an enterprise by participating in BioBanking, you can register for GST if you wish.

The term 'enterprise' is broadly defined and includes activities that are in the form of a business or a concern in the nature of trade. If you are not undertaking an enterprise by participating in BioBanking, you will not have to pay GST.

4.3 How is a proposed biobank site assessed?

A proposed biobank site must be assessed to determine:

- its biodiversity values
- the management actions required for specific threatened species
- the number and type of biodiversity credits that can be created.

An accredited BioBanking Assessor assesses the biodiversity values at the site in accordance with the BioBanking Assessment Methodology, to produce a BioBanking Assessment Report that is submitted with your application for a biobanking agreement.

The assessor uses the methodology and the BioBanking Credit Calculator to assess the biodiversity values according to seven criteria:

1. state and national priorities according to listed threatened ecological communities
2. regional value according to the vegetation type's conservation status (percentage cleared in the CMA area)
3. 'Landscape Value' – native vegetation cover in the adjacent area and the site's connectivity with it
4. 'Site Value' – vegetation condition compared to benchmarks for over-storey, mid-storey and groundcover; the presence of exotic plants; the number of trees with hollows; regeneration; and the total length of fallen logs
5. threatened species – uses information from the Threatened Species Profile Database about habitat requirements and responses to management actions
6. management actions – the effects of the actions that must be undertaken and the consideration of actions already required to be undertaken
7. the area of the land.

The Credit Calculator includes three databases – the Vegetation Types Database, Vegetation Benchmarks Database and the Threatened Species Profile Database. The databases are available on the DECCW website.

You may wish to ask the assessor for a copy of the documentation used to prepare the BioBanking Assessment Report, such as vegetation data sheets and threatened species survey results. This could be useful if you, or future landowners, decide to expand the existing biobank site or if additional threatened species are identified on the biobank site.

4.3.1 Who can assess your proposed biobank site?

To ensure consistent application of the methodology, only the results of a site assessment endorsed by an accredited BioBanking Assessor can be submitted with a biobanking agreement application. To become accredited, an assessor must successfully complete the relevant training and meet the accreditation criteria. This ensures all assessors have the knowledge and experience to assess a proposed biobank site and apply the calculator in accordance with the methodology.

An accredited BioBanking Assessor can also advise you about which area of your property is most suitable for establishing a biobank site. Other consultants can advise you about establishing a biobank site or selling biodiversity credits, but only an accredited BioBanking Assessor can sign off on the site assessment and credit report that you submit to DECCW.

The assessor will charge a commercial rate for advice and assessment.

The most accurate and up-to-date list of accredited BioBanking Assessors and their contact details are provided on the BioBanking website. The website also includes information to help you select an assessor.

4.3.2 How much does a site assessment cost?

Each accredited BioBanking Assessor determines their own fee for assessing a biobank site. You should obtain a quotation from a couple of assessors who operate in your area. To obtain a reliable quotation, you need to provide a certain amount of information to a Biobanking Assessor. You can think of the quotation process as a two-step process.

The first step is a basic assessment of your site and its vegetation types. This will provide you with enough information to draft a brief for a Biobanking Assessor so they can provide you with an accurate quotation for a full assessment. You may have already done this for your EOI (see section 4.1).

If a BioBanking Assessor is provided with information on the vegetation types on your property, they will be able to do a quick desktop analysis to determine the extent of the field surveys required. The BioBanking Assessment Methodology determines the minimum number of transects and plots that must be surveyed at your site and the Credit Calculator identifies the threatened species that require assessment. Without this information, quotations from different assessors will be difficult to compare as they may have based their quotations on different assumptions. Ask the assessors to state what is included in their quotation so you can compare fairly.

The cost of the site assessment, and the length of the time it takes, will depend on the site's location and size and the complexity of its geography and biodiversity. If the site is large and difficult to access or contains many vegetation types and multiple threatened species, it might require a more complex assessment, resulting in a higher cost. However, large diverse sites are likely to generate a greater number and variety of credits that could be the source of more income.

You might decide to enter into an agreement with a potential biodiversity credit buyer whereby they pay the assessment costs (and potentially other costs associated with establishing the proposed biobank site) in exchange for your obligation to sell specific credits at an agreed price, after DECCW has issued them to you.

4.3.3 How are biodiversity credits calculated?

There are two classes of biodiversity credits – ecosystem credits and species credits. Both classes of credits can be created at a biobank site.

Ecosystem credits are created for all biodiversity values, including threatened species that can be reliably predicted to use an area based on habitat. The number of ecosystem credits is calculated from vegetation surveys, other characteristics of the site (geographic location, connectivity) and management actions to improve biodiversity.

Species credits are created for threatened species that cannot be reliably predicted to use an area based on habitat. Threatened species that require species credits are identified in the Threatened Species Profile Database. The number of species credits is calculated based on targeted surveys of each species, and the management actions required to improve the number or habitat of the threatened species.

To ensure consistency, credits are calculated by the BioBanking Credit Calculator, a computer program that applies the methodology. An accredited BioBanking Assessor enters the results of your site assessment into the calculator which produces a BioBanking Agreement Credit Report. This report lists the number and type of credits that can be created on your proposed biobank site.

Biodiversity credits are created for management actions carried out on your biobank site to improve biodiversity values in accordance with the biobanking agreement.

If your land has existing biodiversity management obligations, the number of biodiversity credits that can be created may be reduced (see section 3.9).

4.3.4 What happens to biodiversity credits if there are changes made to the methodology?

Changes made to the BioBanking Assessment Methodology will not affect your existing credits (that is, the credits issued to you before the change) or the management actions you are required to undertake.

The methodology is based on sound ecological principles, current listings of threatened species, and native vegetation data. It underwent extensive internal and external consultation prior to being gazetted. However, if new scientific knowledge becomes available, or minor amendments are required, changes can be made to the methodology.

Methodology reviews must be undertaken two years after gazettal of the methodology (which was gazetted on 11 July 2008) and at least every five years thereafter. The reviews will assess performance of the methodology and consider any new relevant scientific findings. DECCW will conduct public consultations before adopting any change to the methodology, other than a minor change.

The databases underpinning the Credit Calculator are periodically reviewed and updated when new information becomes available or changes or corrections to the ecological principles and assumptions are required. New information may include local data for native vegetation types, benchmarks and threatened species. Anyone can submit a case for the review of a particular database assumption or data. Updates are announced on the BioBanking website.

4.4 What are management actions?

Your biobanking agreement includes the specific management actions that you and future landowners must undertake on your biobank site. These management actions are based on the site's ecological requirements as required by the methodology. They are drafted using the wording and guidance notes in 'Annexure C: Management actions for the biobank site' of the biobanking agreement template.

Standard management actions required for the creation of ecosystem credits on all biobank sites are:

- management of grazing for conservation
- control of weeds
- management of fire for conservation
- management of human disturbance
- retention of regrowth and remnant native vegetation
- replanting or supplementary planting where natural regeneration will not be sufficient
- retention of dead timber
- control of erosion
- retention of rocks.

Additional management actions may be necessary to improve populations or habitats of specific threatened species as identified in the Threatened Species Profile Database. These threatened species may be included in ecosystem credits or species credits. Examples of additional management actions are:

- control of feral and over-abundant native herbivores
- management of vertebrate pests such as pigs and foxes
- control of nutrients
- control of exotic fish species
- maintenance or reintroduction of natural-flow regimes when possible.

