NSW GOVERNMENT | Office of Environment & Heritage

Your reference: CP06_0025 MOD 1
Our reference: DOC12/28037
Contact: Richard Bonner 9995 6833

Mr Chris Ritchie
Manager - Industry
Mining and Industry Projects
Department of Planning and Infrastructure
GPO Box 39
SYDNEY NSW 2001

Attention: Ms Kerry Hamann

Dear Mr Ritchie

I refer to your letter received on 3 July 2012 seeking comments from the Office of Environment and Heritage (OEH) on the revised application to modify the concept and project approval for a concrete and asphalt facility at Eastern Creek (CP06_0025 MOD 1).

OEH has reviewed the Revised Environmental Assessment (REA) report and provides the following comments in relation to the biodiversity aspects of the proposed modification:

- The June 2008 Flora Study (attachment 4 of the REA report) concludes one vegetation community dominated by Swamp Oak (*Casuarina glauca*) and Forest Red Gum (*Eucalyptus tereticornis*) exists on the site. Given these species usually occupy different parts of the landscape OEH suggests it is more likely two or more vegetation communities are present - one dominated by Swamp Oak (probably Swamp Oak Forest) and another dominated by Forest Red Gum (probably Cumberland Plain Woodland or River-flat Eucalypt Forest). All of these vegetation communities are listed under the *Threatened Species Conservation Act 1995* as endangered ecological communities (EECs). It is also possible the remnant vegetation represent ecotones between these EECs.
- Despite the level of degradation, it would appear some degree of native vegetation regeneration is occurring as evidenced by the finding of Kangaroo Grass (*Themeda australis)* and other native ground cover species in 2011 which were not observed in 2008.
- If the proposed vegetation losses of around 1.5 ha on lots 4 and 5 cannot be avoided, OEH recommends they be offset in accordance with OEH's *'Interim policy on assessing and offsetting biodiversity impacts of Part 3A, State significant development and State significant infrastructure projects'*. The policy encourages the use of the Biodiversity Banking Assessment Methodology and adopts three standards by which proposals may be judged including a minimum offset to clearing ratio of 2:1. A copy of this policy is attached.

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Should you have any queries in regard to these comments please contact Richard Bonner on 9995 6833.

Yours sincerely

31 JULY 2012

LOU EWINS
Manger Planning and Aboriginal Heritage
Conservation and Regulation, Metropolitan
Office of Environment and Heritage

NSW OEH interim policy on assessing and offsetting biodiversity impacts of Part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects

Approved by the Chief Executive Officer 25 June 2011

1 Introduction

Offsetting is one practical tool for decision makers who have to balance the relative environmental, social and economic merits of development proposals under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The NSW Office of Environment and Heritage (OEH) has developed the Biobanking Scheme to provide a structured, market driven approach to offsetting. The Biobanking Scheme requires proposals to meet the 'improve or maintain' standard, and is based on sound science and robust, transparent rules.

The Biobanking Scheme is voluntary and many proposals in NSW are assessed outside the Scheme. The majority of these proposals have been assessed by the Department of Planning and Infrastructure (DP&I) as major projects under Part 3A of the EP&A Act. DP&I have now repealed Part 3A. Most developments that would previously have been assessed and determined under Part 3A will now fall into either:

- Part 4 – State Significant Development (SSD): these will be projects put forward by the private sector and determined by the Planning Assessment Commission.
- Part 5.1 – State Significant Infrastructure (SSI): infrastructure projects undertaken by or on behalf of public authorities and determined by the Minister for Planning and Infrastructure.

There are also transitional arrangements for existing projects that will continue to be assessed and processed as Part 3A projects. For the purposes of this policy these existing proposals will continue to be referred to as Part 3A; SSD and SSI are referred to collectively as 'State significant projects'.

A proportion of Part 3A and State significant projects also affect nationally listed threatened species and threatened ecological communities (TECs). These proposals are considered by the Department of Sustainability, Environment, Water, Population and Communities (DSEWPC) under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The question of suitable offsetting often arises in the context of these decisions. This policy seeks to provide a consistent and transparent approach to impact assessment and offsetting for projects assessed under Part 3A or as SSD or SSI. This policy also provides the basis for aligning NSW and Commonwealth assessment and offsetting processes by providing an assessment pathway that is likely to satisfy both NSW and DSEWPC requirements provided that certain standards are met.

