



environmental defender's office new south wales

Submission on the Draft Biodiversity Certification Methodology

30th July 2010

The EDO Mission Statement

The EDO's mission is to empower the community to protect the environment through laws, recognising:

- *the importance of public participation in environmental decision making in achieving environmental protection*
- *the importance of fostering close links with the community*
- *the fundamental role of early engagement in achieving good environmental outcomes*
- *the importance of indigenous involvement in protection of the environment*
- *the importance of providing equitable access to EDO services across NSW.*

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Introduction

The Environmental Defender's Office of NSW (EDO) welcomes the opportunity to provide comment on the *Draft Biodiversity Certification Assessment Methodology*.¹ The EDO has engaged with DECCW over the last 2 years in discussions about developing a robust and transparent biocertification methodology that will deliver genuine environmental outcomes. Our comments on the Draft Methodology therefore build on our previous submissions² and discussions we have had at DECCW and on the biocertification field trip to Wyong/Warnervale (13th April).

We support the development of a transparent and repeatable methodology to apply the “improve or maintain” biodiversity values test for areas that are proposed for biocertification. More broadly, we support the development of tools to more strategically conserve biodiversity and address cumulative impacts at a landscape scale, particularly in light of the failure of the current *Threatened Species Conservation Act 1995* to address biodiversity loss on a site by site basis.

However, tools designed to achieve improved biodiversity outcomes at a landscape scale must include comprehensive and objective assessment processes underpinned by credible and accurate scientific information. It is vital that the methodology is a robust, objective and scientifically credible tool, as it the methodology that will determine whether a proposal “maintains or improves” biodiversity values.

EDO's main concerns relate to the integrity of the “maintain or improve biodiversity values” test. The proposed methodology relaxes the offsetting rules to such an extent that the legislative test becomes meaningless. The clauses in the draft methodology allowing offsetting of one species with an entirely different species and allowing for a financial contribution in lieu of an offset, represent a radical departure from the “like for like” principle of offsetting. The rationale that offset rules for biocertification must be relaxed due to the landscape scale and to make the scheme more attractive to voluntary participants do not justify such a significant departure from ecological principles.

Other key concerns with the draft methodology include: the ability to vary red flag areas, security of tenure and long-term (funded) management of conserved areas, and interim management of biodiversity values prior to land being dedicated for conservation management. Furthermore, as biocertification is a relatively new and untested tool, to live up to the claim of ‘maintaining or improving’ biodiversity values, there needs to be a monitoring and review mechanism built in to the biocertification framework to ensure that the values informing the future improvements in biodiversity values are based on demonstrated outcomes. These issues are discussed below along with a number of comments and recommendations on other drafting and technical issues.

¹ This submission has been assisted by input from the following members of the EDO's expert register: Claire DeLacey, Martin Fallding, Martin Predavec and Judy Smith.

² See: <http://www.edo.org.au/edonsw/site/policy.php#2>, and *Draft Biodiversity Certification Assessment Methodology Preliminary Comment* to DECCW, 19th April 2010.

Our general comments relate to:

1. Legislative context
2. Landscape scale implications
3. Red flag variation rules
4. Offsetting
 - Like for like
 - Discharging offset requirements financially
 - Security of offsets
5. Limitations of desktop survey
 - Requirements for ground-truthing and survey guidelines
 - Data and mapping

We then make specific comments and recommendations on the clauses of the Draft Methodology.

General comments and recommendations

1. Legislative context

On 9 June 2010, the *Threatened Species Conservation (Biodiversity Certification) Amendment Act* passed through the NSW Parliament. We were disappointed that a number of key concerns were not addressed prior to the Bill being passed. This is frustrating as the Bill passed the Legislative Council despite a meeting between TEC, EDO and DECCW being set to discuss a list of key issues and necessary amendments. This process was inconsistent with DECCW's previous willingness to engage with environmental stakeholders, and contrary to the constructive dialogue of the last 2 years.