Management actions can also be divided into passive and active actions. Passive actions have little or no cost and include refraining from doing something, such as not removing fallen logs or bush rock. If a management action is active, you have to undertake specific activities to improve the site's biodiversity.

Some management actions may be passive or active depending on the biobank site. For example, managing stock for grazing will be a passive management action if the biobank site is already suitably fenced, although it will be an active management action if the biobank site needs to be fenced. DECCW will liaise with you to determine whether your management actions are passive or active.

Your biobanking agreement describes all the management actions you must undertake and specifies whether each is passive or active. Not all management actions will be relevant for each biobank site.

Some management actions require the preparation of detailed management plans. Plans for the control of weeds and fire are mandatory and a plan for pests may be required depending on your management actions. You should design your plans to allow for adaptive management and periodical reviews to accommodate changing circumstances and knowledge.

For the purposes of the EP&A Act, any management actions required by a biobanking agreement are treated as 'exempt development' (unless a change is made to the BioBanking Regulation in the future).

4.4.1 How do you estimate your ongoing management costs?

The costs of managing a biobank site vary according to its size, location, vegetation type, cover and condition, topography, fencing and possible boundary management issues.

You should break down your specific management actions and plans into individual tasks for the short and long term and determine the frequency of the actions. You then price each task based on the current costs of materials and labour.

The costs of managing local council bushland reserves may be a good indication of the ongoing costs for managing a small urban-fringe biobank site. To estimate the costs of managing larger sites in rural areas, you may wish to investigate the costs of managing nearby national parks and nature reserves. Advice on costs of management actions may also be obtained from BioBanking Assessors, CMAs, councils and the internet.

Depending on the situation, the annual cost of managing a biobank site could vary from several hundred dollars per hectare to several thousand dollars per hectare. This difference will affect the minimum price you should seek for your credits.

The net present value of all your biobank site management costs is known as your Total Fund Deposit.

The Total Fund Deposit is held in your BioBanking Trust Fund account to cover the costs of managing the biobank site in perpetuity. It is important to ensure sufficient funds are secured for the long-term management of your biobank site.

The costs of managing your biobank site are entered into the Total Fund Deposit worksheet of the Biodiversity Credits Pricing Spreadsheet, which is available on the BioBanking website. There are two subsections on the worksheet:

- management action costs
- other recurring costs (e.g. insurance, rates, reporting fees).

All estimated annual costs should be entered on the worksheet. You enter the costs at current dollar equivalents and the spreadsheet then calculates the net present value, or in other words the amount that needs to be invested to account for future management requirements. The amount calculated by the spreadsheet is the Total Fund Deposit.

Factoring in the costs of labour and administration

The cost of labour and site administration should be based on a third party undertaking the work at a commercial rate, even though you may be able to undertake most management actions yourself, in case you cannot continue to meet your management responsibilities in the future. Also, if you sell your property, the new owner can be assured that the cost of a third party undertaking the management actions is covered.

If you undertake the required management tasks yourself for less than the estimated commercial rates, you still receive the full amount due from the BioBanking Trust Fund account.

Appendix B contains additional information about costing management actions and other recurring costs.

4.4.2 When must you undertake your management actions?

Passive management actions commence as soon as your biobanking agreement is finalised. Passive management actions include the retention of native vegetation, regrowth, fallen timber and bush rock.

You can choose not to commence any active management actions at this stage. As soon as you satisfy 80% of the Total Fund Deposit, you commence all active management actions such as control of weeds and pest animals, management of fire and replanting.

Payments from the Biobanking Trust Fund only start when you satisfy 80% of the Total Fund Deposit.

You should refer to the specific terms of your biobanking agreement for the agreed frequency of management actions.

4.4.3 Who can prepare the proposed management actions?

You may need to obtain professional advice when preparing details of the management actions for your biobank site, especially for replanting, erosion control and developing management plans for controlling weeds, pest animals and fire.

To prepare management actions and plans, you need to know how to manage and conserve native vegetation and threatened species. You therefore might need to involve specialists such as bush regeneration contractors. A BioBanking Assessor might be able to advise you or be able to recommend others who could advise you. Specialist advisers will charge according to the size and complexity of your site.

4.4.4 How do you submit your proposed management actions and plans?

You submit your proposed management actions and plans to DECCW with your biobanking agreement application. The management actions are included in Annexure C of the biobanking agreement template and the costings for the actions are included in the Total Fund Deposit worksheet of the Biodiversity Credits Pricing Spreadsheet. See Appendix A for details on submitting your management actions.

4.4.5 Do you have to report on your management actions?

Your biobanking agreement lists the records you need to keep for management actions and your observation of events that impact on the site's biodiversity values.

You can make minor alterations to management actions provided you improve the site's biodiversity values and record the changes in writing. These alterations should also be listed in your annual report, along with all management actions you have undertaken.

It is useful to keep a diary to record activities and observations on the biobank site. You are not required to submit the diary to DECCW but it can help you to complete your annual report (see section 7.4). An auditing officer can also refer to your diary to establish whether you have complied with the requirements for the management actions.

An example of an activity diary is provided below:

Date	Weather	What did you do or observe?	Problems encountered	Impacts or effects
23.10.08	Dry, cool	Worked with contractor to remove blackberries from management area 'X'	None	None
15.1.09	Dry, hot	Bushfire	Destroyed south-west corner of the site	Burnt vegetation

4.5 What is a biobanking agreement?

A biobanking agreement is a legal agreement between you (the landowner) and the Minister for the purposes of establishing a biobank site. A biobanking agreement designates land to which the agreement relates as a biobank site for the purposes of the BioBanking Scheme. A biobanking agreement remains in force in perpetuity (unless it is terminated with the consent of the Minister and all of the current landowners or it is terminated by the Minister in accordance with the TSC Act). It binds current and future landowners.

The agreement sets out your obligations and entitlements in relation to the biobank site, including:

- the management actions you are required to undertake at the site to improve its biodiversity values
- the number and class of biodiversity credits created in accordance with the methodology
- annual reporting requirements to demonstrate compliance with the biobanking agreement
- the amount required to be deposited in the BioBanking Trust Fund, and the payment schedule and conditions for you to receive annual payments from the fund.

4.5.1 How do you apply for a biobanking agreement?

There are two main stages when applying for a biobanking agreement – submission of an application by the landowner and a review by DECCW.

Stage 1

You submit a completed biobanking agreement application (downloaded from the 'Forms' section of the BioBanking website) which includes:

- your personal information, such as your contact details
- your answers to the questions in the 'fit and proper person' test
- site information including location, land use, existing interests and existing management obligations
- the required attachments, such as
 - proof of land ownership
 - a BioBanking Assessment Report
 - a Biobanking Agreement Credit Report
 - digital maps
 - your completed biobanking agreement template which includes your draft management actions
 - your Total Fund Deposit worksheet of the Biodiversity Credits Pricing Spreadsheet
 - copies of any existing covenants or conservation agreements
- the signatures of all owners of the proposed biobank site
- the fee for DECCW to process the application.

Stage 2

Before DECCW prepares a draft biobanking agreement, it reviews the application by:

- verifying the information you have provided
- checking whether relevant parties have consented to the application, as required under the TSC Act
- consulting with relevant parties, as required under the TSC Act.

You must obtain consent from property interest holders if your proposed biobank site has a mortgage, charge or lease over it or the land is subject to either a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*. You should obtain this consent before lodging your application. The written consent of the property interest holders to the final biobanking agreement must be obtained before the Minister signs the agreement (see section 3.5).

