

KOALA POPULATIONS AND HABITAT IN NEW SOUTH WALES

18 FEBRUARY 2020

Responses to questions taken on notice by:

Paul Elton, Chief Executive Officer, Biodiversity Conservation Trust, Department of Planning, Industry and Environment

Question 1

Mr ELTON: It is very early days. We only took over the administration of biodiversity stewardship agreements from the former Office of Environment and Heritage in 2018. At that point there were 190 existing BioBanking agreements, which are now deemed to be biodiversity stewardship agreements. We have taken over the ongoing administration of those. Since we commenced operations we have received—I do not have the exact number but it is in the order of 30 to 40 applications for biodiversity stewardship agreements. We have so far issued three. It is early days in terms of the arrangements under the new Act, but we do have the ongoing compliance role in relation to all of those agreements that have been entered. Of those 193 agreements, some remain in passive management because they have not sold their credits yet. When they do sell their credits they move into active management, which is where they are required to achieve gains in the biodiversity value on the site. But we ensure compliance whether they are in that passive phase or in that active phase.

The Hon. CATHERINE CUSACK: How many hectares are we talking about?

Mr ELTON: I do not have that figure to hand. I should say in relation to this inquiry about koalas, the figures at this stage are relatively modest in terms of our involvement on the demand side. We have only received payments from developers for 14 koala species credits into the Biodiversity Stewardship Payments Fund through two—

The Hon. PENNY SHARPE: How much is that worth?

Mr ELTON: I do not have that figure to hand, I am sorry. I would have to take that on notice.

Answer

The Biodiversity Conservation Trust (BCT) currently manages 193 biodiversity stewardship agreements (BSAs) over 23,048 hectares.

The total value of the two payments made into the Biodiversity Conservation Fund (BCF) from developers for 14 koala species credits is \$7578.48 (excluding GST).

Question 2

The Hon. CATHERINE CUSACK: Just to clarify, is it one for one or is there a formula? Are we just rearranging the deckchairs or are we actually improving outcomes?

Mr ELTON: Look, that is more a question for the department, because that is determined through the biodiversity assessment method [BAM]. That calculates, on the development side it would calculate the number and type of credits required as a result of the impacts, the unavoidable impacts on a development site. The BAM also has a module that calculates the potential generation of credits on a landholder site. So you have got landholders with equivalent credits for sale to the credits that developers need and they can be matched. The ratios and all the science that informs the calculation of those credit obligations or credit supply is all dictated by the biodiversity assessment method, which is made by the department. That is their area of responsibility, not that of the BCT.

The Hon. CATHERINE CUSACK: But it does sound like koala habitat is in short supply. I think you said that you have issued three?

Mr ELTON: Three biodiversity stewardship agreements?

The Hon. CATHERINE CUSACK: Yes. Did they have anything to do with koalas, or are you still looking for koala habitat to offset the—

Mr ELTON: I do not have that fact immediately to hand.

The Hon. CATHERINE CUSACK: Maybe on notice would be fine.

Mr ELTON: I might take that on notice as to whether we will need to induce supply or not.

Answer

The three new biodiversity stewardship agreements that have been executed since the *Biodiversity Conservation Act 2016* commenced do not include koala habitat.

Across all 193 existing biodiversity stewardship agreements, a total of 2,752 hectares of koala habitat is protected in-perpetuity.

A total of 18,565 koala species credits are currently available for sale in the biodiversity credits market. Given the small number of koala species credit obligations held by the BCT (14 koala species credits), the BCT does not need to encourage koala species credit supply at this time.

Question 3

Mr ELTON: Just to explain the reason we have two different delivery mechanisms: Where our assessment is that there may be many landholders who can potentially supply to biodiversity credits that we are looking for, that is where we will run a tender. That tender will call for bids from people who may already have biodiversity stewardship agreement [BSA] or people who are looking to enter into one. Where we assess there to be a competitive market we will run a tender. Where our assessment is that there is no existing market or no existing supply and there might be a very limited range of landholders, or maybe even only one landholder who can supply the relevant credit we might go out with a direct price offer to see if we will attract interest for people to enter into a BSA and supply the credits that we need.

