

Answers to Questions on Notice from the Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme – 10 December 2021

Question 1 (page 37-8)

The Hon. PENNY SHARPE: Let me put this a different way, and I do not know whether this data exists. You might have to take this on notice, but if we take it from the point in time in 2017 when the scheme started—I accept all the transition, I am not trying to argue the toss on those issues—are we able to say, of all the things that have come under the scheme, how many hectares have been avoided in terms of clearing, how many hectares have been subject to minimisation arrangements and how many hectares have been offset?

Ms DUMAZEL: Yes.

The Hon. PENNY SHARPE: Do we have that data?

Ms DUMAZEL: We will take that on notice, but I will say one thing: In terms of when there is an environmental impact statement [EIS] and there is a biodiversity assessment report, in that report the expectation is that the proponent will explain what has been avoided and how they have minimised it, and then we understand the offset.

Answer

Information on avoid, minimise and offset requirements is publicly available in the Biodiversity Development Assessment Report published by the relevant consent authority as part of the Environmental Impact Statement and the project conditions of consent published if the project is approved. This information is not held in a central database.

Data is not available on the total area avoided or mitigated as these measures do not necessarily relate to a land area. For example, avoidance and mitigation measures may include a change in the design of a proposal, the timing of an impact or the type of technology used.

Table 1 provides the number of and area covered by finalised biodiversity assessments for development activities, and the ecosystem and species credits required to offset the activities, for each legislative pathway into the NSW Biodiversity Offsets Scheme from 25 August 2017 to 19 January 2022. Finalised assessments may or may not have been approved by the relevant consent authority.

Table 2 provides the number of and area covered by finalised biodiversity assessments for potential offset sites, and the ecosystem and species credits generated, from 25 August 2017 to 19 January 2022.

Table 1. Development and clearing activities - finalised biodiversity assessments (25 August 2017 to 19 January 2022)

Assessment Type	Count of Assessments	Total area of Assessments (Ha)	Total Ecosystem credits	Total Species credits
Bio-certification	11	10,207	46,502	187,644
Major Projects	206	15,030	231,130	694,632
Part 4 Development	647	2,914	28,142	57,621
Part 5 Activities	19	254	3,646	5,919
Clearing (General)	5	17	303	525
Scattered Trees	45	N/A	Data not yet available	N/A

Note: Scattered Tree assessments are part of one of the other development types but are assessed separately in the Biodiversity Assessment Method (BAM) assessment. Clearing (General) refers to: clearing of native vegetation in urban areas and areas zoned for environmental conservation that exceeds the biodiversity offsets scheme threshold and does not require development consent or clearing of native vegetation that requires approval by the Native Vegetation Panel under the *Local Land Services Act 2013*.

Table 2. Biodiversity stewardship agreement applications - finalised biodiversity assessments (25 August 2017 to 19 January 2022)

Assessment Type	Count of Assessments	Total area of Assessments (Ha)	Total Ecosystem credits	Total Species credits
Biodiversity Stewardship Agreement	127	52,529	296,767	176,923

Question 2 (Page 40)

The CHAIR: Thank you. Mr Knudson, I might just go back to something you said in your opening statement, which was that the department has taken some action to ensure that staff no longer hold interests in biobanking sites. Is that correct?

Mr KNUDSON: Well, it is that they no longer have an ability to influence those sites. We can walk you through the details of the conflict of interest. Dr Mamouney?

Ms DUMAZEL: I will answer that one.

Mr KNUDSON: Okay, sorry.

Ms DUMAZEL: With the protocol—and we can provide a copy of that as well—

The CHAIR: Great.

Ms DUMAZEL: —where there are staff who have more involvement in the scheme—for example, if they were working in the Biodiversity Offsets Scheme branch—they are not able to participate in the scheme. So we have been quite clear about that now and they are prohibited from participating in the scheme if they have a significant interest in the scheme. If they are working in the scheme they cannot.

The CHAIR: Sorry, just to be clear, if they have a significant interest in the scheme and they are working in the scheme, that means that they no longer have a job in the scheme. Is that what you—

Ms DUMAZEL: No, they got 12 months. At the moment, we do not have anybody working in the Biodiversity Offsets Scheme branch that has any interest in the scheme, but if they had they would have had 12 months to divest of their holdings. But we do not have that case and we have said that if you are working in the Biodiversity Offsets Scheme that you cannot participate in the scheme.

Mr KNUDSON: I just add, divestiture is one option; they can also put it into a trust. We can provide that information.