DECCW is committed to processing an application within 28 days of receipt. In some circumstances, such as if the application is for a complex site, if an extensive review or consultation process is necessary or if there is missing information, the time may be longer.

4.5.2 How is the biobanking agreement finalised?

The biobanking agreement is a record of your obligations and entitlements under the scheme, and the credits produced from your biobank site. You complete the biobanking agreement template and DECCW verifies that it matches the information provided in the rest of your application.

DECCW then provides the final version of the biobanking agreement for all landowners to sign and for the written consent of any property interest holders to be obtained. You then return the signed agreement to DECCW for signing by the Minister.

After the biobanking agreement is finalised, DECCW:

- records it on the land title to bind both you and future landowners to its conditions
- notifies your local council so that a certificate issued under section 149 of the EP&A Act will note that the land contains a biobank site
- places it on the biobanking agreements register
- records the number and type of biodiversity credits on the biodiversity credits register. As the owner of the credits, you can access the biodiversity credits register to print out a list of your credit holdings. If you need a list of your credit holdings that shows the name(s) of the owner(s), you can ask DECCW to provide a Credit Ownership Report.

You will be asked to provide your bank account details for the deposit of your annual management payments from your BioBanking Trust Fund account. You can also designate a contact person to represent all landowners of the biobank site in order to facilitate day-to-day communication related to administering the site.

4.5.3 What are the DECCW fees for biobanking agreements?

The DECCW fees for establishing and administering your biobank site are:

Fee for (as at 1 August 2009)	Amount
Application to establish a biobanking agreement	\$612
Application to vary a biobanking agreement	\$1122
Application to terminate a biobanking agreement	\$714
Annual reporting fee (per year)	\$1122
Application to transfer credits (per batch)	\$102

Note: Fees are adjusted for CPI at 1 August each year

In some cases, as specified in the BioBanking Regulation, the Minister can waive or refund part of the fees.

5 How do you sell your biodiversity credits?

You can sell your credits to anyone. Likely buyers are:

- developers who need to offset biodiversity losses at a development site
- government bodies purchasing specific credit types or credits in strategically located areas to achieve conservation outcomes
- philanthropists, conservationists or corporations using BioBanking to ensure the biodiversity benefits of their endowments are maintained in perpetuity and that specific communities or threatened species are protected.

The biobanking public register on the BioBanking website can help publicise the credits you have available for sale. The biodiversity credits register shows all credits available for sale and the biobank site EOI register shows basic information about the credits likely to be created at a proposed biobank site.

Alternatively, you could review the list of wanted credits (also on the BioBanking website) to see if anyone is seeking your credit types.

Demand for biodiversity credits will vary depending on the types of credits you are selling. The biodiversity credit transactions and sales register provides information about all sales that may help you determine credit demand and price.

Use of all biobanking public registers (see section 10.1) is open to the public via the BioBanking website and is free of charge. An email contact is provided for each register listing.

It is likely that the private sector, such as environmental consultancies, will provide brokerage services to help connect interested buyers with sellers.

When you sell your credits you must submit an application to DECCW, accompanied by the transfer fee, to transfer the biodiversity credits to the new owner. You will also need to ensure the Total Fund Deposit has been satisfied (see section 5.1). DECCW records the transaction, transfers the credits to the new owner and issues a Credit Ownership Report that shows the seller's and buyer's new credit holdings. The biobanking public register is automatically updated.

You can also apply to retire your credits without selling them. To do this you need to pay the Total Fund Deposit into the BioBanking Trust Fund and then submit an application to retire biodiversity credits to DECCW to remove them from the market. For information about how the biodiversity credits market operates, see the *Overview of the biodiversity credits market* on the BioBanking website.

5.1 How do you determine the price of your biodiversity credits?

Under BioBanking, biodiversity credit trading takes place in an open and competitive market in which the price of credits is subject to the forces of supply and demand.

Because BioBanking is a new and voluntary scheme, it may initially be difficult to predict the demand for specific types of credits and their price. When the market is established, it will be easier to determine the demand for, and price of, biodiversity credits.

The minimum price you should sell your credits for is the relevant portion of the Total Fund Deposit. The Total Fund Deposit is paid into the BioBanking Trust Fund to ensure there is enough money to cover expected site management costs into the future.

The Total Fund Deposit is paid from the proceeds of selling your credits. If you sell all of your credits the full amount of the Total Fund Deposit must be paid. Any excess goes directly to you. Any shortfall will have to be made up by you.

If you sell a portion of your credits, the amount to be paid into the Total Fund Deposit is the greater of:

- the relevant portion (number of credits sold divided by total number of credits created) of the Total Fund Deposit
- the total proceeds of the sale.

In other words, if the relevant portion of the Total Fund Deposit is more than the proceeds of the sale, you must make up the difference to satisfy the requirements of the Total Fund Deposit.

The way to avoid this situation is to never sell your credits for less than the relevant portion of the Total Fund Deposit, unless you have already satisfied the full amount of the Total Fund Deposit.

If the proceeds of the sale are greater than the relevant portion of the Total Fund Deposit, the full amount of the proceeds is deposited into the BioBanking Trust Fund up to the total of the Total Fund Deposit. Any excess goes directly to you.

Some examples may help you to understand how the amount to be deposited into the Total Fund Deposit is calculated. Assume 1000 credits have been created at a biobank site and the Total Fund Deposit is \$100,000.

No. of credits sold	Percentage of credits sold	Price per credit (\$)	Relevant portion of the Total Fund Deposit (\$)	Total proceeds of sale (\$)	Amount to be deposited into the Total Fund Deposit (\$)	Excess to the landowner (\$)	Landowner contribution to the Total Fund Deposit (\$)
1000	100	110	100,000	110,000	100,000	10,000	
800	80	80	80,000	64,000	80,000		16,000
500	50	250	50,000	125,000	100,000	25,000	
500	50	120	50,000	60,000	60,000		
500	50	60	50,000	30,000	50,000		20,000
200	20	150	20,000	30,000	30,000		

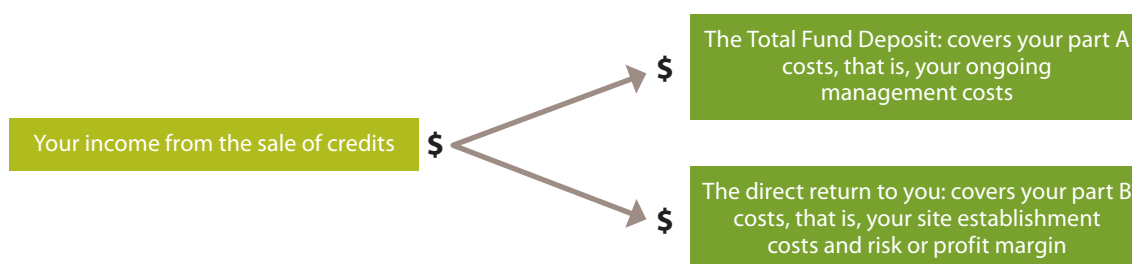
You should be aware that no payments will be made to you from the BioBanking Trust Fund until 80% of the Total Fund Deposit is satisfied.

You may also want to recoup some of the other costs you have incurred in establishing your biobank site, such as assessment costs and fees, or you may want to factor in a risk or profit margin. The credit pricing worksheet of the Biodiversity Credits Pricing Spreadsheet includes all the costs associated with establishing and managing your biobank site to help you determine the price of your credits.

The cost of a biodiversity credit comprises two parts, as does the spreadsheet:

- part A: ongoing management actions also known as the Total Fund Deposit (discussed in section 4.4.3)
- part B: establishment costs, opportunity cost and profit or risk margin.