It is very early days, I should stress, too. We have really only been going since March 2018 in terms of once the Minister approved our business plan. There was a transitional period before the new scheme commenced under the Act, which has been started in different parts of the State at different times as well. So it is very early days in this biodiversity offsets market. In total, we have received payments worth approximately \$11 million so far, and so far we have only discharged a small proportion of those obligations. The koala species credits are a very tiny proportion of the total volume of credits we now have to acquire.

The Hon. CATHERINE CUSACK: In terms of the offset scheme overall, what percentage is your role?

Mr ELTON: I would have to take that question on notice.

Answer

Since 25 August 2017, the BCT has received 82 payments from developers into the Biodiversity Conservation Fund (BCF) with a total value of \$14,043,164. In comparison, there have been a total of 356 ecosystem credit transfers and 47 species credit transfers recorded in the biodiversity credit market over the same period, with a total value of \$289,623,234. Therefore, payments into the BCF comprise approximately 4.8 per cent of the total value of all credit transfers since 25 August 2017.

Question 4

Mr ELTON: The typical cost to establish a BSA we think ranges from about \$30,000 to \$70,000 or \$80,000 if you go the full process. Some people will spend maybe ten grand on an initial assessment; if that stacks up they might then commission a consultant to apply the BAM and produce the relevant report. That will cost quite a bit of money, but it is an investment because they may well be—I mean, the smallest BSA so far is worth about \$300,000 and the largest is worth \$15 million.

The Hon. CATHERINE CUSACK: How much land is entailed in the \$300,000 one?

Mr ELTON: I do not have those numbers to hand, I am sorry. I would have to take that on notice. But they range in scale from dozens of hectares through to thousands of hectares, depending on the context.

Answer

The smallest BSA is 1.71 hectares which is significantly smaller than the average size for a BSA of 119.4 hectares. The smallest total fund deposit is for that site and is a total of \$75,430.

Question 5

The Hon. MARK BUTTIGIEG: You do the qualitative analysis of what the appropriate offset is because they have offloaded their responsibility for doing that legwork to you.

Mr ELTON: No. By the time—if they are making a payment to us that has already been determined through the development consent process. The development consent will say, "You must procure X", you know, "100 credits of X species and 300 credits of X ecosystem". The developer then—so that is all done, the developer has paid for the assessment process, the assessment process is conducted by an accredited consultant. We then, if they pay us to take on that obligation, that is when our role starts in terms of then finding that biodiversity credit offset. To go back to the first part of your question I missed, sorry, in terms of the local subspecies of koala or local koala populations, I would have to take that on notice because I am not an ecologist. There are, as I understand it, subspecies and I do not have enough technical knowledge to know whether the like for like rules would operate at that level of detail, so I will have to take that question on notice.

Answer

The BCT is required to secure offsets in accordance with the Biodiversity Conservation Regulation 2017. Clause 6.3(4) of the Biodiversity Conservation Regulation 2017 provides that 'In the case of impacts on threatened species that are species credit species, like-for-like biodiversity credits represent the same threatened species.'

This means that a 'like-for-like' offset for a koala species credit obligation can be secured by retiring koala species credits derived from anywhere in NSW.

However, for three endangered koala populations, including the Hawks Nest and Tea Garden population, the Pittwater Local Government Area population and the population between the Tweed River and Brunswick River east of the Pacific Highway, offsets are represented via distinct species credits. A 'like-for-like' offset for these endangered koala populations must therefore comprise species credits from the same endangered koala population.

Question 6

The Hon. PENNY SHARPE: One more question on offsets. Offsets where there has been an agreement put in place, there is some concern that those offsets do not necessarily prohibit future operations, for example, mining on offset sites. What is the policy of the BCT in relation to that?