Answer

The Department of Planning and Environment's protocol for conflict of interests requirements relating to the NSW Biodiversity Offsets Scheme is publicly available at:
www.dpie.nsw.gov.au/_data/assets/pdf_file/0006/484989/Conflict-of-interests-requirements-relating-to-the-NSW-Biodiversity-Offset-Scheme-Protocol.pdf

Question 3 (Page 41)

The CHAIR: Okay, thank you. I just wanted to go to you, Mr Elton, about the capacity of the trust in some ways. What is the budget for the BCT? What are you working on in terms of just your operational budget, I suppose?

Mr ELTON: I can get the precise figure if I take that on notice, but just to give you a sense, we receive \$70 million a year from the Government for our private land conservation program, which is separate to the topic of this inquiry. And then on top of that we generate revenues for our roles under the Biodiversity Offsets Scheme. So that typically derives from fees charged to landholders, developers and government agencies that commission us to procure offsets. But that is all done on a cost recovery—

The Hon. PENNY SHARPE: Could you give us a breakdown just in terms of those three groupings on notice?

Mr ELTON: Yes, I will take that on notice, thank you.

Answer

The Biodiversity Conservation Trust's (BCT's) revenue for 2021-22 comprise \$125.1 million, including:

- \$23.4 million from the consolidated fund and \$51.2 from the Climate Change Fund for the NSW Government's private land conservation programs
- \$8.9 million from the consolidated fund for additional private land conservation programs for koala conservation
- \$29.8 million in grants from DPE to secure biodiversity credits for place-based offsets schemes (Western Sydney Growth Centres Program, Cumberland Plain Conservation Plan, and Warnervale)
- projected fee revenues of \$1.7 million from landholders and \$0.8 million from developers for various biodiversity offset program services
- projected interest from investments of \$8.8 million (used to support annual payments to landholders).

Question 4 (Page 41)

The CHAIR: With that as well, taking on notice probably, in terms of the organisational structure and staff, if that is okay.

Mr ELTON: Sure.

Answer

The Biodiversity Conservation Trust's (BCT's) senior staff are a Band 2 Chief Executive Officer and three Band 1 Directors leading a Strategy and Finance Branch, a Programs Branch and a Regional Delivery Branch. The BCT's total approved establishment is 122.1 FTE. The BCT's total staff headcount at present is 121.9 staff. 89 staff (or 73%) are located outside Sydney and/or in regional delivery roles that engage with our existing and prospective landholders.

Question 5 (Page 41)

The CHAIR: We have heard quite a bit of evidence about how difficult it is for landholders and people wanting to understand the scheme, how complex the scheme is—which is a different issue entirely—but just being unable to get somebody to talk to sometimes because there is just not the staff there. Do you think that there is a resourcing issue within the trust?

Mr ELTON: I do not think there is, and in fact we have got quite a positive track record on customer service. We have done landholder and program participant surveys and we have had very positive feedback. I could take that on notice and give you the results of that feedback if you wish.

The CHAIR: Sure.

Answer

The Biodiversity Conservation Trust's (BCT) December 2020 program participant survey showed most respondents agreed or strongly agreed they were satisfied with the BCT in terms of:

- communication (80%)
- responsiveness (76%)
- relevance of information (78%)
- access to information (73%)
- ease of understanding information (76%).

Most respondents also agreed or strongly agreed they were satisfied with the BCT's staff:

- competence (78%)
- reliability (72%)
- commitment (71%)
- integrity (81%)
- helpfulness (79%).

Question 6 (page 43)

Mr JUSTIN FIELD: Thank you, Chair. It follows on from that last question. My understanding is that the green and golden bell frog offsets for WestConnex were sourced on the North Coast. That seems extraordinary to me. It is a classic example of the loss being experienced in one area and it is very difficult to see how, despite the habitat being suitable to that animal, it can be a similar area of biodiversity. Can you explain how that would be allowed to happen?

Dr MAMOONEY: I am going to start off with a little bit about like-for-like offsets, because that is a critical component of the biodiversity assessment method. Then I might turn to Ms Dumazel for a comment on the specific issues. In terms of like-for-like offsets—this is under the Biodiversity Offsets Scheme and the project that you referred to was under the former scheme—the stewardship site, compared to the development site, must be in the same or adjoining IBRA subregion, or a region within 100 kilometres. So in the general geographic location. If it is a threatened ecological community, it must be the same threatened ecological community.