This policy will operate on a trial basis in partnership with DSEWPC and DP&I until 30 June 2012, and will be reviewed at the end of this period.

2 Scope and application

This interim policy relates to proposals that are assessed by DP&I under the Part 3A, SSD or SSI provisions of the EP&A Act, and are not being considered as part of the Biobanking Scheme.

This interim policy:

- acknowledges that proposals assessed as State significant projects or Part 3A do not have to meet the "improve or maintain" standard, which is required under the Biobanking scheme;
- nevertheless, adopts the use of the Biobanking Assessment Methodology (BBAM) for the purpose of:
  - quantifying and categorising the biodiversity values and impacts of State significant projects or Part 3A proposals;

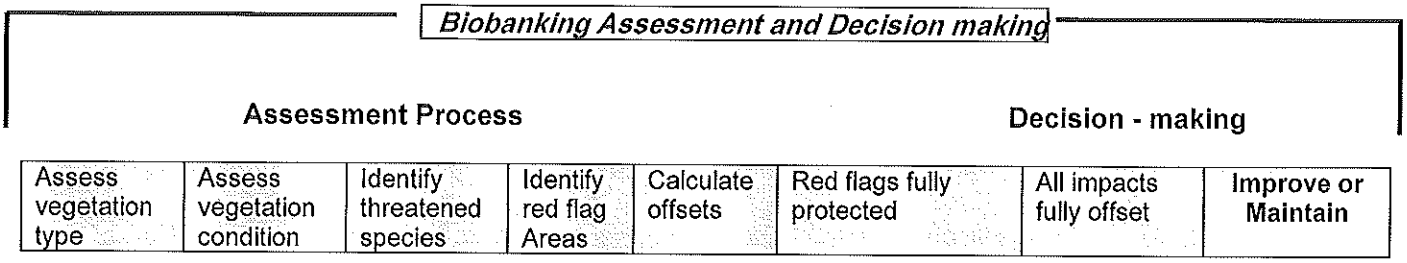
- establishing, for benchmarking purposes, the offsets that would be required if the State significant project or Part 3A proposal had been expected to meet the improve or maintain standard;

- provides a structured approach to determining how proposals may, in lieu of meeting the improve or maintain standard, meet one of two alternative standards established under this policy.

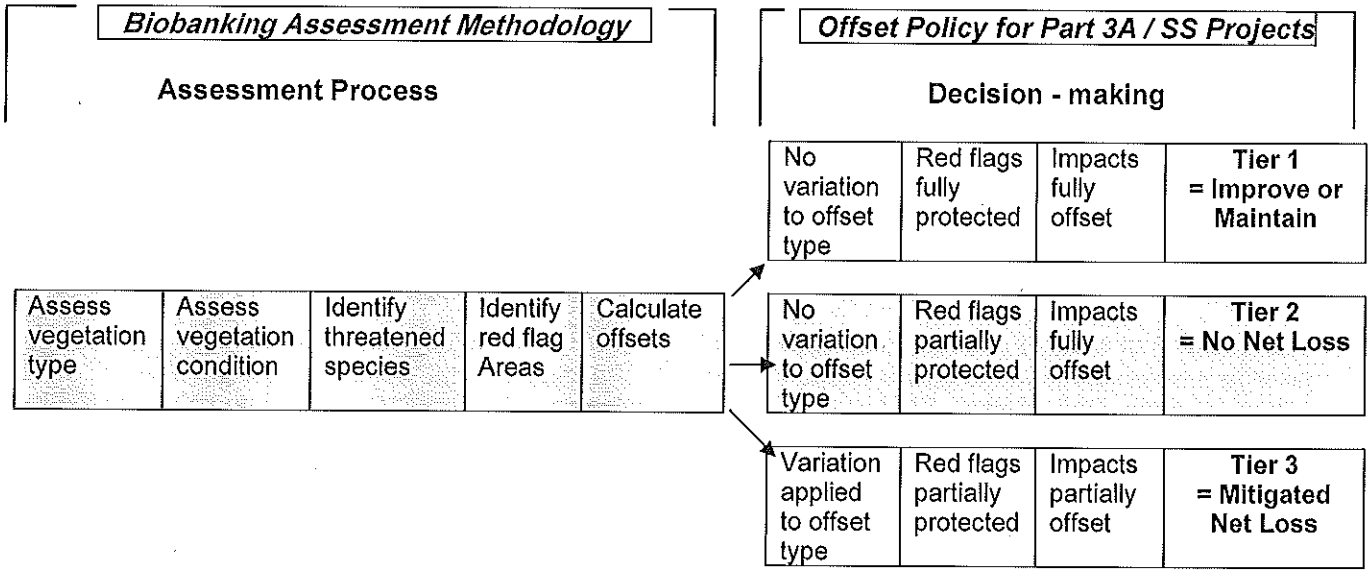
Diagram 1 illustrates how the BBAM is applied under this policy, in contrast to its application under the BioBanking Scheme.