The figure below shows the relationship between income from sale of credits, the Total Fund Deposit and the return to the landowner.



You can compare your credit price estimates with the transactions listed on the biobanking public register to determine whether your credits are likely to be competitive with those of other BioBanking participants.

5.1.1 What are the costs for establishing a biobank site?

Your establishment costs or part B costs are any costs, other than management and other recurring costs, you may seek to recover when setting the price of your credits, including:

- the opportunity cost to you:
 - land value
 - stamp duty
- the costs of entering into a biobanking agreement:
 - site assessment
 - preparation of management actions and management plans
 - the biobanking agreement application fee
- your profit or risk margin.

You should treat the possibility of establishing a biobank site on your property as a business decision. Weigh up all the costs and implications against the benefits of permanently securing and improving the site's biodiversity values. Also consider your potential to obtain a sale for your credits and the likely profit you would receive.

The credit pricing worksheet of the Biodiversity Credits Pricing Spreadsheet can help you to weigh up the arguments for and against establishing a biobank site on your property. You decide whether you want to use the credit pricing worksheet – you do not submit it to DECCW for review.

The costs included in your part B calculations will depend on whether you already own the property or are intending to purchase a property with the intent of establishing a biobank site. The costs associated with purchasing a property, for example legal fees, stamp duty and borrowing fees, are generally not incurred if you already own the property.

Including the land value is optional. Not including the land value in your calculations will obviously dramatically reduce the price of your credits. You decide if you want to be compensated for the use of your land (the opportunity cost) or if you only want to be reimbursed for the cost of undertaking your management actions.

See Appendix C for more information.

5.1.2 What is the potential price of your biodiversity credits?

Most biobank sites are likely to create a number of different credit types. Some of these credits will be in demand whereas others, such as native vegetation communities that are neither highly threatened nor cleared, might be difficult to sell.

You may consider pricing your credits according to their type – credits in demand or in scarce supply might attract a higher price than credits in oversupply. However, if this approach is used, you should try to sell your more expensive credits first to make sure there is no shortfall in the Total Fund Deposit.

The total number of credits created on your biobank site should be included in the worksheet to determine the cost per credit. This will help you to price your credits.

All credit types are subject to the same ongoing management obligations. You should consider what proportion of your credits you are likely to sell, by monitoring the market and seeking professional advice as necessary. The credit pricing worksheet of the Biodiversity Credits Pricing Spreadsheet provides space for five different scenarios to be calculated.

You can:

- enter different proportions of credits likely to be sold to demonstrate how those affect credit price
- calculate the proportion of credits you have to sell at a specific price to cover the ongoing management costs of the whole site.

If the proportion of credits you are likely to sell is small, the price of your credits may increase to a level at which they are no longer cost competitive. In this situation, you may decide to reconsider the area of the proposed biobank site or consider other options. One option may be to stage your biobank site by way of the variation process (see section 8.1).

The credit pricing worksheet automatically calculates the suggested credit price after you have entered all your part B costs (it automatically transfers your part A costs from the Total Fund Deposit worksheet).

5.2 Understanding your risks

You should consider many factors when determining your credit price. Use these notes as a guide only and seek professional advice when required. It is recommended that you fully inform yourself about all possible risks before entering into a biobanking agreement.

Risks you might encounter when establishing a biobank site include:

- legal obligations to manage the property in accordance with the agreement
- an inability to sell some or all of your credits because they are not desirable or the market has an over supply
- an inability to sell enough credits to reach 80% of the Total Fund Deposit
- any future impact on the value of the property.

There are also a number of risks associated with estimating your site management costs and determining the credit price, such as:

- underestimating the future costs of site management
- unexpected future management costs
- the potential reduction in credit value because of market pressures.

The credit price calculated on the Biodiversity Credits Pricing Spreadsheet varies according to the extent that you factor in risks.

Every component of the spreadsheet will not necessarily be relevant to every biobank site. You might choose to not seek a return for some components or to seek a reduced return for some components such as land value. The pricing of these components may significantly affect the credit price and the competitiveness of your credits in the market.

6 What is the BioBanking Trust Fund?

6.1 How does the BioBanking Trust Fund work?

The BioBanking Trust Fund ensures money is set aside to fund your future ongoing management payments.

When biodiversity credits are first sold (or first retired if they haven't been sold before), an amount specified in the biobanking agreement is deposited into the BioBanking Trust Fund. This amount is known as the Total Fund Deposit.

The money in the BioBanking Trust Fund is invested and used to pay you to carry out the management actions specified in your biobanking agreement. These annual payments are only made if the agreed management activities have been carried out during the previous year.

6.1.1 Why is money invested in the BioBanking Trust Fund?

Investing the proceeds of credit sales in the BioBanking Trust Fund provides long-term assurance that sufficient funds will be available for the ongoing management of your biobank site. It is a secure investment that is managed to provide a reliable return with a low management fee.

All monies held in the trust fund are paid back to the biobank site owners. The fund does not provide any revenue for government. Each biobank site has an individual account in the trust fund.

If you sell your biobank site, your account is transferred to the new landowner as biobanking agreements run with the land. The new landowner will need to carry out the required management actions and comply with the conditions of the biobanking agreement, and in return will receive the annual payments from the trust fund.

The BioBanking Trust Fund is designed to be secure and transparent. Annual reports on the management and overall performance of the fund will be made public. Individual account statements will be provided to landowners annually.

6.1.2 Who manages the BioBanking Trust Fund?

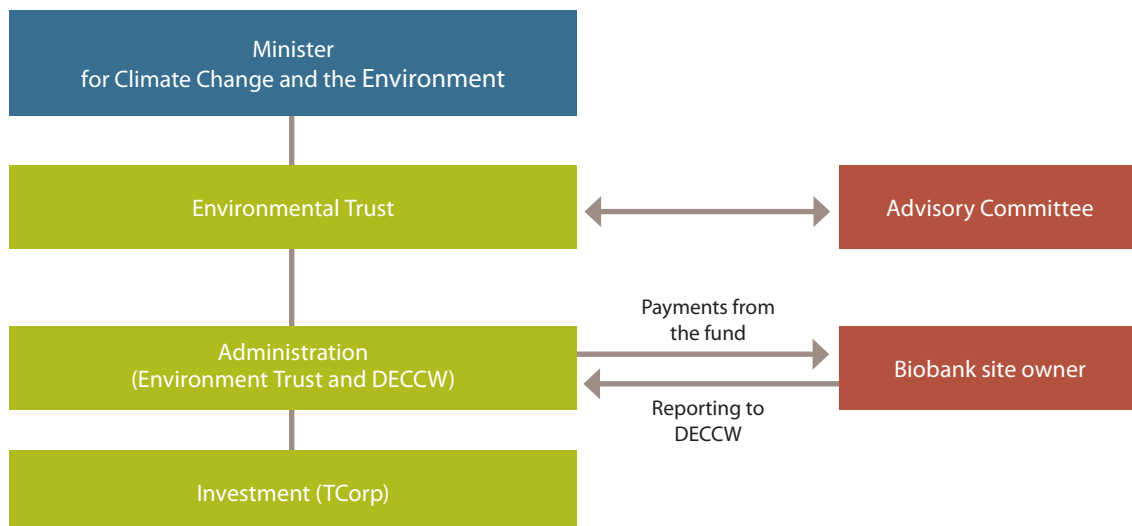
The legal and administrative structure of the fund is consistent with the general framework of laws relating to investment funds, including the *NSW Public Authorities Financial Arrangements Act 1987* (PAFAA) and the *Corporations Act 2001*.