As discussed at the meeting between EDO and DECCW on 19th March, there are a number of key elements of the biocertification scheme that should be clearly articulated in the *Threatened Species Conservation Act 1997* (TSC Act). The hierarchy of action (ie, to avoid impacts, minimize impacts prior to considering onsite offsets, then offsite offsets and as a last resort a financial contribution), should be a clear legislative requirement. Similarly, environmental safeguards around red flags should be in the legislation. It is not sufficient to have important process steps and environmental safeguards addressed purely in the methodology or regulation, as these subordinate instruments can be changed without parliamentary scrutiny. The EDO will raise these issues in the context of the broader review of the TSC Act later this year.

2. Landscape scale implications

We understand that the biocertification methodology draws upon tools developed in NSW to undertake site assessments (for native vegetation and biobanking), and that in applying the logic of these tools to the landscape scale has necessitated some 'relaxing' of certain offset rules and survey intensity requirements. The draft methodology currently does not get the balance right between providing a flexible and attractive option for a planning authority, and providing an accurate and scientifically credible assessment tool. All the benefits of

landscape scale conservation (as noted above) will be lost if the tool does not require adequate and detailed assessment and appropriately circumscribe offsetting based on ecological principles. The EDO has concerns about the as increased reliance on desktop assessment and relaxed rules for offsetting. These are discussed further below.

3. Red flag variation rules

Having robust ‘red flag’ areas is a fundamental aspect of biocertification. If the red flag definitions are not clear and the red flag variation rules not appropriately circumscribed, then community and environmental groups will have no confidence in the biocertification scheme.

Currently any red flag is amenable to variation based on ‘viability’. The methodology (section 2.3.3) currently indicates that all low viability red flag sites can be varied, rather than determining if intervention could increase viability. It is essential that the variation rules are tightened to more clearly articulate categories of red flags that cannot be varied. Further information is needed including field trials of applying the variation rules,³ with case studies developed to illustrate how the variation rules will be applied in practice. In the absence of these, it is impossible to support the scheme.

4. Offsetting

Consideration of alternative options onsite

The methodology identifies offsets as a key element of the biodiversity certification process. The consultant’s report for the Warnervale/Wyong trial of the methodology presented a number of options for the configuration of the assessment area, using different combinations of on site certified and non-certified areas. All options met the maintain or improve goal. This enabled consideration of the configuration which provided the best environmental outcome on the site. Such a process is essential and should be built into the methodology to ensure applicants genuinely explore multiple options to arrive at the one with the best environmental outcome. For example, a single 15ha conservation measure on the edge of a development, adjacent to a national park is likely to provide a better environmental outcome than three separate conservation measures of 10ha each, which are surrounded by residential development, even though at face value 30ha appears better than 15ha.

The importance of having a clear requirement to consider a range of development configurations relates to effectively requiring proponents to address the hierarchy of action (noted above). The methodology must more clearly require planning authorities to demonstrate how they have: 1) avoided impacts on biodiversity, 2) minimized impacts on biodiversity, and 3) sought on-site offsets *prior* to any consideration of off-site offsets or financial contributions in lieu of offsets.

Like for like

³ The report for the field trial in Wyong/Warnervale did not model how the red flag variation rules would be applied to the site.

As noted above, certain rules have been relaxed purportedly to adapt the methodology to a landscape context. The EDO is extremely concerned about the option of offsetting impacts on a particular vegetation type by conserving a different vegetation type within the same vegetation *formation*. As we have noted previously (in relation to developing the biobanking assessment methodology), offsetting within a formation is extremely broad and could encompass vastly different vegetation types. With approximately 1,600 vegetation types, and only 12 vegetation formations in NSW, this option is not going to result in 'like for like' outcomes. Of even greater concern, since the last version of the methodology there have been extensive changes to the offsetting rules for species credit species, with species allowed to be offset with credits from different species. Permitting trade-offs between *kingdoms*, ie, a plant species for an animal species, is clearly not going to improve or maintain the impacted biodiversity value, and this makes a mockery of the legislative test. The option of trading between completely unrelated species must be deleted from the methodology if it is to have any scientific credibility.

The current draft methodology is therefore inconsistent with offsetting principles that have been used by DECCW since 2002 and also with offset principles as applied by the federal Government. This has serious implications for strategic assessment of biocertification proposals under the *EPBC Act*.⁴ For the offsetting rules to retain ecological integrity and credibility, there must be a clear nexus between what biodiversity value is impacted and what is conserved.

