

**Inquiry into the NSW Planning Framework  
Questions on Notice**

**ADDITIONAL QUESTIONS FROM MEMBERS**

1. **Could you provide some more information on Bio-banking and bio-certification? For each could you advise:**
- **The process by which it can be applied to a parcel of land or a development application?**
  - **To which areas or what types of zoned land these initiatives can be applied?**

The Biobanking scheme is a voluntary process that a developer can follow to streamline the assessment of the impact of development on biodiversity. A developer can apply for a Biobanking Statement under the Biobanking scheme demonstrating that the development improves or maintains biodiversity values. The assessment work is undertaken, on behalf of the developer, by an accredited Biobanking consultant who applies the Biobanking Assessment Methodology. The consultant firstly works with the developer to avoid and then mitigate impacts on biodiversity. The Methodology then provides a basis to determine the credit requirements for any biodiversity offset. Once a Biobanking Statement is issued and consent provided, the developer can then find and purchase biodiversity credits on the market to satisfy the required offset arrangements. Once secured the credits retired and cannot be traded again.

The Biocertification Scheme

The *Threatened Species Conservation Act 1995* establishes two forms of biodiversity certification – one provides for the certification of the native vegetation reform package and the other provides for the certification of environmental planning instruments. Both forms of certification have the desired goal of streamlining regulatory processes while ensuring that provisions are in place to protect biodiversity.

The native vegetation reform package was certified in November 2005. The effect being that approved property vegetation plans under the *Native Vegetation Act 2003* do not require a separate licence under the *Threatened Species Conservation Act 1995*.

Biodiversity certification of environmental planning instruments (EPIs) is a scheme that links to the strategic planning components of the *Environmental Planning and Assessment Act 1979* that is, State Environmental Planning Policies and Local Environment Plans. The effect of certification is that developments will not need to comply with separate threatened species assessment requirements under the *Environmental Planning and Assessment Act 1979*.

Determining Applicable Land

Under the Biobanking Scheme, a biobanking statement can be issued for impacts on biodiversity in urban environments and on all lands of the local government areas contained in the greater metropolitan region (these lands and local government areas are specified in schedule 1 of the *Native Vegetation Act 2003*). There are limitations on the lands that can supply biobanking credits. Credits cannot be obtained from lands already zoned for conservation purposes such as national parks and certain classes of crown land.

Biocertification of the native vegetation reform package generally applies to land zoned rural. Conversely, biodiversity certification of EPIs can apply to any land zoning as it certifies the planning instrument itself. EPIs guide State and local government land use decisions, zoning land and applying development controls accordingly. Particular purposes for which land is zoned may include residential, industrial, rural, scenic protection and environmental protection. For a planning instrument to be biodiversity certified it must together, with other relevant measures, meet an 'improve or maintain standard'.

**2. Throughout the Inquiry there has been a call for a process whereby all conflicts between agencies are resolved at the strategic planning stage, rather than have the need for resolution at the development application stage. Is it possible to identify all environmental constraints at the strategic level, or are constraints and the type of assessment required determined by the nature of the development?**

Generally, it is possible to identify the majority of environmental constraints at the strategic level. DECCW works closely with local councils and the Department of Planning (DoP) to ensure environmental issues are appropriately addressed through land use planning. Where these issues are addressed and reflected in Council's Principal Local Environmental Plan (LEP), for example, DECCW's involvement at the developmental assessment stage can be greatly reduced and in many cases, removed.

Certain developments, however, do require input from DECCW because of the nature or scale of the development, such as new coal mines, highways and desalination plants. These types of developments are usually assessed as Major Projects under Part 3A of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and can require significant input from DECCW on a broad range of environmental issues.

For Major Projects, DECCW has an advisory role during the Planning assessment process whereby we provide expert advice to the Department of Planning. An exception to this is where an environmental protection licence (EPL) is required, for example, where an activity requires pollution discharge limits and monitoring. Consequently, conflicts are largely eliminated because the approval of the development rests with the Minister for Planning (after considering advice from DECCW) and any conditions relating to a subsequent EPL must be consistent with the Minister's approval.

DECCW recognises that conflicts during the consent process can cause significant cost and time delays for proponents. DECCW's biocertification scheme aims to address this concern by addressing threatened species and biodiversity issues at the strategic level and consequently removing the need for our involvement at the development assessment stage.

This outcome has been achieved for the North West and South West Growth Centres of Western Sydney, which was biocertified by the Minister for the Environment in 2007. The Growth Centres is a major source of greenfields housing and employment growth with an estimated 180,000 housing lots in the process of being released. The main practical effect of certification is that it removes the need to undertake individual threatened species assessments for developments or activities within the area subject to certification. Without certification in place, each building block would require an individual assessment of biodiversity values, which would typically require the employment of an ecological consultant. These reports often cost several thousands of dollars. If you multiply this amount over the 180,000 lots in the Growth Centres a large amount of money would have been needed to commission these reports.