The Minister has appointed the Environmental Trust as the fund manager for the BioBanking Trust Fund. It is a separate legal entity operated independently of DECCW.

The fund manager keeps records of the individual biobank site accounts, makes annual payments to you, and invests the deposited funds through TCorp (the NSW Treasury Corporation).

For information about the Environmental Trust, visit the Environmental Trust website.

The flowchart shows the management structure of the BioBanking Trust Fund.



DECCW is responsible for checking your annual report to ensure the required management actions have been undertaken. If all requirements have been met, DECCW will advise the fund manager to process your annual payment.

TCorp, the central financing authority for the NSW public sector, is a leading issuer of semi-government securities. It currently manages more than \$30 billion on behalf of various NSW Government agencies. It safeguards investors' interests and ensures that investment facilities remain highly efficient.

TCorp have been instructed to adopt the UN Principles for Responsible Investment for all BioBanking investments. Entities that adopt these principles build environmental and social considerations into mainstream funds management.

Independent investment advice will also be sought from a licensed investment advisor. This advice will guide the Environmental Trust when instructing TCorp about investment strategies to maximise returns for the BioBanking Trust Fund within a low-risk investment framework.

6.1.3 What is the management fee?

The BioBanking Trust Fund is designed to minimise management fees. The annual management fee is set at 0.5% of each account, for example, an account containing \$1 million would have an annual management fee of \$5,000.

The management fee covers funds management by TCorp and administration costs including transaction processing, account management and independent advice, as required.

6.1.4 What reporting must the BioBanking Trust Fund do?

The Environmental Trust will publish quarterly and annual reports on how the fund is performing on the Biobanking website. It will also provide you with an annual report for your individual account.

6.2 What transactions take place and when?

When credits are first sold, the proceeds must be deposited into the BioBanking Trust Fund until the Total Fund Deposit has been paid in full (see section 5.1). This amount may be reached before all credits are sold, depending on the price of credits. When the Total Fund Deposit is paid in full, any other proceeds from the sale of credits are paid directly to you for your own use. You are paid in advance to complete your management actions in the following year.

Payments are made to you in accordance with the payment schedule included in your biobanking agreement. The amounts shown in your payment schedule are at today's dollar value but will be adjusted each year according to inflation. These will be shown on your statements from the BioBanking Trust Fund.

Your first management payment occurs within 45 days of the sale of credits that result in 80% of your Total Fund Deposit being attained, or within 45 days of your anniversary date when investment returns have resulted in 80% of your Total Fund Deposit being attained for the first time.

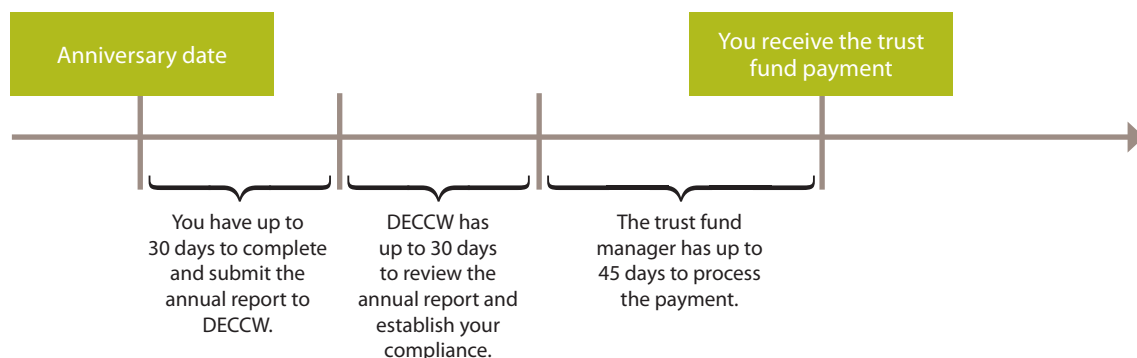
Your anniversary date varies depending on what transactions have taken place:

- until you satisfy 80% of your Total Fund Deposit, your anniversary date is the date of your biobanking agreement
- if you satisfy 80% of your Total Fund Deposit because of investment returns, your anniversary date remains as the date of your biobanking agreement
- if you attain 80% of your Total Fund Deposit due to a sale of credits, your anniversary date becomes the date of that sale.

If you have complied with the terms of your agreement, and your Biobanking Trust Fund account has at least 80% of the net present value, annual payments will be paid as soon as possible after your anniversary date. Before receiving your annual payment, you must submit an annual report showing how you have complied with your obligations under the agreement. You have 30 days from your anniversary date to submit your annual report. The sooner you submit your annual report, the sooner you will receive payment.

Within 30 days of receipt, DECCW will review your annual report and authorise the release of your next payment, provided you have demonstrated that you have met all the requirements of your biobanking agreement. The BioBanking Trust Fund will then process and release your payment within 45 days.

The timeline for annual payments is laid out below.



If you do not complete the management actions set out in your biobanking agreement, you will not receive your annual payment. In that situation, the money will remain in your account and DECCW will not authorise its release until you have completed the agreed management actions and submitted a satisfactory annual report.

6.2.1 What happens if you sell your property?

If your biobank site has a change of owner, your individual BioBanking Trust Fund account will be transferred to the new owner. If the ownership changes in the middle of a reporting period, both you and the new owner will need to submit a report for the period when you were the biobank site's legal owner. You will need to negotiate what amount of the management payment (which you have already received) you will provide to the new owner so that they can undertake the remaining management actions and reporting obligations for the year.

6.3 What are the investment strategies for the fund?

The BioBanking Regulation requires financial risks to be managed appropriately and the fund manager to comply with financial audit and reporting procedures. The BioBanking Trust Fund has been set up to manage risks and to deal with market volatility.

As the BioBanking Trust Fund invests conservatively, the risk that your payments may eventually cease is relatively small. It is expected that you will usually receive the scheduled payments set out in your biobanking agreement. However, occasionally you may receive a higher payment when investment returns are high or not receive any payment when investment returns are lower than expected.

6.3.1 Dealing with volatility in investment returns and inflation

The BioBanking Trust Fund has three investment facilities: cash, medium-term growth and long-term growth. Investment in the cash facility will allow short-term liquidity for the expected higher payments in the first five years. The medium-term growth facility is expected to replenish cash as it is drawn down and provide higher returns. The investment in the long-term facility should provide higher returns to maintain the capital base in perpetuity. Based on independent advice, investments will be 30% cash, 30% medium-term growth and 40% long-term growth.

The expected real return (net rate of return after adjustment for inflation on investment) from this investment strategy is 4.2% per annum based on independent investment advice.

The Biodiversity Credits Pricing Spreadsheet incorporates a conservative real return of 3.5% per annum to estimate the money needed for annual payments projected into the future. This rate has been gazetted as required under the legislation. The rate may be reviewed and amended in the *Gazette* from time to time.

To manage risk, the investment strategy includes annual rebalancing to ensure allocations to the three facilities remain appropriate to the investment goals of the BioBanking Trust Fund. The investment strategy will also be reviewed annually based on independent advice. An additional buffer is built into the spreadsheet as the real return used (3.5%) is less than the expected real return (4.2%).

The aim of this investment strategy is to ensure the highest probability that funding for land management will last in perpetuity.