If it is not a threatened ecological community then it must be of the same class—i.e. there must be a match in, I guess, the degree of threat that that ecological community is experiencing. If the development site is a site with hollow-bearing trees then the offset site must also have hollow-bearing trees. For species credits—and that would relate to the green and golden bell frog—the like for like is more straightforward. It must be the same species as impacted, but offset credits can be from anywhere within the species' distribution. I will just refer to Ms Dumazel in terms of the specifics.

Ms DUMAZEL: I will have to take the specifics on notice, Mr Field.

Mr JUSTIN FIELD: In this instance, obviously you could totally lose a population of a particular species in one area and that loss—i.e. in Sydney—is offset by protecting an area of species hundreds and hundreds of kilometres away, and that is okay?

Dr MAMOONEY: Under the current Biodiversity Offsets Scheme, the serious and irreversible impacts would apply—although for major projects that is something for consent authorities to consider. For councils, they must apply the serious and irreversible impacts requirements.

Mr JUSTIN FIELD: What you are suggesting is that offset would not be allowed under the current system unless the planning Minister, consent authority for a major project, agreed that that was suitable? Am I understanding correctly?

Ms DUMAZEL: If it is a development that the consent authority is local government and it is serious and irreversible impact, then that is not approved. If it is a part 5, for example, then consideration needs to be given to serious and irreversible impact and then a decision in terms of what would be required would be included in that. That is correct.

Answer

The Westconnex New M5 (now called the M8 project) received Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and NSW State Significant Infrastructure approval in 2016. The project was assessed using the applicable assessment methodology at the time, the Framework for Biodiversity Assessment (FBA), and was subject to the EPBC Act assessment bilateral agreement.

The conditions of approval for the project are available at <https://majorprojects.accelo.com/public/611f2f476fa2594c6921eb8d4305391f/>. The conditions include the implementation of a Green and Golden Bell Frog Plan of Management to ensure

protection of the frog population in the vicinity of project works and the implementation of a Habitat Creation and Captive Breeding Plan to provide a source population for new specially constructed ponds built on the then Roads and Maritime Services land at Arncliffe.

Under the FBA, a credit requirement was generated for impacts to 7 hectares of foraging habitat within Kogarah Golf Course. These credits were obtained from a site on the mid-north coast consistent with the FBA, which allowed credits to be purchased across the species known range.

During delivery of the project, Transport for NSW avoided direct impacts to the small population of green and golden bell frogs present in a constructed pond on the site, including undertaking pre-clearing surveys to ensure that no frogs were directly impacted by the establishment of the construction compound. The captive breeding program and the artificial habitats required under the Green and Golden Bell Frog Plans of Management were delivered and are performing well.

Question 7 (Page 44)

Mr JUSTIN FIELD: I would not mind coming back to this question of staffing and the ability for staff to participate in the scheme. I want to be careful that I understand. We were drawing some quite specific connections before. You were talking about staff that are operating within the biodiversity team. What are the conditions, if there are any, that apply more broadly to staff working within DPIE participating in the scheme? Of course, staff would be working on strategic planning, mapping projects and other things where they would have quite specific and specialised knowledge and advice. Will you explain what the requirements are from this point forward? What were the previous requirements for declaring conflicts?

Mr KNUDSON: Sure. What I will make sure of is again that we definitely do get all the members a copy of the protocols. I will be clear about this. I have been heavily focused on the implications for my staff. So, in effect, Dr Mamouney talked about those working within the branch. But I run a directorate of around 800 people. All of those individuals, with the next conflict of interest protocol, are not allowed to have any participation in the offsets scheme from a personal standpoint.

They can be involved professionally in acquitting their responsibilities but they cannot own or participate in a Biodiversity Stewardship Agreement or anything along that line or a private land conservation agreement. So that is very clear. That is different from what it was. Quite frankly, we took that insight from the protocols that the Biodiversity Conservation Trust put in place. We have applied that. That is what is new for the staff within my directorate and that is beyond the branch that Dr Mamouney leads.

In terms of the rest of DPIE—and I do not want to mislead the Committee, so I am a bit reticent because I will not have the exact language in mind—effectively it says, "Listen, if you are at a relatively high risk that you have got effectively access to key information, et cetera, then you should not participate in the scheme and here is what you need to do." But it would be better for me to come back to you, Mr Field, with the specific elements for other staff outside of my area and what the implications are for them, just so I do not mislead.

Mr JUSTIN FIELD: I appreciate that. Without naming any individual staff—I am not asking for that at all—do you know how many staff who have previously worked for DPIE were participants in the scheme whilst they worked for DPIE?

Mr KNUDSON: Yes. I will come back with the exact number, but it is less than five.