- 3. Throughout the Inquiry there have been calls for consolidation of all legislation that impacts on land-use decisions into the one Act. For example, would it be possible (and practical) to separate those sections of the Threatened Species Act that deal with development assessment from the sections that deal with listing of threatened species?**

The Department is of the view that there have already been a number of significant planning reforms implemented in NSW. Now is the time to implement those reforms and bed them down to deliver streamlined services to the development industry in NSW. After a period of implementation and monitoring of performance an assessment of further regulatory reform can be properly made.

- 4. During its regional hearings the committee heard evidence from Albury Council on the lengthy process for it to seek biocertification of its LEP. Are you familiar with this case? If so, can you comment?**

DECCW has been involved in the Albury Biocertification Proposal from its inception and recognises that biocertification is a complex matter because of the need to resolve biodiversity issues at a strategic level and to ensure that a number of parties are satisfied with the outcomes proposed. These outcomes will be reflected in Albury City Council's draft Local Environmental Plan (LEP).

Albury City Council is seeking biocertification for its whole local government area (LGA) which covers an estimated 33,000 ha. DECCW has invested significant time and resources to assist Council develop its proposal, which will be determined by the Minister for the Environment. This has involved working collaboratively with Council and the Department of Planning (DoP) and also the Commonwealth Department of Environment Water, Heritage and the Arts (DEWHA). Council, in addition to biocertification, was originally seeking a Strategic Assessment for the whole LGA under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). If biocertification is approved, this significant investment by Council, DoP and DECCW will produce large savings in the future by removing the need to undertake detailed threatened species impact assessments at the development application stage.

There may be some confusion in the evidence provided to the inquiry by Albury City Council regarding the responsibilities of DECCW, DoP, and the Commonwealth (DEWHA) with respect to biocertification. DECCW would like to clarify the following points made in that evidence:

- There is no such thing as biocertification under the EPBC Act. The parallel process under the EPBC Act is called Strategic Assessment. DECCW is not responsible for Strategic Assessment under the EPBC Act and hence any delays in the Federal process or for DEWHA's requirement for additional studies to support the Strategic Assessment application.
- The Albury Biocertification Proposal has not delayed DoP's consideration of the Draft Albury LEP or the preparedness of the Draft LEP for exhibition. DECCW has prepared the Albury Biocertification Proposal and as soon the Draft Albury LEP is approved the two documents can be exhibited.
- Although there were some DECCW staff changes during the Albury biocertification process, these changes have not affected the delivery of the Albury Biocertification Proposal as time lines for its development and exhibition are set by the LEP process.

Under current legislation a proposal to biocertify an LEP must be publicly exhibited at the same time as the new Draft LEP.

- DECCW has maintained a consistent position on the conservation objectives for the Albury Biocertification Proposal throughout the biocertification process. This has been based on maps showing areas of high conservation value in the Albury LGA prepared by DECCW and provided to Albury City Council at the commencement of the biocertification process in 2005. However, following a legal challenge to certification of the Sydney Growth Areas in 2007, DECCW reviewed the minimum standards for biocertification and identified six additional areas in the Albury LGA requiring protection. DECCW believes that this advice minimises the risk of legal challenge to the biocertification, increasing certainty for all parties.
- DECCW has responded within required time frames to all requests for information. It has provided its expertise and resources to Albury City Council and prepared the Albury Biocertification Proposal at no cost to Council. DECCW has not required nor requested that Council commission any environmental studies at Council's own expense.

**5. In general how does a landowner discover that his/her property rights or development proposal is affected by the relevant Acts administered by your department?**

The first point of contact for a landowner to determine his or her property rights or requirements for a proposed development on their land is the local council. Initially, Councils would refer to their local environmental plan (LEP) to advise the zoning of the subject land and specify whether the development is permissible with consent, without consent, or is prohibited.

Councils would also be able to advise if concurrence or approvals are required from certain state authorities. This information is often specified on each Council's development application form where it would list proposed works which trigger certain Acts and require approvals from state authorities. Where an approval is required from a state authority, the development is often determined to be integrated and consequently, Council will consult with the relevant State Authority and seek their concurrent consideration of the development application and any general terms of approval or conditions of concurrence etc. For example, DECCW is an integrated approval body for works which destroy, damage or harm an Aboriginal object or an Aboriginal place.