Mr ELTON: There is no BCT policy in relation to that. There is, as I understand it, a provision in the legislation whereby a mining interest can—there are certain procedures, I would have to take the detail on notice.

Answer

Section 5.18 of the *Biodiversity Conservation Act 2016* provides that:

‘the Minister may ... vary or terminate a biodiversity stewardship agreement without the consent of the owner of the biodiversity stewardship site if a mining or petroleum authority is or has been granted in respect of the site and the Minister is of the opinion that the activity authorised by the mining or petroleum authority—

- a) will adversely affect any management actions that may be carried out on the land under the biodiversity stewardship agreement, or
- b) will adversely affect the biodiversity values protected by the biodiversity stewardship agreement.

If the Minister varies or terminates the biodiversity stewardship agreement under this section, the Minister may, by order in writing to the holder of the mining or petroleum authority, direct the holder to retire biodiversity credits of a number and class (if any) specified by the Minister within a time specified in the order.’

Question 7

The CHAIR: So you are telling the Committee that the box EEC was mapped as—basically, the map said box EEC was there. Your ecologist went to Maules Creek, the offset site, to try and find box EEC and said the areas mapped as box EEC are of particular concern. You are saying that that has now been mapped correctly. They found the box EEC on the site?

Mr ELTON: Yes, there were definitely EECs.

The CHAIR: Was it just in the wrong spot?

Mr ELTON: I would have to take that on notice. I do not have the precise technical detail, but we do now have maps for the relevant conservation agreements that accurately map where the EECs occur. There are EECs on the sites, if that is what your question is going to. We just wanted to make sure that the maps of those EECs were spatially accurate. If you want me to go into more precise detail I would have to take that on notice.

The CHAIR: Thank you. The ecologist said there were general concerns for all sites visited. So for all of the sites that they visited, in terms of offsets, there were concerns raised—some of which was little use of direct seeding as an alternative to planting and little successful restoration achieved. Do you want to comment broadly, in relation to that specifically, on why that is such a problem?

Mr ELTON: Again, it is very technical in terms of whether that was a description of what was happening previously or whether it was around the commitments to be made in the conservation agreement. I am not across that level of technical detail so I would have to take that on notice.

Answer

BCT staff conducted site visits of the Eastern and Western biodiversity offset sites in 2018. The site visits were intended, amongst other things, to confirm agreement areas and layout, discuss management plans, confirm conservation values, and view initial information provided including vegetation maps.

Photos and spatial locations were recorded as references and notes recorded on return from the field. Initial observations by staff flagged concerns as to the accuracy or scale of the maps provided. This was because of the scale of the mapping products or inaccurate classification of vegetation types. Staff also observed high rates of failure from revegetation works that had been completed in the previous few years. This was of concern because large scale successful revegetation is required as one of the key management actions.

Because conservation agreements are in-perpetuity agreements with ongoing management commitments for the current and future landholders, the BCT's staff ensure management obligations are accurate and achievable. Initial observations in the field triggered more detailed work to ensure the accuracy of information in each final agreement was reasonable. Agreements have now been finalised for some of the Eastern and Western and offset sites.

Question 8

The CHAIR: Do you have information in relation to which of the biodiversity offsets have so far been approved for Whitehaven Coal from the Biodiversity Conservation Trust [BCT]?

Mr ELTON: I do not have those figures to hand so I could take that question on notice.

The CHAIR: If you could take that on notice, that would be great, thank you.

Answer

Please refer to answer to supplementary question 1.

Question 9

The CHAIR: Okay. Regarding the Maules Creek offsets—you might have to take this on notice as well, actually—we need the dates on which the offsets were approved, if there has been approval, and which conservation agreements for biodiversity offsets for Whitehaven Coal's Maules Creek coalmine have been executed. You are not aware of which ones?

Mr ELTON: No.

The CHAIR: Which conservation agreements have been registered with the NSW Land Registry Services—that as well.

Mr ELTON: Yes.

The CHAIR: In relation to one of the Whitehaven Coal's offsets, we understand that there is an active coal exploration licence over three of the Maules Creek mine offsets. Are you aware of that?