Answer

The Department of Planning and Environment's (Department) protocol for conflict of interests requirements relating to the NSW Biodiversity Offsets Scheme is publicly available at: www.dpie.nsw.gov.au/_data/assets/pdf_file/0006/484989/Conflict-of-interests-requirements-relating-to-the-NSW-Biodiversity-Offset-Scheme-Protocol.pdf.

The Department is aware of four individuals who participated in the NSW Biodiversity Offsets Scheme, through a Biodiversity Stewardship Agreement, while employed by the Department.

Question 8 (Page 48)

The Hon. PENNY SHARPE: Thank you for coming in today and for your submission. The flowcharts have been extremely helpful in terms of working out who decides what and when. My first question is a follow-up from the last session. In your submission on page 14 you talk about the scheme providing opportunity for Aboriginal stakeholders and Local Aboriginal Land Councils [LALCs]. Are you able to tell us how many agreements are in place with Local Aboriginal Land Councils?

Mr ELTON: Biodiversity stewardship agreements?

The Hon. PENNY SHARPE: Yes.

Mr ELTON: I would have to take that on notice

Answer

To date, one Biodiversity Stewardship Agreement (BSA) has been signed with the Wonnarua National Aboriginal Corporation in 2012 (agreement #76). The Biodiversity Conservation Trust is aware of other Local Aboriginal Land Councils that are considering applying to enter BSAs.

Question 9 (Page 49)

The Hon. PENNY SHARPE: Look, I accept that. I know that you sort of rail the suggestion that there is this magic fund and that somehow there is not being offsets. Our concern, though, of course is the length of time that it is happening and that some are still not retired after a very, very long period of time. Accepting that it is a new scheme and you are trying to make it faster, but there are still those gaps that it really is essentially is for the developer. They have paid in, they have cleared, they have built, and off they go. The BCT has got to fix the mess or find the credits, no matter how long it takes and whether they are available. My concern is just: How do we have confidence that there is no net loss? I do not think that we can show that.

Ms DUMAZEL: No net loss is per project, so in the biodiversity development assessment reports, the proponent has to work out or has to demonstrate what they are going to avoid and minimise and then offset. Certainly one of the things that we are doing is trying to work more at the start with major projects. So where we understand a proponent in a major project, we try and work up-front and to kind of help them navigate the scheme in terms of thinking, "Well, really, you could avoid a lot more if you looked at these different areas." We are trying to provide more of that service aspect before we get to the regulatory aspect. I think that is going to help.

What we do not do is actually—and I know I have taken this on notice and I will need to go away and have a think about it—that work we do where we advise at that point. We are not documenting then what we are actually avoiding now, but it does make a difference because proponents are also looking to reduce their costs. The more that they can avoid and then actually have their footprint on a part that does not have a high value biodiversity—that is the expertise that we provide to our planning colleagues as well. But there is something about how we actually document that part of it.

Answer

A standard of no net loss of biodiversity values in NSW is established in the Biodiversity Assessment Method (BAM) under the Biodiversity Offsets Scheme, as required by section 6.7(3)(b) of the *Biodiversity Conservation Act 2016*.

The BAM provides a consistent method for assessing biodiversity values from a proposed development, activity, clearing or biodiversity certification, as well as improvements in biodiversity values from management actions undertaken at a stewardship site.

The BAM uses the best available science, data and knowledge of biodiversity in NSW. It has been peer-reviewed and several components of the method are published in scientific journals. The data that underpins the BAM are sourced from BioNet, a repository for biodiversity data products managed by the Department of Planning and Environment, and are publicly accessible. The data include NSW wildlife observation records, classification of native plant communities, threatened species information and spatial layers. The BAM must be applied by accredited persons (known as Accredited Assessors).

Using the BAM, Accredited Assessors produce biodiversity assessment reports that accompany development and clearing applications and applications for biodiversity stewardship agreements.

For development or clearing applications, the BAM first requires consideration and application of measures to avoid and minimise impacts where possible. If there are residual impacts that cannot be avoided, assessors use the BAM to calculate the number and class of biodiversity credits required to offset those residual impacts.

For stewardship agreements, the BAM calculates the expected gain in biodiversity values from management actions proposed to be undertaken at the site and quantifies this as biodiversity credits.

The BAM calculates losses and gains in biodiversity values using the same consistent method to achieve the legislative standard of no net loss. The no net loss standard is only applicable to the BAM and the broader scheme settings do allow consent authorities to move away from no net loss. For further information see Attachment B of the NSW Government submission to the Parliamentary Inquiry:

www.parliament.nsw.gov.au/lcdocs/submissions/76448/0097%20NSW%20Government.pdf.