Diagram 1: Application of the Biobanking methodology to Part 3A and State significant (SS) project offsetting decisions

A. BIOBANKING SCHEME



B. INTERIM OFFSETS POLICY FOR PART 3A or SS PROJECT DEVELOPMENTS



This interim policy does not apply to:

- decisions on developments under Part 4 or 5 of the EP&A Act (except SSD under Part 4 or SSI under 5.1 of the EP&A Act); or
- decisions on the making of environmental planning instruments (EPIs) under Part 3 of the EP&A Act.

3 Definitions

BBAM:	Biobanking Assessment Methodology
Biobanking Credit Calculator:	As defined under the BBAM
Biodiversity Credits:	Ecosystem or species credits required to offset the loss of biodiversity values on development sites or created on biobank sites from management actions that improve biodiversity values
DGRs:	Director-General's Requirements for either an EIS (issued by DP&I) or a SIS (issued by OEH)

EARs	Environmental Assessment Requirements
Ecosystem credit:	As defined by the *Threatened Species Conservation Act 1995* (TSC Act)
EPI:	Environmental Planning Instrument as defined by the EP&A Act
ESD:	Ecologically Sustainable Development
State significant project:	Collectively State significant development and State significant infrastructure projects
Planning authority:	A person or body exercising and consent or approval role under the EP& A Act – usually a Council or DP&I;
Proponent:	A person or body seeking consent or approval under the EP&A Act.
Red flag:	As defined by the BBAM – areas of particular conservation significance of sufficient scale to be viable over the medium to long term.
Relevant planning decisions	Decisions made by DP&I under Part 3A, 4 or 5.1 of the EP&A Act
Variation criteria:	Options outlined in this policy vary the offsetting requirement in certain circumstances
Species credit:	As defined by the TSC Act
SSD:	State significant development as defined by the EP&A Act
SSI:	State significant infrastructure as defined by the EP&A Act
Threatened Species concurrence and consultation decisions:	Decisions made under section 79(B), in the case of Part 4 EP&A Act matters, and sections 112B and 112C, in the case of Part 5 matters
Voluntary planning Agreement	A planning agreement as defined by the EP&A Act

4 OEH's policy on impact assessment and offsetting

Attachment A sets out the process for Part 3A proposals considered under this policy. It is expected to be similar for State significant projects (this will be confirmed after release of the new regulations outlining the State significant project process).

4.1 Determining offset requirements

Under this policy, the Biobanking Assessment Methodology (BBAM) is used for the following purposes:

- to describe, quantify and categorise the biodiversity values and impacts of a proposal;
- to identify, for benchmarking purposes, the offsetting that would be required to meet the improve or maintain standard; and
- to provide the information for calculating offsets under this policy.

The BBAM is an assessment tool that allows the impacts of a proposal and its offsetting requirements to be calculated in a consistent and transparent way. The BBAM can be applied on:

- a voluntary basis by the proponent, either on a formal basis as part of the Biobanking Scheme, or as part of the assessment of a State significant project or Part 3A proposal;
- by OEH to inform its submissions to the DP&I on State significant project or Part 3A proposals. In such cases OEH would be using the assessment information provided by the proponent to assess likely impacts and calculate offset requirements.

