



TOTAL ENVIRONMENT CENTRE

Hon Verity Firth MP
Minister Assisting the Minister for Climate Change, Environment & Water

By facsimile: 9228 4131
Email: Amy.Persson@firth.minister.nsw.gov.au
CC: Richard Sheldrake, Louisa Mamouney

Dear Minister,

'Red flag' variations under the Biobanking Scheme

The Environmental Defender's Office (EDO) and the Total Environment Centre (TEC) are members of the Ministerial Reference Group on Biodiversity Banking (MRG), and have been working on the biobanking reforms since the scheme was first proposed in 2005. Our primary concern is that biobanking must have a sound scientific basis and not contribute to further clearing of threatened species and communities.

Changes to the biobanking assessment methodology have been made recently and were provided to the MRG for the meeting on 31st October. The changes included a downgrading of offset requirements in response to developer concerns (the results of which we are subjecting to a scientific review); and insertion of a process for varying 'red flag' areas in the assessment methodology.

As you may know red flag areas are supposed to be 'no go' areas, with the logic being that the vegetation or species in question is so threatened that it is simply impossible to offset. The new changes provide that developers may apply to vary red flags in certain circumstances. According to the amended methodology, the decision making process for when this may occur is to be set out in Director General protocols which will include a number of considerations (see section 2.3.2 of the revised methodology as supplied to us, and subsequently put on public exhibition).

EDO and TEC have serious concerns with the proposed red flag variation process. Our key concerns include:

- The variation process establishes a significant parallel and inconsistent assessment process involving consideration of different variables (for example, the methodology assesses 'low condition' vegetation whilst the

protocol will assess 'poor condition' vegetation according to a different range of attributes). For the purpose of comparison, we note that in the case of the *Native Vegetation Act 2003* (NV Act) a *minor* variation can occur with new scientific information or a marginal change made to the current maintain or improve test, as assessed by an external accredited expert. This is a separate process set out in the *Native Vegetation Regulation 2005* and not the assessment methodology.

- The variation process introduces new non-scientific considerations. Most concerning is that the Director General will consider amounts of developer contributions that have been made "to support a variation" (page 6). The perception that a developer can "buy" their way out of environmental limitations will be unpalatable to the broader community.
- The variation process targets small patches and focuses on their viability. This categorization would include many urban remnants in areas of high development pressure (such as Western Sydney or urban coastal fringes) and therefore many applications for a biobanking statement would include an application to vary red flags. Not only does this signal the death knell for certain communities (where there are only small remnants left), but it will also undermine the goal of biobanking to create a consistent and scientifically rigorous offset methodology if it is varied on a case by case basis.
- The focus on viability of small areas could, if applied to existing urban areas, create a rationale to clear small bushland parks. While we are not suggesting that this would occur, it will raise the serious question in peoples' minds as to whether a methodology that destroys small patches of bush, that in other circumstances are highly valued places – is worthy of any support.
- The proposed in-house DECC use of the Methodology and protocols under Biobanking to vary offset requirements, lacks transparency and accountability. In comparison, the NV Act process requires independent experts to support a variation based on scientific data. The proposed biobanking variation process undermines the ecological credibility of the methodology by introducing non-scientific considerations, and undermines public confidence in the process as it lacks transparency and accountability by being in a subordinate protocol rather than clearly set out in the regulation.

We understand that DECC is striving provide flexibility in order to maximize involvement of developers in the scheme, however red flag no go areas are fundamental to the ecological integrity of the scheme. As part of the *Threatened Species Conservation Act 1995*, the biobanking scheme cannot water down red flag areas and expect to retain any ecological credibility – this is the crucial public test. One or more examples of Biobanking leading to the destruction of red flag habitat, would mean the death knell of the entire project.

We will be making further comment on the Scheme in coming weeks.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JA Angel', written in a cursive style.

Jeff Angel
Director, Total Environment Centre

A handwritten signature in black ink, appearing to read 'R Walmsley', written in a cursive style.

Rachel Walmsley
Policy Director, Environmental Defender's Office Ltd