Question 10 (Page 50-51)

The Hon. PENNY SHARPE: Ms Dumazel, my question then is—and you might have to take it on notice—whether this is an issue that people are actually making complaints to and seeking compliance of. As I said, several of the councils raised it today. It was not just a one off—"This happens." There were two allegations essentially being made. One is that people are clearing and then they are saying it is for agricultural purposes, but it is clearly not for agricultural purposes, and the next thing you know it is actually for a development to essentially avoid triggering all of the BOS. The other issue that people said was that in terms of illegal land clearing in some cases some large landholders are just basically happy to do the illegal land clearing and pay the fine because it is cheaper than going through the process of actually dealing with biodiversity offsetting. I know it is a little bit of a strange question but could you come back to us on notice about, in terms of the complaints, whether that is something you are aware of. I accept it is a fairly boutique loophole but again several of the councils have raised people genuinely doing this because they do not want to have to go through the biodiversity offsetting scheme.

Ms DUMAZEL: Certainly I will take that on notice and where there is a complaint that is made we do investigate that and make sure. Mr Witherdin outlined the early change monitoring which has made a big difference for us in terms of where—because we can more rapidly see where there might be clearing occurring.

Answer

The Department of Planning and Environment has received complaints of this type. All complaints are assessed in accordance with the Department's compliance policy, which is available at www.environment.nsw.gov.au/policy-and-law/compliance-and-enforcement.

The Land Management framework under Part 5A of the *Local Land Services Act 2013* (NSW) permits some clearing without notification or approval by the Government. This includes:

- native vegetation clearing for routine farm management (known as Allowable Activities)
- activities under the Land Management (Native Vegetation) Code 2018 that do not require notification or certification (for example managing woody native regrowth in managed native pastures under Part 4 Division 1)
- transitional arrangements for landholder self-assessment of the level of disturbance of grasslands or groundcover, or other legislative exemptions.

The use of allowable activities does not permit 'pre-emptive' clearing for a purpose that needs development consent. Section 60Q(2)(a) of the *Local Land Services Act 2013* states that allowable activities do not permit clearing or any other activity 'without an approval or other authority required by or under another Act or another Part of this Act (or in anticipation of the grant of any such approval or other authority)'.

Clearing that occurs on rural regulated land under categories that do not require approval are categorised as 'unexplained clearing' when identified by satellite monitoring. The Government is working to review unexplained clearing that occurs within these categories to identify ways that the clearing can be identified in satellite monitoring as 'explained'.

Question 11 (Page 53)

The CHAIR: There is no way within the scheme to measure the kind of cumulative impacts of multiple developments on threatened species, is there?

Ms DUMAZEL: It is all up-front and so it is built in the assessment method.

The CHAIR: Is it? For example, if you had 24,000 hectares of critically endangered ecological community left and then there is a development that clears 800 hectares and another development that clears 1,200 hectares, do those credits then become somehow more expensive or does the calculator calculate how much is left in terms of the cumulative impact?

Ms DUMAZEL: I will have to take that on notice because the calculator builds into the fact the threatened aspect of the species—critically endangered or endangered. That is built into the formula. It is reviewed regularly, so we update that based on whether there has been a determination as well. We do need to do some work, and we are kind of looking at our overall monitoring and evaluation framework to see whether it is robust based on what is required between the actual reports and the individual projects versus

Answer

The Biodiversity Assessment Method (BAM) considers condition and status of impacted entities. The credits required to offset clearing of a threatened or good condition ecological community are higher than for clearing of a poor condition ecological community. Threatened entities at risk of extinction due to cumulative impacts and/or their unique ecology are deemed potential serious and irreversible impact (SAII) entities under the BAM. If a development proposal may impact on a potential SAI entity, additional assessment is required under the BAM to address this extinction risk, including consideration of historic and contemporary extent of occurrence.

The data that underpins the BAM are sourced from BioNet, a repository for biodiversity data products managed by the Department of Planning and Environment, and are publicly accessible and regularly updated. For example, BioNet is updated when the Threatened Species Scientific Committee determines to list, or change the threat status of, any threatened entities already listed under the *Biodiversity Conservation Act 2016*. Data that underpins specific elements of the BAM is reviewed annually. Where there is evidence to suggest an entity is under increased pressure the Department adjusts settings in the BAM to better manage this increased risk. This may include increasing the biodiversity risk weighting, adding the entity to the list considered at risk of SAI if it meets one of the principles, or amending the data supplied by government for the assessment of SAI.