OEH will support both of these options being implemented by:

- Amending and then recommending standard Environmental Assessment Requirements for State significant projects or Part 3A to include the option for the proponent to use the BBAM in his or her environmental assessment; and
- Internally applying the BBAM to State significant projects or Part 3A proposals using the information provided by the proponents in their Environmental Assessment; and using that

assessment and this policy as the basis for OEH submissions on State significant projects or Part 3A proposals. (See Attachment A.)

Due to resourcing constraints it will not be possible for OEH to undertake this work for all State significant projects or Part 3A proposals but all efforts should be made to use the BBAM where the State significant project or Part 3A proposal is or is likely to be an EPBC Act controlled action.

Where it is not possible due to resourcing constraints to apply the BBAM, offsets are to be negotiated on a case by case basis and in accordance with OEH's offsetting principles (See http://www.environment.nsw.gov.au/biocertification/offsets.htm). The *NSW OEH interim policy on assessing and offsetting biodiversity impacts of Part 3A, State significant development (SSD) and State significant infrastructure (SSI) projects* is not relevant to offsets that have been calculated without applying the BBAM.

The Policy provides for a range of mechanisms to be used to implement offsets (ie. not only biobanking credits) in view of the currently limited supply of biodiversity credits on the market.
The Policy describes 3 possible outcomes that proposals should strive to meet depending on the circumstances. These outcomes are described in Table 1.

Table 1: Offsetting calculations using the BBAM*

Outcome achieved	Level of impact	Offsetting requirement
- Improve or maintain (Tier 1)	- red flag assets protected and clearing only occurs within the variation rules set by the BBAM	- calculated by the credit calculator**
- No net loss (Tier 2)	- some/all red flags not protected and clearing allowed outside the variations rules permitted by the BBAM	- calculated by the credit calculator**
- Mitigated net loss (Tier 3)	- as for 'no net loss'	- calculated by the credit calculator but then amended by the offset variation criteria contained in Attachment A of this policy to a minimum land offset to clearing ratio of 2:1

* These standards do not apply where the BBAM has not been used as it is not possible to identify red flags or credit requirements in the absence of the BBAM assessment.
** The difference between Tier 1 and 2 relates only to the clearing of red flags. The amount of offsetting required is the same for both Tiers

OEH's submissions will advocate that proposals deliver at least one of these outcomes, with "improve or maintain" (Tier 1) being preferred.

4.2 Determining an appropriate outcome

Tier 1: "Improve or Maintain"

While not required of State significant projects or former Part 3A proposals, the "Improve or Maintain" nevertheless represents a high standard of biodiversity protection. OEH should set out in its submissions to DP&I the requirements for meeting this standard. DSEWPC has advised that proposals that meet the "Improve or Maintain" standard are likely to satisfy its requirements for impact assessment and offsetting.

A proposal can fall short of the "Improve or Maintain" standard in two main ways: either red flag assets are to be cleared outside the rules allowed by the BBAM; and/or the amount and type of offsetting secured is inconsistent with the requirements of the BBAM credit calculator.

Tier 2: Negotiating a "No Net Loss" outcome

'No Net Loss' is attained when it is proposed to clear red flags outside the variation rules permitted by the BBAM, but all impacts are to be fully offset in accordance with the BBAM requirements.

In deciding whether this is appropriate, consideration should be given to:

a) whether any feasible alternatives exist that would avoid clearing;

b) the value of the resource (in the case of extractive industries) or other economic benefits and the likely contribution of the proposal to local and regional economies.

Most Part 3A proposals and State significant projects are of social and economic significance to State and regional economies. It is for DP&I to compare and balance the significance of economic or social benefits, and potential environmental (including biodiversity) impacts and gains.

DP&I has prepared draft social and economic impact assessment guidelines to assist decisions makers balance social, economic and environmental outcomes. OEH will work with DP&I on the preparation of these guidelines and their subsequent integration with future versions of this policy.

Proposals that meet the 'No Net Loss' outcome may satisfy DSEWPC requirements for impact assessment and offsetting provided that a sound economic and social justification for anticipated impacts is provided.