Mr ELTON: No, I am not.

The CHAIR: I think it is Wollondilly and a couple of others. If you could look at that as well—and I assume the same thing applies with these exploration licences and that those offsets could be offset again.

Mr ELTON: Possibly. That would be a matter for Ministers, not a matter for the BCT.

Answer

Please refer to answer to supplementary question 1.

The BCT is aware of the coal exploration licence.

Question 10

The Hon. CATHERINE CUSACK: It all seems like there is a veil of secrecy and the community has had to spend a lot of volunteers' money and fundraising time.

Mr ELTON: Right.

The Hon. CATHERINE CUSACK: You have got all of their money now because they have just wanted to access information.

Mr ELTON: Look, I have not been involved in setting those fees. I imagine that those GIPAA's have been managed by the department so I would have to take that question on notice to understand exactly what fees were charged and why, I am sorry. But I do support very much the principle of transparency. The BCT is trying to be a very transparent organisation.

Answer

The Department of Planning Industry and Environment (DPIE) Information Access and Privacy Team decides GIPA applications on behalf of the BCT. I am advised that:

Prior to 1 July 2019, Department of Planning and Environment (DPE) and Office of Environment and Heritage GIPA applications were managed by the DPE GIPA team.

Since January 2018, DPIE and its predecessors have received 20 applications for information relating to Maules Creek Coal Mine. (Not all these applications were made for BCT information and not all relate to koalas).

Of those applications:

- No fees (other than the initial application fee) were charged for 12 applications
- Fees were charged for eight applications
- Of the applications for which fees were charged:
 - One fee was collected in full (\$90)
 - Five were granted a 50per cent discount
 - Two were granted a discount of less than 50per cent
- Total fees charged across all 20 applications was \$2,625.00
- Total fees collected across all 20 applications was \$1,562.50
- Total fees waived across all 20 applications was \$1,062.50.

Question 11

The Hon. CATHERINE CUSACK: Do corporations have privacy?

Mr ELTON: Corporations?

The Hon. CATHERINE CUSACK: Yes—like a mining company: like in relation to Maules Creek. Is it an issue that we are respecting the privacy of the mining company that is not complying with the terms of the development application agreement? Your officers are trying to get them to comply but because of privacy the public is not allowed to do about that—because of the mining company's privacy. Is that how this works?

Mr ELTON: I would have to take that question on notice.

Answer

The Privacy and Personal Information Protection Act 1998 (the Act) is limited to protecting 'personal information'. Personal information is defined in section 4 as 'information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion'.

A corporation as an entity does not have legal protections under the Act. A corporation is not an individual, and the Act only benefits individuals.

The disclosure of information about individuals working for a corporation, including its directors, may be protected by the Act. This will depend on consideration of:

- the nature of the information and the circumstances;
- consideration of if the information falls within the definition of personal information under the Act; and
- if disclosure would be contrary to the Act.

The BCT seeks to adhere to the principle in the *NSW Government Information (Public Access) Act 2009* of a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure.

Question 12

The CHAIR: With some of the conservation agreements in relation to Maules Creek—the Whitehaven—have some of them recently moved into a management plan? Do you know whether that has been quite recent in terms of conservation agreements?

Mr ELTON: Yes, relatively recent. I will have to get the details, as you asked for before, but I think I signed some of those conservation agreements late last year or early this year. But I will have to get those facts for you. Up and until that point, there are no obligations. It is only once we actually sign a conservation agreement that the management requirements in the conservation agreement are required to be carried out from that point forward, and we then check that annually.

Answer

The BCT has executed four conservation agreements. These are currently with Land Registry Services for registration on title.

Conservation management obligations take effect immediately once agreements are executed and registered.

Question 13

The CHAIR: I have heard that outstanding obligations that Whitehaven had to meet with these offsets to get the conservation agreements in place have now been incorporated into these management plans with a 12-month extension for Whitehaven to get them right. Is that correct?