In 2021, the then Department of Planning, Industry and Environment released Cumulative Impact Assessment Guidelines for State Significant Projects. From 1 October 2021, these guidelines must be applied to all Scoping Reports and Environmental Impact Statements submitted to the Department for major projects. The guidelines provide advice on scoping cumulative impacts and methodologies for identifying and considering the combined impacts (including environmental, social and economic impacts) of past, present and reasonably foreseeable future projects. The guidelines are available at: www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/Policy-and-legislation/GD1259-RAF-Assessing-Cumulative-Impacts-Guide-final.pdf.

The *Biodiversity Conservation Act 2016* established the biodiversity indicator program to assess the status of biodiversity in NSW accurately, now and into the future. The first assessment, which assessed the status of biodiversity at the beginning of the Act, was published in June 2021 and is available at www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/Biodiversity-Indicator-Program/biodiversity-outlook-report-first-assessment-200621.pdf.

Question 12 (Page 55)

Mr JUSTIN FIELD: A slight variation but, yes, I did. Mr Gainsford, it might be for you or to redirect. I asked some questions through the House recently about coalmine offsets and received an answer back that I was trying to seek some clarification on. It indicated in the answer that, of the 41 coal projects approved in the past decade, one did not require offsets, 14 have not yet triggered the requirement for offsets and, of the remaining ones, 17 have been substantially finalised in perpetuity security arrangements. I was wondering if you could provide on notice the 17 and could you give us an indication of what "substantially finalised" means?

Mr GAINSFORD: Yes, thank you, Mr Field. I am happy to provide some further details on notice. "Substantially finalised" in this circumstance means that for all intents and purposes the offsets have been secured and they have been completed. However, because of the nature of a number of these individual cases, there is some complexity to the complete finalisation, and I will give you a couple of examples. One is where, for example, a mining project has a number of modifications that are associated with that mining project. So it may well be for the actual consent, the original consent for that mine plus a series of modifications, that all of those offsets have been completed but there might be one outstanding modification that is currently going through the system and it has a small level of biodiversity impacts that have not been completed.

The other circumstance that, I guess, motivated us in using that terminology was the finalisation of legal arrangements that, particularly under the previous schemes, prior to the Biodiversity Offsets Scheme there was some flexibility in establishing those conservation bonds and agreements, and so different applicants have used different methodologies, and in some cases there are quite complex legal arrangements to secure those offsets in perpetuity, such as positive covenants and other types of legal arrangements. So, again, that reflects circumstances where some of those mines have not entirely, I guess I would describe it as dotting the i's and crossing the t's. But for all intents and purposes, there are land-based offsets, there are conservation bonds that are in place. That is why the term "substantially finalised" has been used.

Answer

The term substantially finalised means that for all intents and purposes the offsets have been secured. The projects which meet this definition have either:

1. completed the security of all their offsets
2. completed security for the vast majority of their offsets
3. have lodged the final agreements with the relevant branch of government and are awaiting final sign-off.

The table below lists the 17 projects which have substantially finalised their offset security requirements and briefly outlines the final steps required (where relevant).

Project	Status of Biodiversity Offsets	Final Steps for Security
Bulga Open Cut Mine	All 6 offset areas for original project secured but one offset area for a recent modification (Mod 3 – approved in July 2020) is not required to be secured until July 2022.	On track to secure final property in July 2022.
Bulga Underground Mine	All biodiversity offset areas legally secured.	-
Bulli Seam Operations	All biodiversity offset areas legally secured.	-
Charbon Coal Mine	All biodiversity offset areas legally secured.	-
Duralie Coal Mine	All biodiversity offset areas legally secured.	-
Integra Underground Mine (consent transferred to Rix's Creek North Mine)	Security for one offset property finalised. Final survey plan and terms of Conservation Agreement for remaining five properties is complete and with the Biodiversity Conservation Trust (BCT) for finalisation.	On track to finalise security by 30 June 2022.
Mandalong Southern Extension Project	All biodiversity offset areas legally secured.	-
Maules Creek Coal Mine	Conservation Agreements secured covering 92% of offset area. Following reconciliation of updated mapping to secure offsets with new plant community type (PCT) mapping and to meet Commonwealth like for like offsets, a modification is proposed to finalise residual offsets.	Modification required to finalise residual offsets
Mt Arthur Open Cut Extension	All biodiversity offset areas legally secured.	-
Narrabri Coal Mine	All biodiversity offset areas legally secured.	-
Ravensworth Coal Mine	All biodiversity offset areas legally secured – detailed ground surveys of offset areas found very minor (<0.5%) discrepancy in offset areas.	-
Rocglen Extension Project	All biodiversity offset areas legally secured.	-