6.3.2 What if investment returns are higher than expected?

Any returns on investments are distributed back to individual accounts in the trust fund. If returns are greater than expected, and your account builds up to 130% of the net present value required for management payments, you may receive bonus payments. These bonus payments would be subject to compliance with the biobanking agreement.

6.3.3 What if investment returns are lower than expected?

If the rate of return is very low over a number of years and the amount in your account drops to less than 80% of the net present value required for management payments, DECCW will contact you about the option of stopping or reducing your management payments to preserve your investment capital. During these years, you still need to comply with the conditions of your biobanking agreement but can delay some or all of your active management actions until your returns improve. If the funds in your account run out, you will not receive any payments.

In the absence of management payments, you:

- must still undertake passive management actions that have minimal or no cost, such as retaining existing native vegetation, fallen timber, regrowth and bush rock, and keeping stock numbers low
- do not have to undertake active management actions that have a higher cost, such as weed control, fire management and replanting.

You must resume all your management actions when your fund account has grown to an adequate level (80% of the net present value) through investment returns.

6.3.4 What happens to your investment if the BioBanking Trust Fund is wound up?

If the BioBanking Trust Fund is wound up, all money in your account is returned to you. However, the biobanking agreement is ongoing and you will need to manage your own funds and continue to comply with the obligations set out in your agreement.

7 What are your obligations as a biobank site owner?

7.1 Biobanking agreements must be registered on the land title

After you, property interest holders and the Minister have signed the biobanking agreement, DECCW will apply to the Land and Property Management Authority (LPMA) to register the biobanking agreement on your land title. You and any property interest holders will have to sign an abstract of the biobanking agreement for submission to the LPMA. The fee to register the biobank site on the title is paid by DECCW from your application fee for the biobanking agreement.

You will have to pay the additional LPMA fee if you want to identify the biobank site's exact boundaries on the deposited plan for your property. To do this you must provide a 'full plan' for irregular boundaries or a 'sketch plan' for regular boundaries that is prepared and signed by a registered surveyor. The plan must also meet the requirements set by LPMA (see <http://rgdirections.lands.nsw.gov.au/plans>).

Please note that LPMA has to approve a full plan before you submit it to DECCW, whereas a sketch plan needs no prior approval before submission with your application for a biobanking agreement.

There is a different process for registering an interest on 'Old System' land rather than Torrens Title land. If you are negotiating a biobanking agreement on Old System land you should request LPMA to convert it to Torrens Title. The previously described registration arrangements would then apply.

7.1.1 Can you subdivide land with a biobanking agreement?

You can subdivide a property with a biobanking agreement.

If some subdivided portions are not part of your biobank site, you can ask DECCW to vary the biobanking agreement to remove these lots from the agreement (see section 8.1). To remove the registration on title, you will have to submit a Release Request Form 11R to LPMA. This form is available on the LPMA website.

If there is more than one subdivided portion that is part of your biobank site, contact DECCW to discuss ways in which the biobanking agreement can be varied.

7.2 The Total Fund Deposit must be satisfied

The BioBanking Trust Fund is an important component of BioBanking that provides security for the funds from the sale of credits.

When you sell your biodiversity credits for the first time or retire them without selling them first, a specific amount must be deposited into a BioBanking Trust Fund account.

You should consider making sure that your initial sale of credits covers at least 80% of the Total Fund Deposit. Otherwise, you will not receive any payments from the fund until you attain 80% through further sales of credits or investment returns.

See section 5.1 for more detailed information.

When you sell your credits to someone who then re-sells them, no further payments are paid into the trust fund from the proceeds of the re-sale.

7.3 Management actions must be undertaken

You are required to undertake passive management actions as soon as your biobanking agreement is finalised. Active management actions are required as soon as you have satisfied 80% of the Total Fund Deposit.

You should refer to the specific terms of your biobanking agreement for the agreed frequency of management actions.

See section 4.4 for more detailed information.

7.4 You must submit an annual report

Every year after the biobank site is established, you must submit an annual report that details how you have met the conditions set out in your biobanking agreement. You must complete the annual reporting template included in your biobanking agreement. It must be submitted to DECCW within 30 days of your anniversary date (see section 6.2).

Before you satisfy 80% of your Total Fund Deposit, you only need to report on your passive management actions. After you have satisfied 80% of your Total Fund Deposit, you have to report on both passive and active management actions.

Your annual report includes:

- a record of the management actions you have undertaken on the biobank site, including minor alterations that are part of adaptive management
- a record of events that have had an impact on the site's biodiversity values
- any problems you have experienced and the recommendations you propose or the actions you have taken to address them
- photographs you have taken at the photo points identified in your biobanking agreement
- details of any other requirements set out in your biobanking agreement
- payment of the annual reporting fee (note: DECCW can waive this fee for reports you submit before your first sale of credits).

8 Can a biobanking agreement be varied or terminated?

8.1 Can a biobanking agreement be varied?

A biobanking agreement can be varied with the establishment of a subsequent agreement between you and the Minister. However, as in the case of the original agreement, property interest holders will also have to consent to the variation in writing, and some may have to be consulted by the Minister, before the variation is permitted.

The Minister must also be satisfied that:

- the variation will not have a negative impact on the biodiversity values protected under the agreement, or
- where there is a negative impact, you have taken the required measures to offset the negative impact, by cancelling credits for your biobank site or purchasing and retiring credits from another biobank site.

To vary a biobanking agreement, you must submit a biobanking agreement variation application, which has been signed by all landowners and property interest holders, to DECCW with the appropriate fee.

Depending on the nature of the variation, you may need to provide additional documentation with the application. For example, if additional threatened species that qualify for species credits are found on the biobank site or if you decide to add an area of the property to the biobank site, you will have to provide similar documentation to the documentation required when you applied for your biobanking agreement.

When the varied agreement has been approved and signed by all parties, it will be placed on the biobanking public register and the Land and Property Management Authority will be notified of any changes. DECCW will record and retain the reasons for approving the variation.

8.1.1 Variation by the Minister without the landowner's consent

In limited circumstances, the Minister can vary a biobanking agreement without your consent. These circumstances include proposals by public authorities, and mining authorities and petroleum titles that may affect a biobank site. For example, if a public authority needed to build a major public road through a biobank site, it may be necessary to vary the biobanking agreement.

Where the Minister proposes to vary a biobanking agreement without your consent, the Minister must give you written notice of the proposed variation and an opportunity to make submissions. The Minister must then consider any submissions you make.

If the Minister proposes such a variation, you can terminate the biobanking agreement provided that no biodiversity credits have been sold or retired. Any credits are then cancelled.

No compensation is payable in respect of such a variation, other than compensation to which the landowner may be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act.

8.2 Can a biobanking agreement be terminated?

You can voluntarily terminate your biobanking agreement within the first three months of your entry into it, or after five years of your entry into it, provided you have neither sold nor retired the credits and you agree to have the credits cancelled. This situation might arise if you cannot find a buyer for your credits.

To terminate your biobanking agreement, you must submit a biobanking agreement termination application to DECCW. All landowners and property interest holders must sign the application and it must be accompanied by the appropriate fee. When the Minister has approved the termination, DECCW will record it on the land title and note it on the biobanking public register.

If the Minister decides to terminate your biobanking agreement without your consent, the same provisions as for variations without your consent are applicable (see section 8.1.1).

9 How does DECCW ensure biobanking agreements are complied with?

You are accountable for the commitment you have made under your biobanking agreement. You should read your biobanking agreement in conjunction with the TSC Act and the BioBanking Regulation. Under the TSC Act, DECCW and the Minister have various powers to check that the terms of your agreement are being met. You should also read the Biobanking Compliance Assurance Strategy, which is available on the Biobanking website.