Mr ELTON: I am not aware of that idea, as far as I know, but I will take that on notice to verify.

The CHAIR: You said you signed the conservation agreements recently.

Mr ELTON: I did, yes.

The CHAIR: You would have seen the management plans as well, then?

Mr ELTON: That is right. I am not aware that there is such a delay written into the agreements. If there was, I will go back and interrogate that because my understanding is that as soon as they are signed, the obligations take immediate effect. But I will take that on notice and verify that for you.

Answer

Conservation management obligations take effect immediately once agreements are executed and registered. There is no delay written into the conservation agreements.

Question 14

Mr ELTON: Forties or fifties. There are wildlife refuge agreements that were struck, I think, as early as the forties or fifties.

The Hon. CATHERINE CUSACK: Is that all included in the figure of 193?

Mr ELTON: No, there are nearly 2,000 all up. The 193 is just the new ones that we have done.

The Hon. CATHERINE CUSACK: Could I ask you, on notice, to give us a list of the types?

Mr ELTON: Numbers of agreements?

The Hon. CATHERINE CUSACK: I assume this is obtainable for you.

Mr ELTON: Absolutely. We can give you that.

Answer

As at 31 December 2019, the BCT administers a total of 2,012 private land conservation agreements, including:

- 193 biodiversity stewardship agreements
- 689 wildlife refuge agreements
- 332 registered property agreements
- 798 conservation agreements.

Question 15

The Hon. CATHERINE CUSACK: I have one more question. Earlier today we heard from Mr James Fitzgerald from the Two Thumbs Wildlife Trust whose property, tragically, was—

Mr ELTON: I heard part of his testimony, yes.

The Hon. CATHERINE CUSACK: Terrific. I do not know if you heard him say that he had been offered money under your scheme. He had been offered financial assistance, but I think his words were, "I couldn't accept that because if I'm accepting credits then that would mean koala habitat is being destroyed elsewhere." So, as someone who is very dedicated to protecting and enhancing—he certainly did not say "blood money" but that was kind of the implication; that it was not ethical for him to accept those credits. Firstly, I wonder what your response is to that. Secondly, as someone who is trying to do the right thing but does not want to do it as an offset for a developer, is there assistance he can get from your—

Mr ELTON: Yes. I am not aware if he has a conservation agreement with us but, if he did, he could then—

The Hon. CATHERINE CUSACK: Benefit without being in an offset scheme?

Mr ELTON: Yes, definitely. So he could either come in through our voluntary program, which is open to everyone across the State. If he signed a voluntary conservation agreement with us, he would then be eligible to apply for those grants.

The Hon. CATHERINE CUSACK: What is the budget for that each year?

Mr ELTON: We have, so far, allocated \$2.5 million per annum but it has not been fully subscribed yet. However, I might add that, in relation to fire, of our 2,000 landholders, 260 have been directly impacted by fire. That has been about 51,000 hectares—80 per cent of the conservation areas, on average, to varying degrees of severity. So we have also updated our grant guidelines and eligibility requirements to be more flexible in relation to people who have been impacted by fire. We are reaching out to all of those landholders. We have made contact with about 120 of them so far.

The Hon. CATHERINE CUSACK: Yes.

Mr ELTON: Some we are yet to get to. Some are still dealing with the more immediate issues of immediate fire recovery, but we want to do whatever we can with ecological advice to support them in the recovery of their site and, if appropriate, grant assistance to assist with re-establishing fencing, to assist with the additional weed and pest problems they may face post-fire. So we are being very active in the fire recovery front.

The Hon. CATHERINE CUSACK: It did not sound like he had been contacted. Maybe he is not registered—

Mr ELTON: I do not know his particular case.

The Hon. CATHERINE CUSACK: Does he need to register with you to be—

Mr ELTON: I do not know. I would have to take that on notice as to whether he holds an agreement with us at the moment or not.

Answer

Mr Fitzgerald does not hold a conservation agreement with the BCT.