Tier 3: Negotiating a "Mitigated Net Loss" outcome

"Mitigated Net Loss" occurs when red flag assets are to be cleared and this clearing is considered acceptable under the requirements set out for no net loss; and the amount and type of offsetting proposed is inconsistent with the requirements of the BBAM credit calculator. In considering whether the mitigated net loss standard is appropriate, consideration should be given to:

a) whether the credits required by the calculator are available on the market;
b) whether alternative offset sites (other than credits) are available on the market;
c) the overall cost of the offsets and whether these costs are reasonable given the circumstances.

Should any of these circumstances apply, then it is reasonable to apply the variation criteria to the point that:

a) suitable offset sites can be found within a reasonable[2] timeframe;
b) the costs of offsetting is brought within a reasonable range; and
c) an offset to clearing ratio of at least 2:1 vegetated to cleared hectares is achieved.

The variation criteria are set out at Attachment B. In summary the variation criteria:

- Make provision for the conversion of ecosystem credits to another type of ecosystem credit;
- Make provision for conversion of one type of ecosystem credit to another type of ecosystem credit and for the waiving of species credits in some circumstances;
- Remove the need for offsets where clearing is minimal and confined to non-threatened vegetation; and
- Make provision for the conversion of ecosystem and species credits to hectares which, in turn, allows the land value of the offset to be estimated. In this way, approvals can be issued that specify either the hectares or the financial contribution that would need to be made to secure the land required for offsetting.

OEH should set out in its submissions to DP&I the requirements for meeting this standard.

Proposals that meet a mitigated net loss outcome will be considered on merit by DSEWPC.

5 Securing an offset site

5.1 Criteria for determining suitability of an offset site

OEH offset principles require offsets to be managed under effective and secure long term management arrangements. Dedication of land under the *National Parks and Wildlife Act 1974* (NPW Act), and the establishment of biobanking sites with Biobanking Agreements under the TSC Act, meet this requirement because:

a) The unambiguous principal objective of ongoing site management is biodiversity conservation;

[2] What is "reasonable" is contingent upon a range of factors and needs to be considered on a case by case basis.

b) Management is undertaken in accordance with a Plan of Management;

c) There is reasonable likelihood that sufficient resourcing will be available to implement the Plan of Management over-time;

d) The arrangements are in-perpetuity, and conservation obligations are transparently transferred and disclosed to any new owners of the land through appropriate administrative procedures; and

e) There are appropriate accountability mechanisms to secure the outcomes and these mechanisms cannot be altered without alternative and comparable offsetting arrangements being put in place.

f) An alternative to establishing biobanking sites is to retire biobanking credits, where appropriate credits are available. The Minister for Planning may approve a project under Part 3A subject to a condition that requires a proponent to acquire and retire biodiversity credits of a specified number and class (section 75JA, EP&A Act). S.89I and 115ZC allow approvals for all State significant projects to include conditions that require biodiversity credits to be obtained and retired by the proponent.

Other conservation mechanisms may also meet the criteria in certain circumstances. These include:

a) Conservation Agreements under the NPW Act;

b) Trust Agreements under the *Nature Conservation Trust Act 2001* (NCT Act);

c) A Property Vegetation Plan registered on title under the *Native Vegetation Act 2003* (NV Act); and

d) A Planning agreement under s93F of the EPA Act.

The suitability of these mechanisms (or any other mechanism) depends on whether the proposed arrangements are likely to result in the management of the land in accordance with the five criteria above.

5.2 Offsetting and reservation under the NPW Act

If an offset site is proposed that may involve the transfer of land to OEH for reservation under the NPW Act, then consultation must occur with the relevant PWG Branch Director at the earliest possible stage. No commitment should be made to accept an offset involving new reserves without the agreement of the Deputy Chief Executive, PWG. Similarly, no commitment should be made to accept offsets involving other forms of in-perpetuity protection without the agreement of the relevant sponsoring body.

6 Implementation and accountabilities

Staff may use the BBAM only if they have been trained. Some Catchment Management Authorities (CMAs) have indicated an interest in participating in offsetting discussions and may be available to assist OEH to undertake this work. OEH, however, will remain the lead Agency responsible for offsetting negotiations on behalf of the Environment portfolio. Positions with significant responsibilities under this interim policy are listed below.