Discharging offset requirements financially

Currently, it appears the 'avoid, mitigate, offset, finance' hierarchy is in name only. There is no limit on what percent of an offset requirement can be discharged by financial contribution, and how the contribution will be specifically linked to addressing the impact. The methodology sets out the financial option for offsetting, but it is not explicit that other offsets be comprehensively and transparently considered first.

Security of offsets

The EDO is concerned about the long-term conservation of vegetation retained under a biocertification scheme protected only by an environmental zoning (eg E2) as opposed to a reserve or biobank site where management is funded in perpetuity. Such environmental zones do not provide security in perpetuity. The potential for spot rezoning or rezoning as part of a required LEP review process or via Part 3A projects to affect biocertified areas or offset areas is of concern. Additionally a developer may choose a weaker retention tool because it better protects the asset value of the developed area in the knowledge that weaker management and ingress will be attractive to future buyers. It is also inappropriate to simply

⁴ For further comment on the differences between the federal approach and the more recent NSW approach to offsets in the context of biocertification and strategic assessment, please see: ***Submission on the proposed Sydney Growth Centres Strategic Assessment*** 25 June 2010 available at: http://www.edo.org.au/edonsw/site/pdf/subs10/100625growth_centres_strategic_assessment%20_EPBC.pdf.

envisage offsetting offsets in the future as this further distances offset from the original impact.

5. Limitations of desktop survey

Requirements for ground-truthing

We note that there is to be greater emphasis on desktop assessments for the biocertification proposals due to the larger areas being surveyed, multiple owners, potential access limitations and cost implications. We appreciate that the report compiled for the Wyong/Warnervale field test was desktop assessment due to time and financial constraints. However, the field trial (and the ELA report p3-4) did highlight a number of inadequacies of relying on desktop assessments that need to be rectified by clearer requirements in the methodology including:

- Areas that were not mapped as being areas of native vegetation in the report had native grassland/groundcover evident at the site. This raises the question whether it is possible to accurately map native groundcover from aerial photographs.
- In relation to coarse condition zones, there was some debate about condition categories in the report compared to the site. This raised concern as to whether the coarse category zoning is sensitive enough to identify a range of conditions in patches of more than one vegetation type.
- It is unclear what triggers a requirement to ‘ground-truth’ a desktop assessment. It was suggested that the onus will be on the proponent to undertake surveys in order to present accurate information for exhibition, however we are concerned about this approach. While local community knowledge is often comprehensive, local groups do not always have capacity to make submissions on exhibited plans to ensure local ecological information is not overlooked. Triggers need to be clear.
- Where ground-truthing is undertaken there need to be clear survey guidelines. It was indicated that the current Threatened Species Survey Guidelines would need to be adapted for the landscape context (ie, in a larger area the number of transects/quadrants required for a site assessment may be onerous/expensive).

Data and mapping

Desk top assessments rely on adequate mapping and data according to clear, objective and credible criteria including seasonal and spatial factors. If it is necessary to rely on a desktop study, desktop data should be referred to an external expert to assess its adequacy. Where information is inadequate (as determined by DECCW) comprehensive site assessment should be mandatory.

Specific comments and recommendations

2 Improve or maintain biodiversity values

- **2.1 (1a)** - This should include both direct and indirect impacts on a red flag area.
- **2.1 (1b)** – See our concerns with 2.3; Section 2 should include a reference to offsets only applying where direct impacts cannot be avoided or mitigated by onsite measures.
- **Red flag definition** - We support the definition of red flags, and support the definition being extended to cover riparian buffer zones of minor creeks, as well as wetlands recognized by a SEPP or other state or federal instrument. In relation to the definition of *low condition vegetation*, it may also be necessary to note that to properly assess condition of native grassland, site assessment may be needed to augment the desktop assessment.
- **2.3 Red flag variation rules** - This section would be clearer with a consolidated statement of the factors the Director General must be satisfied are met before make a determination that biodiversity certification of a red flag area is to be regarded as improving or maintaining biodiversity values. We suggest 2.3 concludes with the following:

“The Director General may only make such a determination if satisfied that:

 - The options and the feasibility of these options, to avoid impacts on red flag area(s) where biodiversity certification is conferred, have been considered (2.3.1);
 - The native vegetation and threatened species habitat in the red flag area makes a low contribution to regional biodiversity values (2.3.2); and
 - The viability of biodiversity values in the red flag area is low or not viable (2.3.3).