Councils can also assist proponents to determine whether a threatened species concurrence (granted by DECCW) or approval under the Native Vegetation Act (granted by a Catchment Management Authority) is required. Many Councils have mapped the native vegetation and threatened species habitat present within their local government area and have information on the significance of this vegetation.

Further information on these and other approval and concurrence roles is provided on DECCW's web-site, which contains a range of guidelines and fact sheets for landowners. The Department also maintains a public Environment Line which landowners can access via phone or internet. Environment Line is administered by knowledgeable staff that can assist landowners with any questions they may have regarding environmental approvals and environmental constraints on their land.

6. **The submission from the Nature Conservation Council argued that there were four different regimes for protecting biodiversity - Bio-banking, Bio-certification, seven-part tests in Part 4 assessments and the *Principles for the use of biodiversity offsets in NSW*. They argue that having these separate schemes is confusing for both communities and developers, and that the planning system with respect to biodiversity is inconsistent, ad hoc and fails to effectively protect biodiversity.**

The alternative approaches to biodiversity assessment have been developed for specific purposes.

Biobanking and seven-part test assessments are site-level/development specific assessments. The seven part test is the system that has been in place since 1995 and is the mandatory process for the assessment of impacts on biodiversity, unless a Biobanking statement is secured. Biobanking is a market-based scheme that ensures transparent and consistent decisions are made in relation to the impacts of developments and the offsets required to improve or maintain biodiversity outcomes. This is a relatively new policy approach to managing biodiversity. It streamlines assessment processes within the *Environmental Planning and Assessment Act 1979* and adds transparency to the process of offsetting impacts. Biobanking is not mandatory.

Biodiversity certification applies at the strategic planning scale, Part 3 of the Environmental Planning and Assessment Act. It was introduced in 2004 to promote the incorporation of threatened species and biodiversity into urban settlement planning. Where granted it removes the need to undertake a seven part test at the development application stage.

The *Principles for the use of biodiversity offsets in NSW* provide policy guidance to the delivery of all offsetting proposals regardless of scale or process. The Principles are not based in legislation and are therefore a statement of policy intent rather than a statutory scheme.

#### **QUESTIONS TAKEN ON NOTICE BY MR WOODWARD (IDENTIFIED IN TRANSCRIPT)**

7. **Are you largely in agreement with the insurance industry in relation to the potential ocean level increases along the NSW coast? Raised by The Hon. Matthew Mason-Cox**

To support sea level rise adaptation, the NSW Government has prepared a Draft Sea Level Rise Policy Statement that sets out the Government's approach to sea level rise, the risks to property owners from coastal processes and assistance that Government provides to councils to reduce the risks of coastal hazards. This statement includes sea level planning benchmarks which have been developed to support consistent consideration of sea level rise in land-use planning and coastal investment decision-making. The adopted benchmarks are for a rise relative to 1990 mean sea levels of 40 cm by 2050 and 90 cm by 2100.

At no time during consultation on the Policy Statement has the insurance industry indicated their position in regards to potential ocean level increases along the NSW coast. The Policy Statement was publicly exhibited for consultation for six weeks from February this year. There is also no record on the Inquiry's web-site of the insurance industry making a submission to the Committee. It is therefore difficult to determine whether DECCW is in agreement with the insurance industry when their views are not clearly known.

**8. Do you have a policy position on whether the owners or the council should take steps to prevent the erosion by putting some buttressing et cetera on the coastal rim? Raised by the Hon. Fred Nile**

The NSW Government draft Sea Level Rise Policy Statement provides a position in this regard. It states that:

- risks to properties from coastal hazards rest with the property owners, whether they be public or private; and
- landowners affected by coastal hazards should be allowed to seek approval from their local council to protect their property.

In addition, through DECCW's Coastal Management Program, the Government provides technical and funding support to Council for the preparation of coastal hazard studies, coastal zone management plans and coastal management options established by them. This may include, but is not limited too, the construction of structures to reduce the affects of coastal erosion.

**9. Information about Sandon Point, which has been subject to a court challenge. Raised by the Hon. Christine Robertson.**

The Nature Conservation Council's submission to the Inquiry makes reference to a successful Land and Environment Court challenge to the Concept Plan approval, granted by the Minister for Planning, for a development at Sandon Point near Wollongong. It was argued during the court challenge that the Minister for Planning failed to take into consideration the recommendations and findings of the Sandon Point Commission of Inquiry report, and that the Minister failed to apply the principles of ecologically sustainable development (ESD) when deciding to approve the proposal. In the judgment, it was found that the Minister had failed to consider ESD by failing to consider whether the impacts of the proposed development would be compounded by climate change.

The Minister for Planning, however, successfully appealed to the NSW Supreme Court, Court of Appeal. DECCW was not party to either of the court cases.