Project	Status of Biodiversity Offsets	Final Steps for Security
Springvale Extension Project	All biodiversity offset areas legally secured.	-
Stratford Extension Project	All biodiversity offset areas legally secured.	-
Tarrawonga Coal Mine	All biodiversity offset areas legally secured.	-
Ulan Coal Mine	All but 10 ha (0.6% of offset area) has been secured. Final 10 ha under private ownership and landowner has not agreed to secure the offset.	Modification is required for an alternative offset area for the 10-ha area.
Werris Creek Coal Mine	All biodiversity offset areas legally secured.	-

Question 13 (Page 55-6)

Mr JUSTIN FIELD: Would it be possible, Mr Gainsford, when you provide that additional information on which of the 17 are substantially finalised, that an explanation is provided for each of those?

Mr GAINSFORD: We can, Mr Field. What I would say is because there are literally scores, if not hundreds, of modifications across all of these projects, it is quite a complex environment. But, yes, I am happy to take it on notice and to try and provide some more clarity.

Mr JUSTIN FIELD: Talking about the 17, I appreciate there might be a lot of complexity in each of those, but an explanation is good because what you just said then for each would be useful and a bit of an indication, if you could, for what is the process to conclude those, because it is all well and good for you to say that—and I absolutely take you at your word on that and the use of "substantially finalised"—but in terms of meeting an obligation, some of these approvals are from a long time ago and they have not been met. I was just trying to understand how these get concluded.

For the nine that remain, where it says "nine have land set aside which is being approved in accordance with individual BMPs. Further work is underway to secure the land in perpetuity", could you provide on notice again which projects are included in that nine and whether or not they are on track or behind in the delivery of the work that is required under the BMPs? And can I ask you a question, and it might come across as well to Mr Elton, I think? I have heard that some of these offset obligations have not been secured because there are disagreements about whether or not the credits that are required to be secured through these sites are available on the sites, that they are not adequate in terms of biodiversity outcomes that were expected on those sites. Can you speak to that?

Ms GREENWAY: Perhaps if I could just answer the first part of the question, Mr Field. Yes, I am happy to take that on notice. Again, with regard to these projects that we have identified here, there are biodiversity management plans that are in place for all of those projects. I would like to see further progress made. I do not think that we have been as timely as we should be. I have asked my team to work with Biodiversity Conservation to make sure that we do not have these long delays. A lot of the delays are partly as a result of some of those complex legal arrangements that I was mentioning before in finalising the offsets for these projects; some of them are around transition—and I think that is what your second part of the question is getting to, which I will refer to Mr Elton—but, at the same time, that there are those reasons for why extensions and why some of the offsets have not been finalised and have taken so long. I am also not satisfied and I think more work needs to be done here and certainly I am committed to making sure that we can try and finalise as many of these as quickly as possible. But I might refer the rest of the question to Mr Elton.

Answer

It should be noted that there are several complex steps required to formally 'secure' land in perpetuity, and this process can take years to finalise. There are a variety of different legal mechanisms for 'securing' land-based offsets in perpetuity for the long-term and many of the approved coal mining projects are subject to transitional arrangements as they were assessed under previous regulatory arrangements (i.e. they were assessed under the previous NSW Biodiversity Offsets Policy for Major Projects and the Framework for Biodiversity Assessment which no longer exists). Nevertheless, the Department of Planning and Environment (Department) is actively working with the Environment, Energy and Science Group (EES) to provide formal security of biodiversity offsets for all approved coal mining projects across NSW as soon as possible. The table below includes the nine projects which have land set aside for offsets which are currently being managed under an approved Biodiversity Management Plan while the Applicants work to finalise the security arrangements.

Project	Offset area Identified	Offset Security Due Date	Current Status
Bengalla Coal Mine	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	30 June 2022	Applicant currently engaged in negotiations with the National Parks and Wildlife Service, the Biodiversity and Conservation Division (BCD) and BCT. Transition to the Biodiversity Conservation Act (BC Act) and the Biodiversity Assessment Method (BAM) methodology requires additional survey effort to secure offsets.
Boggabri Coal Mine	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	30 June 2022	Applicant and BCT currently negotiating requirements for conservation agreements.
Hunter Valley Operations South	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	TBC pending outcome of associated Warkworth modification application (see below)	Associated modification application for Warkworth lodged April 2021 related to offset requirements currently being assessed by the Department.
Moolarben Coal Mine Stage 1	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	31 March 2022	Original offsets required under approval secured. Applicant currently engaged in negotiations with BCD and BCT for security of offsets required under a modification. Minor boundary adjustment required prior to finalisation of conservation agreement.