Criteria for determining each of these factors are provided in sections 2.3.1 – 2.3.3.”
- In **2.3.1(a)**, the consideration as to whether it is ‘reasonable or necessary’ to clear red flag areas to implement Government approved strategic land use plans or strategies is: subjective; has the potential to undermine conservation goals of biocertification; and means that the biocertification decision is based on an existing government decision and not on the objective ecological assessment of the site (as occurred with the flawed Growth Centre biocertification process).
- **2.3.1(b)** - Including “costs of future management” as a criteria here may be problematic for the most threatened species (where only degraded or small fragments remain) as conservation costs are likely to be high and this should not be used as a justification to override a red flag for the most threatened or vulnerable species.
- **2.3.1(c)** - If current ownership precludes appropriate management arrangements being undertaken, it may be preferable to exclude the land from the area for assessment.
- **2.3.2** - The methodology needs to identify that each of the criteria in 2.3.2 relate to a specific red flag criterion e.g. 2.3.2(e) is only a relevant consideration for areas

declared red flags on the basis of 2.2(2) or 2.2(3) relating to threatened species. As it currently reads, it provides far too much flexibility.

- **2.3.2(a, b, c)** - If data on relative abundance and percent remaining is going to be used to justify a red flag variation, the data should be made available through the vegetation types database to make decisions transparent; this data is not always easily accessible.
- **2.3.3** – There should be a note regarding categories of red flag that are not amenable to variation, such as species that are listed as critically endangered or identified as unable to withstand further loss.⁵ This safety net is essential as such species would probably fail the current requirements for viability, as by definition they are remaining fragments in disturbed/degraded areas. To allow the variation rules to apply to such species could result in unacceptable net loss of the species.
- **2.3.3 (a and b)** – This sets up a somewhat circular argument. Red flag areas will be within or adjacent to areas proposed for biodiversity certification. The future use of these areas is not yet approved; using the argument that the future land use in the biodiversity certification area renders the red flag area not viable, isolated or subject to edge effects is flawed. The methodology should require identification of red flag areas as the first step (ie. before design of the development) and that every effort is made to maintain the viability and connectivity of red flag areas through careful placement and design of the area proposed for biodiversity certification. Only current or *approved* future uses of surrounding land should be able to be considered when determining the viability or connectedness of red flag areas for the purposes of 2.3.3.
- **2.3.3(b)** - We suggest this paragraph specifically acknowledges that connectedness will vary depending on the species comprising, and associated with, the vegetation type.
- **2.3.3(c)** - The introduction of a new condition level, ‘degraded’, is confusing given the wording on p5 (end of section 2.2), which states that “If native vegetation is not in low condition, it is in moderate to good condition.” Rather than making this vegetation subject to red flag variation, primary consideration should be given to whether its condition can be improved with appropriate management.
- **2.4** - We support the assessment of indirect impacts and suggest the inclusion of additional examples such as the introduction of pest species, contribution to climate change (which is having and will continue to have large impacts on biodiversity), and the impact of extraction of raw materials used in the development. We would like to see more consideration of indirect impacts in the remainder of the methodology; having identified an indirect impact it must then be addressed in some way, and more guidance would be helpful. We welcome the requirement that conservation measures used to mitigate any negative indirect impact must be secured. However we reiterate our comments regarding the lower level of security and environmental outcome provided by the conservation measures at 7.1.1 and 7.1.2 compared with those at 7.1.3, and similarly our concerns about financial contributions in lieu of offsets. We also reiterate our concern about subjective cost-effectiveness being such a heavily weighted (frequently mentioned) criteria for consideration. In this instance,

⁵ We note that this is consistent with section 126Q(2) of the *Threatened Species Conservation Amendment (Biodiversity Certification) Bill 2010*.

does the fact that no ‘cost-effective’ measures are available negate the need for the applicant to undertake any action to address indirect impacts?