Position	Responsibility
Director, LEC Manager, Conservation Policy and Strategy, LEC	Policy development and review
Manager, Biodiversity and Vegetation Programs	Issue biobanking statements and agreements State-wide co-ordination of biobanking program Overall program support including Biobanking helpline, Workshops and Training and accreditation programs.
Regional Director, EPRG	To approve the communication of BBAM outcomes to proponents and planning authorities To approve amendments to credit requirements in accordance with the requirements of this policy To liaise with PWG Branch Directors on offset proposals involve new reserves
Manager, Planning and Aboriginal Heritage,	To approve use of BBAM by OEH staff when dealing with

EPRG Manager, Metro Projects and Support (Metro only), EPRG Manager Environment and Conservation Programs (NW only), EPRG Manager, Regional Operations, EPRG	SSD, SSI or Part 3A matters
Regional Operations Officers, EPRG Catchment Management Officer, CMA	Must be trained in BBAM in order to apply to methodology

7 Policy review

This interim policy will be reviewed by 30 June 2012.

8 Contacts for further advice

For further advice on this policy please contact:
Ms Julie Ravallion, Manager, Conservation Policy and Strategy on 02 9995 6729

For advice offsetting and new reserve proposals please contact Mr Ray Fowke, Environment Planning Advisor on 02 9585 6607

For advice on the Biobanking Scheme please contact the Biobanking helpline.

9 Related policies and other documents

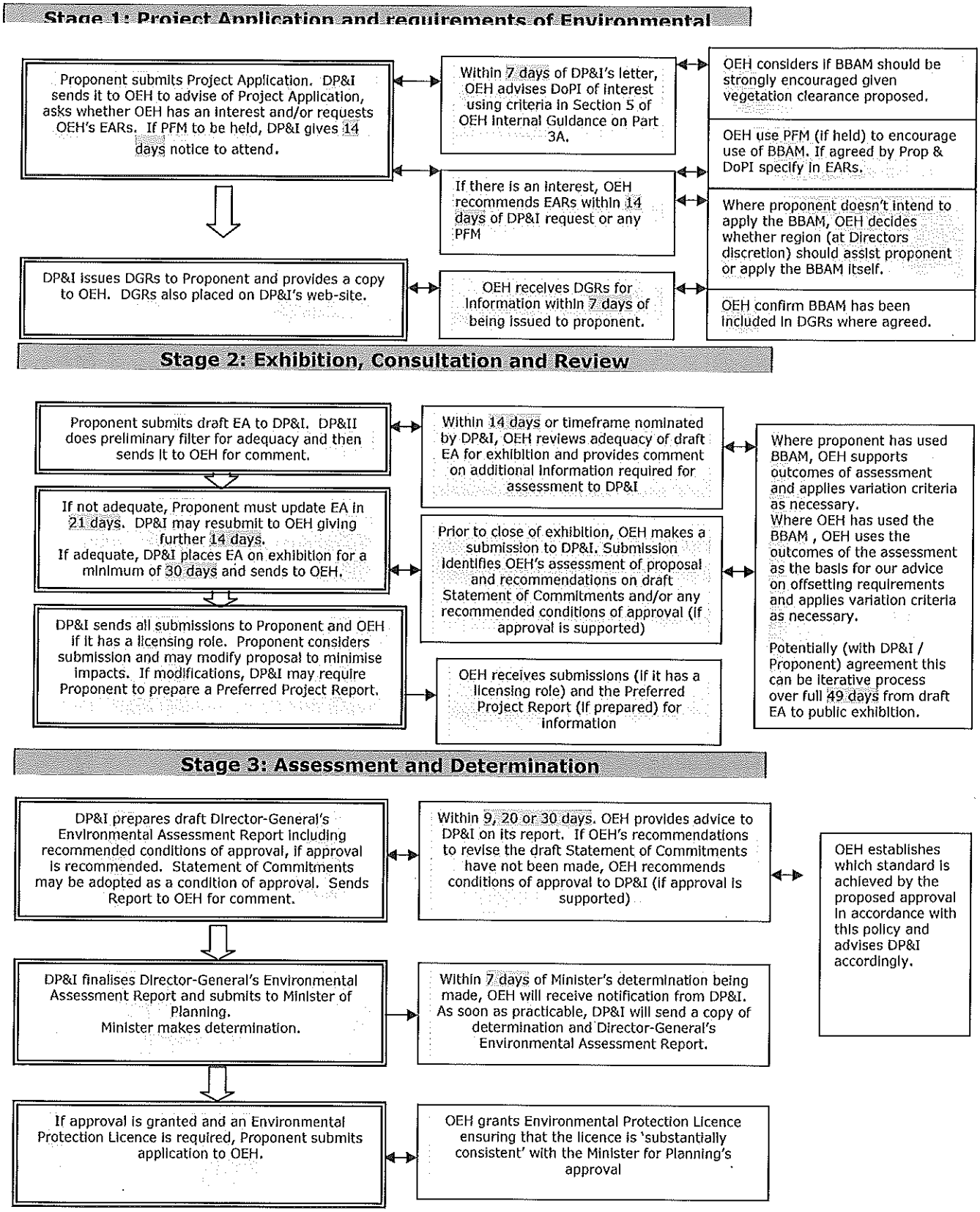
BioBanking Assessment Methodology and Credit Calculator Operational Manual, March 2009, http://www.environment.nsw.gov.au/resources/biobanking/09181bioopsman.pdf