You must keep records and report annually to DECCW. If you have not met the terms of your biobanking agreement, DECCW will initially liaise with you. If non-compliance is ongoing, DECCW will use an escalating response including requests for remedial action, warning letters and inspections. If the non-compliance is more serious, DECCW will invoke sections 127L–O of the TSC Act, which include provisions for:

- withholding annual payments from the BioBanking Trust Fund if you have not undertaken the required management actions
- directing you to undertake work at your own cost to rectify a breach of the agreement
- entering your land to undertake any necessary work when you have failed to comply with a Ministerial direction
- recovering the costs of conducting such works
- suspending or cancelling your biodiversity credits
- ordering you to retire a specified number and class of biodiversity credits within a specified timeframe
- seeking damages against you for breaching the agreement when the breach has arisen from an intentional, reckless or negligent act or omission
- in limited circumstances, applying for a court order to transfer the land to a more responsible land manager (compensation in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* or any other Act may be paid to you in this circumstance).

The TSC Act also includes provision for any person to apply to the NSW Land and Environment Court for an order to 'remedy or restrain' a breach of your biobanking agreement.

If your biodiversity credits are suspended, the credits cannot be bought or sold while the suspension is in force. Credits can be suspended for up to two months. Credits can only be cancelled in limited circumstances, such as when the Minister has terminated your agreement (see section 8.2) or you have failed to undertake the management actions set out in the agreement. If your credits have already been retired, they cannot be cancelled. Cancelled credits cannot be bought or sold.

10 Other biobank site questions

10.1 What is the biobanking public register?

The biobanking public register is available on the Biobanking website and contains details of all biobanking agreements, statements and credits. It also contains an 'expression of interest' facility so you can promote your intention to create biodiversity credits.

The biobanking public register includes registers for:

- biobank site expressions of interest for landowners who are interested in establishing a biobank site but have not entered into a biobanking agreement
- biobanking agreements – the register includes the biobank site's location, the biobanking agreement and any variations to it, and management actions and plans
- biobanking statements – the register includes a copy of the biobanking statement, when the statement was issued, whether it is still in force and the credits that have been retired to comply with the conditions of the statement
- biodiversity credits – the register includes the particulars of the biobank site where each credit was created, the current owner, the class of biodiversity credit and the credit's status, whether it is available for sale or has been suspended, cancelled or retired
- biodiversity credit transactions and sales – the register includes information about credit transactions, including sale prices and dates, transfers, suspensions, cancellations and retirements.

The biobanking public register ensures transparency of the scheme and helps facilitate the biodiversity credits market.

Personal information, as defined by the *Privacy and Personal Information Protection Act 1998*, will not be disclosed to the public unless DECCW is satisfied that the disclosure complies with section 57 of the Act. Personal information does not cover information about companies or information available publicly, for example, information available on the Torrens Title Register held by the NSW Land and Property Management Authority.

Where you do provide personal information, only a contact ID will be displayed on the public register. Where the biodiversity credit holder is a company, the company name will be displayed on the public register.

Information on ways in which DECCW collects, uses and retains personal information can be found on www.environment.nsw.gov.au/help/privacy.htm.

10.2 Will changes to the scheme affect existing biobank sites?

The BioBanking Scheme will be reviewed after two years of operation and the public will be invited to make submissions.

It is not anticipated that changes arising from the review will impact on existing agreements (see section 4.3.4). If the results of the review will impact on existing biobank sites, there will be advance notice to biobank site owners.

It is expected that the scheme will continue after the two year review. In the unlikely event that the scheme is discontinued, biobanking agreements with no credits sold would be terminated. Those agreements with some or all credits sold would continue unless there was a subsequent legislative change.

10.3 What happens if my biobank site is damaged by a natural event or a malicious third party?

If you live in a region that is regularly affected by natural events, you should factor this into your management actions. For example, if your land is in a 1 in 20 flood zone, you would factor the likely effects of a flood every 20 years into your management actions.

You must notify DECCW in writing as soon as possible after the event if there has been, or is likely to be, a sudden or significant decline of biodiversity values on the biobank site (see the biobanking agreement template for more information).

As BioBanking allows for adaptive management, you can alter your management actions to take into account a natural event or malicious damage by a third party.

It is strongly recommended that you insure your property against damage from natural events and malicious third parties. Insurance should cover matters such as the cost of replacing fences and other fixed assets after a fire or flood. Check that your existing or new insurance policy covers such costs.

You are responsible for undertaking the passive and active management actions in your biobanking agreement even if a natural event or malicious damage has occurred. A natural disaster is not necessarily an ecological disaster.

If you cannot comply with your obligations because of a natural event or malicious damage, you should contact DECCW to discuss your options.

Appendix A: Drafting management actions

Your management actions are detailed in your biobanking agreement, especially Annexure C, and costed in the Total Fund Deposit worksheet of the Biodiversity Credits Pricing Spreadsheet. You need to complete all relevant sections of the biobanking agreement template and the spreadsheet and include a map that delineates the areas where management actions will be undertaken.

You also need to provide individually prepared management plans for some management actions. These include:

- an integrated weed management plan (compulsory)
- a fire management plan (compulsory)
- a management plan to control feral and overabundant native herbivores (if required)
- a vertebrate pest management plan (if required).

These plans must address the points specified for each management action in Annexure C of the biobanking agreement template.

The following two sections provide advice for completing the biobanking agreement template. Instructions for completing the Biodiversity Credits Pricing Spreadsheet are included in Appendix B and in the spreadsheet itself.

A.1 Management actions

When drafting your management actions, you – or the consultant who is drafting them on your behalf – should use the format and wording in Annexure C.

The wording of the management actions is similar for all biobank sites, with specific details for each biobank site entered in the highlighted areas of Annexure C. Additional guidance is provided by notes in the annexure.

You are also required to specify the frequency of each proposed management action and the area to which it relates. Some actions, such as management of human disturbance, might apply to the entire biobank site whereas others, such as weed management, might be required only on affected parts of the site. The site's management areas are marked on your map.

A.2 Map of the site's management areas

You need to prepare a map at a suitable scale to clearly identify the area where each management action will be undertaken. You must clearly mark:

- the biobank site boundary
- the area(s) where each management action will take place (note: you may need to provide more than one map if it is difficult to present all the areas on one map because the site is large or complex)
- the location or habitat area of threatened species for which additional management actions are required
- the location and name of significant landmarks such as roads, fire breaks, asset protection zones and water courses.

Boundaries and management areas must be confirmed on the site using a GPS. This information should be digitised onto an ortho-rectified aerial photo or SPOT-5 image. Maps must be easily readable and submitted to DECCW as a Geographic Information System (GIS) file that is ESRI compatible.

Separate shapefiles should be created for:

- the site boundary
- the area that each management action relates to
- the area for each threatened species requiring additional management actions
- the location or habitat area of sensitive species, and the management area related to that sensitive species, as this information cannot be displayed publicly.

Shapefiles must use GDA94 datum. Name each shapefile as: 'biobank site name_ management action name', for example, 'Hill Farm_weed control'.

All maps must include:

- a title including the site's name, location and DP/lot numbers
- the scale
- the date it was prepared
- a legend.

Appendix B: Estimating your part A costs for the Biodiversity Credits Pricing Spreadsheet

B.1 Costing your management actions

The cost of implementing the management actions required for your biobanking agreement needs to be estimated and included in the Total Fund Deposit worksheet of the Biodiversity Credits Pricing Spreadsheet. Suggestions for some management actions are listed below. However, when calculating these costs, make sure you include the cost of all the management actions for your biobanking agreement.