3 Assessment and measurement of ecosystem biodiversity values

- Sections **3.1-3.5** of the Methodology indicate that native vegetation extent, type, condition, zones and coarse condition will be first determined by aerial photography, satellite imagery or ortho-rectified aerial photography. Plot and transect surveys are then discussed in relation to assessing site values in **3.5.2**. Section **3.4** includes requirements where extent of vegetation has changed – how will this be identified based on a desktop assessment? Sections **3.1-3.5** should require that existing data, studies and mapping *must* be considered in the initial assessment, and that ground-truthing is required to confirm vegetation types, and particularly to confirm boundaries and coarse condition groups, as it is essential that extent, type, and condition categories are accurate prior to assessing the values. EcoLogical Australia identified the number of assumptions required as a limitation in their assessment using the draft methodology, which they attributed to the desktop nature of the study⁶. Some EECs are very difficult to distinguish from one another (e.g. Shale/Sandstone Transition Forest and Sydney Turpentine-Ironbark Forest) and from other similar non-significant communities using aerial photography or satellite imagery⁷.
- **3.3** - The link on p11 is to the VegType Database not the VegBenchmark Database.
- **3.4** - The dot points at the end of the section should list ecological community (under the TSC Act) rather than just endangered ecological community.
- **3.6.2** - The final sentence should begin “The *change in* percent native vegetation cover score...”. As it reads currently, it is inconsistent with Equation 4 on p20.
- **3.6.3** - The dot point criteria in the text appear inconsistent with the descriptions in Table 3 relating to local biodiversity link. This section should make clear that connectivity could occur in two different ways: via corridors; or via ‘stepping stones’ or distinct patches. The distance between patches which can still be considered connected will vary by species (e.g. mobile species such as birds, or wind blown pollen and seeds, move between patches separated by more than 30m).

4 Assessment and measurement of threatened species

- **4.1** - For new users, it would be helpful to clearly differentiate between the Biobanking Threatened Species Profile Database, which contains very specific information to support a biobanking or biocertification assessment and the general threatened species database which is searched by species name to get a description, habitat and ecology etc.
- **4.3 Step 2** – EDO supports a requirement for assessors to consider additional information sources; this also highlights the importance of updating the TSPD regularly.

⁶ EcoLogical Australia (2010) *Desktop biocertification assessment of Warnervale Town Centre and Wyong Employment Zone*.

⁷ Pers. Comm.. Judy Smith

- **Step 3** - Excluding vagrants, species should only be able to be culled from the list of species for further assessment where surveys (carried out in accordance with the DECC draft survey guidelines) have failed to locate the species or suitable habitat. If additional surveys are not undertaken, the species should be presumed to be present when calculating the credits required.
- **4.3 Step 7** - The second last paragraph on p25 refers to the unit of measurement used to determine the number of species credits that are generated and directs users to the Threatened Species Profile Database to find this unit of measurement. It is not clear which of the fields in the TSPD this relates to – none are named unit of measurement or similar. If the intent is simply that flora are measured by number of individuals and fauna by hectares of habitat, the reference to the TSPD is unnecessary and confusing.
- **4.5** - The ability of an expert to identify whether a species is present or absent, and to estimate numbers, without actually undertaking surveys would require extensive experience with that species in that local area, preferably on the site in question. Given the few cases in which this level of expertise is likely to exist, we have concerns about the application of this section delivering accurate information to inform the assessment. We suggest the removal of the section. Should it be kept, there should be a requirement for extra credits where expert reports have been used in lieu of onsite surveys, and expert reports should be made public to ensure transparency.

5 Additional matters of national environmental significance

- This section should include a link to EPBC Act Significant Impact Guidelines 1.1 <http://www.environment.gov.au/epbc/publications/pubs/nes-guidelines.pdf>.
- The migratory MNES is migratory species, not specifically birds.
- The methodology indicates that a biocertification proposal would satisfy the information requirements for a Strategic Assessment under the EPBC Act. While we support including a reference to MNES in the methodology, we note that inconsistencies or gaps may arise as the federal accreditation requires consideration of significant impacts and has different requirements for offsetting remaining impacts.