Project	Offset area Identified	Offset Security Due Date	Current Status
Mount Owen Continued Operations	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	30 September 2022	BCT currently reviewing application for Biodiversity Stewardship Agreements.
Rix's Creek South	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	30 September 2022	BCT currently reviewing application for Biodiversity Stewardship Agreements.
United Wambo	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	31 January 2022	BCT currently reviewing applications for Biodiversity Stewardship Agreements.
Warkworth Coal Mine	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	TBC pending outcome of modification application	Modification application lodged April 2021 related to offset requirements currently being assessed by the Department.
Wilpingjong Extension Project	Yes – Land-based offset areas are currently being managed in accordance with an approved Biodiversity Management Plan.	31 July 2022	Applicant engaged in negotiations with local Councils about land subdivision and COVID-19 disruptions to on-ground survey works.

Question 14 (Page 56)

Mr JUSTIN FIELD: But how many coalmine projects would you get this sort of situation where you are currently considering entering into a conservation agreement but you are still doing the work to work out whether or not they are good?

Mr ELTON: There are some in relation to the Whitehaven Coal Maules Creek Mine that I am aware of. We have settled a number of the conservation agreements for that project and there are still some to be finished. So that is one that I am aware of. I am not aware of any other significant areas of concern for other mining projects, but I could take that on notice and confirm that.

Answer

There is no formal mechanism by which the Biodiversity Conservation Trust (BCT) is notified if a coal mining project has been granted an extension to achieve any biodiversity offset obligation. The BCT is aware of some cases anecdotally only.

Question 15 (Page 56-7)

The Hon. PENNY SHARPE: Hopefully, these are not too long. I actually want to go to Transport. I am not sure, Ms Dumazel, if you are able to answer this. In part of your submission, and you pointed to it a couple of times—on page 6 of Transport for NSW's submission there is some useful information in there. I do want to unpack the issues. In the second last paragraph on page 6 they say, "Since 2011, TfNSW has purchased more than \$77 million of biodiversity and biobanking credits"—accepting that is obviously under the current and the old scheme—"and expended more than \$6 million to establish agreements over land owned by TfNSW." Great, and given more than \$5.8 million to Mr Elton's organisation. They continue, "Sydney Metro has purchased a further \$12 million in biobanking credits." Then they give us some information de-identified in terms of project by project about what that has cost. Are you able to actually tell the Committee how much? It is not dissimilar to Mr Field's question. How many of those have actually been fully accounted for and retired?

Ms DUMAZEL: I will have to take that on notice.

Answer

Transport for NSW has recommended the Portfolio Committee refer this question to Transport for NSW for a full response.

Question 16 (Page 58)

Mr ELTON: Look, I do not necessarily see that, and Ms Dumazel might add to my remarks. The trend that we are seeing is that typically developers with relatively small offset obligations that may not yet be readily available in the market are paying into our fund. So we are receiving a lot of small payments.

The CHAIR: I think we heard that, for example, up and down the coast—for coastal areas instead of major projects.

Mr ELTON: Yes. We have had three or four larger payments associated with major projects but the vast majority at this stage of major project proponents are still tending to look to source credits directly in the market rather than through the BCT. Ms Dumazel might wish to add that.

Ms DUMAZEL: I cannot recall the correct percentages, but I think it is approximately 90 per cent of the offsets are done outside of that kind of payment into the fund direct.

Mr ELTON: It is 93 per cent.

Ms DUMAZEL: Thank you.

The CHAIR: Have you provided those statistics within the Government submission?

Ms DUMAZEL: No.

The CHAIR: Could they be provided on notice?

Ms DUMAZEL: Yes, I am happy to. So 93 per cent is—you know how they have the option of creating their own site, asking the neighbour, looking at the registers or paying straight into the fund.

The CHAIR: That is fine, if we can get that on notice. I just wanted to bring to your attention, Mr Elton, some of the recommendations from some of the councils that have appeared before us. I clarify as well that one council has said that they have found the Biodiversity Offsets Scheme support team—so that is probably within the department, is it?—

Answer

Please refer to the answer given on notice to the Energy and Environment Budget Estimates hearing on 26 October 2021, recorded on page 38 of the Answers to Questions on Notice uncorrected transcript.