It is recommended that you cost all management actions as if a third party contractor will do the work. This ensures there will be enough funding whether you can undertake the management actions yourself or not.

Removal of weeds and control of feral animals

Government bodies, such as the Livestock Health and Pest Authorities, or commercial contractors, such as bush regenerators and land conservation managers, can advise you about rates for bush regeneration, weed removal and pest control.

Fencing

This category should include the costs of constructing, maintaining and replacing fences. You may need to enter these on separate lines of the spreadsheet to allow for the different frequencies for maintenance and replacement of fences.

The perimeter of your biobank site will probably be the length of the required fencing. Depending on the surrounding land use and geography, you might not have to fence the entire boundary of your biobank site. If your property is not already fenced, you might require fencing to keep grazing stock or people from entering the property. Fencing costs will vary depending on the type and standard of fencing, the terrain and the access. Generally, to comply with your management requirements, fences will need to be at least stockproof.

In some situations, the type of fencing might have to be of a higher standard, for example, you may need to prevent four-wheel drive vehicles or trail bikes from accessing the site. This type of fencing will be more costly, and you might also have to install suitable signage and security.

Removal of rubbish and installation of signage

Some biobank sites, especially those located near an urban area, will be more at risk from human disturbance and illegal dumping. You might have to remove rubbish and protect your site by erecting appropriate fencing and installing signage. Most of these costs will occur in the first few years of managing your biobank site, although you should also incorporate the possibility of having to replace signage or remove more rubbish in the future.

Fire breaks, track maintenance and ecological burns

This category should include the costs of establishing and maintaining fire breaks and management trails to protect your biobank site from bushfires. The frequency of maintaining fire breaks and management trails will depend on the terrain and soil types. You might have to undertake maintenance annually or every three to five years. In some cases, you may decide to close any unnecessary trails and rehabilitate the area to reduce your ongoing maintenance costs and the number of pathways for introduction of weeds and movement of feral animals.

You should also include the cost of undertaking ecological burns for vegetation types that require periodic burning to maintain or improve their ecological health.

B.2 Examples of other recurring costs

Business management

This category accounts for the time required to administer the site on an ongoing basis. Like other costs, you should base this on outsourcing the business management component in case you either decide or need to hire a third party to perform this function.

You should include costs associated with organising the materials and labour necessary to undertake the agreed management actions. The annual costs might vary due to the periodic nature of some actions. You should also account for any additional responsibilities related to administering the site or selling your biodiversity credits, for example, the costs related to seeking potential credit buyers, negotiating the credit price, and selling and transferring the credits.

The business and financial structures of each biobank site are likely to be unique. You might wish to seek independent financial and legal advice about the taxation component of your biobanking agreement. You should factor the costs of complying with, and reporting on, these requirements.

General information on the tax implications of entering into a biobanking agreement is provided on the BioBanking website, although you should seek specific independent advice from your tax adviser.

Annual rates and insurance costs

You should factor council rates and other government charges, for example from the Livestock Health and Pest Authorities, into this category.

Insurance costs should also be factored in. Insurance should cover matters such as the cost of replacing fences and other fixed assets after a fire or flood. Make sure that your insurance policy covers these events.

Annual reporting costs

You have to keep accurate records of your management actions so you can prepare an annual report about how you complied with your biobanking agreement. You should include the cost of preparing annual reports such as the costs of conducting site inspections, making entries in your activity diary and taking photographs at the photo-points.

The DECCW fee for submitting your annual report is automatically included in the Total Fund Deposit worksheet.

Appendix C: Estimating your part B costs for the Biodiversity Credits Pricing Spreadsheet

C.1 The opportunity cost to you

The market value of the land

You can decide whether to include the value of your land in your establishment costs. You may decide that the price of your credits should only cover the costs of your management actions and assessment. Including the value of your land in your credit pricing will increase the price of your credits. You should weigh up whether this increased price will be competitive in the market.

Although you still own the land that is subject to the biobanking agreement, you will have significant restrictions on what other activities can occur on it, and that may influence the value of the land. These restrictions, which are necessary for protecting and improving the biodiversity values, are binding on all future landowners. You should consider whether the existence of a biobanking agreement on your property title might affect the future value of your property.

Unless you sell your property, it is difficult to predict what the impact of a biobanking agreement will be. To some extent, you could gain an indication from the value of land that has another type of conservation agreement. However, as BioBanking provides ongoing funds for undertaking management actions, the effect of a biobanking agreement may be quite different to the effects of other conservation agreements which usually do not provide ongoing funds.

The Valuer General routinely assesses the unimproved value of properties in NSW. Unimproved value does not include improvements such as houses, roads, fences or dams, or improvements to grazing. You can obtain your property's most recent unimproved value from your council rates notice or the Land and Property Management Authority website.

The unimproved value is used to determine council rates and land tax. When your property is registered as a biobank site, you are exempt from paying land tax on the part of the property that is protected under your biobanking agreement, although you must still pay council rates.

The market value of your land might be significantly higher than the value as assessed by the Valuer General as it will be based on any improvements to the land as well as local market influences. You could obtain your property's current market value from a local real estate agent or professional property valuer. Note that professional valuers might charge a fee to provide this service. You can also use recent sales of similar properties in your area to gain an indication of your property's market value.

Ultimately, though, it is up to you to determine the land's fair market value and decide what proportion of that value you want to incorporate in the credit sale price. This decision is important, because:

- you could recover a proportion of the 'lost opportunity value' of the biobank part of the property
- if the property is mortgaged, your decision may affect whether the mortgagee consents to having the property registered as a biobank site.

The governing principles for market valuation of land for tax purposes are contained in Part B of 'Market valuation for tax purposes' published on the Australian Taxation Office website.

Stamp duty

If you purchase a property to participate in BioBanking, you will be liable for NSW Government stamp duty. You can include this amount in your opportunity cost if you wish.

C.2 Establishment costs

Site assessment

If you have followed the recommended two-step process (see section 4.3.2), you should include the costs of both your initial appraisal (perhaps undertaken for your EOI) and your full assessment. Costs will vary depending on the size and complexity of the proposed biobank site.

Preparation of management actions and management plans

You may have enough knowledge and experience to be able to determine the required management actions yourself. If you do not have all the skills to draft your own management actions and plans, you will need to seek professional advice. Include the cost of any such advice in this category. You may seek advice from ecological consultants, bush regeneration contractors, fire specialists or other specialist advisors. Similar to assessment costs, the cost of this advice will depend on the size and complexity of your site.

The fee for the biobanking agreement application

The one-off fee for applying for a biobanking agreement should be included (see section 4.5.3).

Legal and taxation advice

If you have sought legal or taxation advice before establishing your biobank site, you should include the costs here. Ongoing advice after the establishment of your site should be included in the Part A costs.

Rates

Most rates and other ongoing government charges are included as Part A costs as they are ongoing recurring costs. However, these will only be recovered after you start receiving payments from the BioBanking Trust Fund.

Any rates or other government charges that you incur after signing your agreement but before you satisfy 80% of your Total Fund Deposit, should be included in your Part B costs.

C.3 The profit or risk margin

You might wish to include a profit margin in your calculations for your credit pricing. Alternatively, you may decide to include a small risk margin in case you cannot sell all your credits or you undervalued some of your management actions. However, if the profit or risk margin is too large, the price of the credits might not be competitive.