6 and 7 Calculating ecosystem and species credits and credits for conservation measures

- There needs to be a definition of biocertification area and biocertification assessment area up front, including indicative diagrams. Although the biodiversity certification assessment area is defined in the glossary, it is difficult to envisage the distinction in the absence of an example and without the definition of biocertification area.
- We recognise that the methodology necessarily includes ways to calculate future states given loss or gain in biodiversity values (such as the use of values in Table 5 for predicted improvements in the condition attribute score). To live up to the claim of ‘maintaining or improving’ biodiversity values, there needs to be a monitoring and review mechanism built in to the biocertification framework to ensure that the values

informing the future improvements in biodiversity values are based on demonstrated outcomes. Otherwise there is a risk that the forecasts overestimate the environmental outcome (which may not be achieved despite every required management action being undertaken) and result in the biocertification process failing to meet the goal of maintaining or improving biodiversity values.

- **6.1** - The landscape T_G value is calculated by taking an average of all the T_G values of species predicted to be present in a certain vegetation type. Instead of an average, the T_G value of the least responsive species should be used so that its response to condition improvements is captured, otherwise only the most responsive species will be adequately offset.
- **7.2.1** - We support varying the weighting of credit calculations depending on the security and management of the land proposed for conservation measures, as we have strong concerns about allowing offsets on land that could be rezoned in the future. Feedback from the EDO expert register has included concerns regarding linking biocertification to Standard LEP zones that contain flaws in their effectiveness to protect biodiversity and promote sustainable natural resource management. Moreover, we propose further discounting the credits for the permanently managed conservation measures at 7.1.2 to 0.75. Our rationale is that, in addition to not having secure management (as acknowledged), they are measures which can be terminated or put in place for a finite period, and are therefore not secure in perpetuity.
- **Equation 13** – We understand, from our discussions with DECCW, that the use of the default value of 0.6 for $\%changeLAC_{gain}$ is intended for situations where direct measurement of site value is not possible e.g. lack of access. The EDO opposes the generation of credits from sites that have not been the subject of an onsite assessment.
- **7.3** - We support the discounting of existing conservation obligations.

8 Obtaining credits outside the proposal area

- Reference should be included in the introduction to this section to reiterate the hierarchy, that on-site offsets must be exhausted before offsite offsets are sought. This relies on the development being designed in a way that delivers the best environmental outcome on site ie. maximizes the viability of red flag or retained areas on site (as discussed previously). Will there be a limit on the percent of offsets that can be offsite?
- **8.1** - The EDO supports the requirement that offsite offsets can not be obtained through planning scheme conservation measures.
- **8.3** - Currently, comparing sections 7 and 8, it appears that credits are calculated differently depending on whether they are onsite or offsite. From discussions with DECC, we understand that the intent is to apply the same methodology, including discount factors, in both cases; the EDO supports a consistent approach. This needs to be clarified in the methodology.
- **8.4** - There should be a limit on what percent of an offset obligation can be discharged financially – in its current form 100% of an offset could be a payment in lieu of an offset. The EDO proposes that credits obtained by financial contribution

should be discounted, to provide an incentive for applicants to make every effort to secure offsets directly. There should also be a clear requirement that any financial contribution will be spent on conservation specifically relevant to the biodiversity values being impacted. The EDO is concerned about the over-use of this option and the removal of the nexus between impact and offset. Any contribution must be detailed in a publicly available agreement (this should be required by the legislation). Additionally, the dot point regarding “funds to purchase and retire biodiversity credits” implies that there is a third party holder of funds involved and that the biodiversity credits are not currently available for purchase (otherwise the applicant could purchase them directly). If this is the case, this dot point should be removed, as biodiversity credits for the specific biodiversity value may not be available until significantly after the impact has occurred, and they may never become available; offsets should be secured in a timely manner.

- **8.5** - This reads as though an environmental levy can only be charged if a financial contribution is made. This would create an incentive for proponents to make financial contributions in preference to undertaking conservation measures themselves as they can then pass this cost onto developers. If this perverse incentive is not the intention, this section needs some clarification.