OEH's offsetting principles can be found at:
http://www.environment.nsw.gov.au/biocertification/offsets.htm

The Department of Sustainability, Environment, Water, Population and Communities' draft offsetting policy can be found at:
(http://www.environment.gov.au/epbc/publications/draft-environmental-offsets.html)

Attachment A: **Typical Project Application's Process under Former Part 3A**

Note: The project application process for State significant projects is under development (as of July 2011)



Notes - All times are in calendar days.

DP&I	Department of Planning and Infrastructure	EARs	Environmental Assessment Requirements
DGRs	Director-General's Requirements	PFM	Planning Focus Meeting
EA	Environmental Assessment		

DP&I /Proponent Statutory Requirements | OEH Statutory Requirements | Offset Policy Requirements

Attachment B: Variation criteria for mitigated net loss (Tier 3)

To achieve Tier 3 - mitigated net loss standard, the following variation criteria may be applied to the offsetting requirements of the BBAM. The minimum area standard is an offset to clearing ratio of 2:1.

Variation criteria	**When is this option appropriate**	**How**
a) Convert ecosystem credits for one vegetation type to any vegetation type within the same vegetation formation in the same IBRA bioregion	When no matching ecosystem credits are available	Review to biometric vegetation database to identify vegetation types in the same formation in the same IBRA bioregion. Number of credits should be the same.
b) Convert one type of species credit to another type of species credit with the same or more endangered conservation status	When species credit is not available and the matching species credit is considered a greater conservation priority.	Review conservation status of species Number of credits should be the same
c) Remove/reduce the need for offsetting	Where clearing is minimal (less 4 ha) and where the vegetation is not a highly cleared vegetation type or a Commonwealth or State listed TEC.	Identify and remove credits required for offsetting vegetation under 4ha and for vegetation types that aren't greater than 70% cleared or a Commonwealth or State listed TEC
d) Convert ecosystem credits required to hectares and, if necessary, convert hectare figure to an estimate of land value	Where suitable offset sites are known to exist but: • there is insufficient time to secure the offset sites at the time the decision is made; or • the proposal is to use the services of a third party provider such as the Nature Conservation Trust to secure offset sites and an estimate of cost is required.	Convert credits required to hectares using the credit to ha converter[1] and ensure that the approval: • specifies the type, location and condition of offsets; and • secured offset sites in accordance with the requirements of section 5 of this Policy. An estimate of the cost of the offset can be made by using a Valuer Generals estimate of land value.
e) Waive the requirement for species credits NB: This criteria should not be used for EPBC Act listed species where the proposal is a controlled action	Where no matching credits are available and all ecosystem credits have been obtained in accordance with this policy	Remove the requirement
f) Convert ecosystem credits to a regional conservation priority as identified in a regional conservation plan or similar	When no matching credits are available and variation 1 is not feasible	Identify areas of high conservation priority in existing regional conservation plans or similar. Convert credits required to hectares[1]. Identify eligible offset sites and ensure areas are of sufficient size, condition and landscape context.

[1] OEH is currently finalising an excel spreadsheet which converts credits to hectares. This spreadsheet will be lodged on the OEH intranet site.