9 Credit profile and offset rules

- Generally, viability of a patch has only been considered at impacted sites, but not at offset sites. For example, the offset area class attribute does not apply to ecosystem credits generated for land proposed for biodiversity conservation within the biocertification assessment area. This means that offsets within the biocertification assessment area won't necessarily have to meet criteria relating to size, connectivity and condition i.e. you could have an ecologically non-viable offset within the biocertification assessment area (also see our general comment regarding consideration of alternative options onsite).
- **9.3** - As above, the offset rules for species credit species do not consider patch size, connectivity or condition. We suggest the same criteria used for biobanking are applied such that an offset for a species credit species must have the specific attributes that are associated with the occurrence of the species for which the offset is being secured.
- **9.2 and 9.4** are inconsistent in their conditions and hence their treatment of offsets for ecosystem credits generated within and outside the biodiversity certification assessment area. The first criterion is the same for both, however criterion 2 in 9.4 provides for offsetting different vegetation types to those impacted (see further comments below), and criterion 3 in 9.4 (which importantly identifies the required landscape features and vegetation condition) is not replicated in 9.2. The EDO proposes combining the most specific criteria from each, that is criteria 1 and 2 from 9.2 with criterion 3 from 9.4, in order to achieve offsets which are most closely like for like, a key element of offsets to enable them to ‘maintain or improve’ biodiversity values. The criteria for offsets for ecosystem credits (either within or outside the biocertification assessment area) should be:

1. the CMA subregion identified in attribute 1 of the credit profile for the offset is the same as the subregion(s) identified in attribute 1 of the credit required for the land proposed for biodiversity certification, and
 2. the vegetation type identified in attribute 2 of the credit profile for the offset area is the same as the vegetation type(s) identified in attribute 2 of the credit required for the land proposed for biodiversity certification, and
 3. the landscape features (percent native vegetation cover class, adjacent remnant area size class) and vegetation condition (low or moderate-good) of the proposed conservation measure match the same or higher offset area class identified in attribute 3 of the credit required for the land proposed for biodiversity certification.
- The second dot point relating to the use of offset **rule 2 (ii)** allows the applicant to demonstrate that the cost of securing the preferred offset type 2 (i) – the same vegetation type - is disproportionate. Offsets containing the most cleared and under pressure vegetation types (e.g. those incorporating endangered or critically endangered ecological communities) are likely to be expensive to purchase (e.g. if they are listed because of loss due to development pressure), and are therefore the most likely to be ‘traded off’ on the basis of cost effectiveness. This seems counterintuitive to the intent of their listing, by which they have been judged as requiring the highest level of protection.
 - In order to use offset **rule 2 (iii)** the application for biodiversity certification must “identify which threatened species impacted by land proposed for biodiversity certification are predicted to use the proposed offset”. The proponent should then have to demonstrate that the proposed offset (or combination of offsets) supports all the threatened species impacted by the land proposed for biodiversity certification. Otherwise some threatened species can be impacted without the provision of appropriate offsets to protect them elsewhere; this does not achieve ‘maintain or improve’.
 - **9.5** - The EDO strongly opposes the substitution of species credits between unrelated species, for any listed species regardless of the listing category. The flexibility provided by this section allows a species credit plant species to be offset with species credits from an animal that exists in the same IBRA region e.g. Yass Daisy for Eastern Pygmy Possum. This is very clearly not ‘improving or maintaining’ the biodiversity values of the biocertification area, and continues the trend throughout the methodology away from the principle of ‘like for like’ in offsetting. This option must be deleted for the methodology, and the biocertification scheme, to have any credibility.
 - Regarding the final dot point, how was it determined that if a species has four remaining populations, then that makes it acceptable to impact one without securing an offset which protects another of the (now) remaining three? This seems arbitrary and ignores important ecological factors about the population to be impacted. For example, what if the impacted population is the largest remaining known population, an important source population or links two or more of the few other remaining populations? The criteria for defining important populations in EPBC Act Policy Statement 1.1 is a useful guide:

An important population is “a population that is necessary for a species’ long-term survival and recovery. This may include populations identified as such in recovery plans, and/or that are:

- key source populations either for breeding or dispersal
- populations that are necessary for maintaining genetic diversity, and/or
- populations that are near the limit of the species range.”

The final point in **9.5** should include the requirement to consider these ecological factors, rather than nominating an arbitrary number without any consideration of the role of the population in the ecological functioning and viability of the species as a whole.

Appendix

- **Appendix 1 Table 7** provides different riparian buffer distances for the coast and tablelands, western slopes and plains and estuarine areas. These variations depending on location are not reflected in Table 3 on p19 of the methodology.

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