

**INQUIRY INTO INTEGRITY OF THE NSW
BIODIVERSITY OFFSETS SCHEME**

Name: Name suppressed

Date Received: 9 August 2021

Partially
Confidential

Submission from a Concerned NSW Accredited Biodiversity Assessor

09/08/2021

Issue 1. Unresolved Issues Managing Conflict of Interest Among Assessors

I question why the NSW Government (DPIE and the BCT) has (to date) not brought in a set of black-and-white rules that prevent the same Assessor, or same company (or different companies with the same Directors) from undertaking the Biodiversity Development Assessment Report (BDAR)/Biodiversity Certification Assessment Report (BCAR) as well as the Biodiversity Stewardship Assessment Report (BSSAR) for the same property/project?

Clear cut rules could be as simple as to state....

"the Accredited Assessor can undertake a BSSAR on land where they are also undertaking a BDAR under the provision that they declare, arrange an impartial peer review and do x,y or z"

or

"the Accredited Assessor must not undertake:

- *a BSSAR on land where they are also undertaking a BDAR, or*
- *a BDAR on land where they are also undertaking a BSSAR, or*
- *a BSSAR for the purpose of generating credits which may be retired by the development assessed by a BDAR which they are also undertaking"*

Such rules would provide much needed clarity to Assessors and Developers alike.

At several industry conferences I have attended to date, DPIE and the BCT have almost 'threatened' Accredited Assessors to make sure we 'avoid conflict', yet, the same departments refuse to provide clear rules and guidelines to identify what conflicts entail, and worse, the same departments are blurring the lines of consistency between when an action is a conflict of interest or not by approving projects where the same consultancy and assessors have prepared both the BCAR/BDAR as well as the BSSAR.

How can we avoid conflict when there is no clear identification by NSW Government what conflict actually entails?

How can we avoid conflict when we are told one thing, then see Departmental agencies approving projects where such perceived conflicts exist in plain sight (i.e. the same consultancy preparing the BCAR/BDAR and the BSSAR)?

It is my understanding that many consultancies and their Accredited Assessors have, or are in the process of preparing both the BDAR/BCAR as well as the BSSAR for the same client for the same development or subdivision site. Up until recently it was my understanding that this type of activity was simply not allowed under the rules of the BAM and/or BC Act, yet, I hear time and time again that consultancies are 'getting away' with doing both assessments, and regional DPIE officers are approving this.

I believe this is unfair, as consultancies like my own have deliberately refrained from undertaking both studies for the same client, out of concerns about perceived conflict of interest. I note, these clients are clients who I (and my staff/business) have no relation to whatsoever other than on a client-consultant basis, yet I still refuse to do both the BSSAR and BDAR as it is my understanding that it is the 'right thing to do' by upholding my duties as an Accredited Assessor.

However, my business has now become financially and commercially disadvantaged by my refusing to do both the BDAR and BSSAR on the same property for the same development. To date my business has lost in excess of one hundred thousand dollars of guaranteed consulting work because I have rejected invitations to deliver both the BDAR AND the BSSAR for the same property/development.

Meanwhile, my declining of the work has allowed other companies/Accredited Assessors in the industry to gain financial advantage, and in some cases, such consultancies have ended up being awarded both the BSSAR and BDAR on the same property/site for the same client and development.

In rejecting to prepare both reports on the same property/development, my small business has lost out because I simply followed (what I thought were) 'the rules'.

DPIE has published (on their website) an extremely vague list of dot points around conflict (accessed online : <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/accredited-assessors/assessor-quality-assurance-feedback>). These dot points are vague, difficult to understand and frankly misleading.

As a result of the lack of commitment to consistent rules, the NSW Government has created an industry that is self-governed by Accredited Assessors who act upon 'chinese whispers'. An example is a current industry consensus that by simply 'declaring a perceived conflict' on the BDAR and BSSAR report for the same property, a company/Assessor instantly resolves themselves from any perceived conflict. I frankly think this is wrong. The NSW Government need to step in and prepare some clear advice/guidelines and rules to manage this issue.

If the NSW Government wish to maintain the Biodiversity Offset Scheme with integrity and positive public perception and repute, the NSW Government needs to step up and define some clear rules and guidelines detailing when perceived conflicts are unacceptable or acceptable. Particularly relating to the scenario where the same company/same assessor/company with the same director are engaged by the same client to prepare both the BDAR/BCAR and BSSAR for the same developer/property/site/project.

If the stance of the NSW Government and its departments (DPIE and BCT) is that the same consultancy/Assessor/company/Director CAN prepare both the BDAR and BSSAR for the same developer, then please make this stance clear and provide clear rules around how to facilitate such arrangements. Do not leave it up to individual Assessors, or developers to 'guess' what DPIE/BCT regard is a 'conflict of interest' and what is not. It is simply unfair and puts us a great risk.

Issue 2. Inconsistent and Flawed Assignment of Fauna to Species Credit and Ecosystem Credit Streams

The BOS includes the requirement to assess and offset 'species credit species' separately to 'species credit species'.

An 'ecosystem credit' species is one that is assumed present on both the impact (development) site, as well as the offset site, regardless of whether it is known to occur there or not. In contrast, a 'species credit' species is a species that is assumed present on the development site, but not assumed present on the offset site.

This is an important distinction as it means 'ecosystem credit species' are not afforded any of the conservation benefits as 'species credit species'.

All flora species have been afforded 'species credit' status however, animals have been inconsistently divided into 'species' and 'ecosystem' credit status.

For example, the NSW BC Act listed vulnerable Yellow-bellied Glider *Petaurus australis* is a tree-dwelling marsupial that occurs in mature forests and woodlands with abundant tree hollows. It requires tree hollows for shelter and breeding. It is listed as an 'ecosystem credit'. If a population of this species occurs in a Plant Community Type (PCT) in the location of a residential development for which a BDAR is being produced, the species can be offset simply by retiring credits of that same PCT (or vegetation trading group) through payment to the BCT or through purchase from the market. In contrast, the closely related BC Act listed vulnerable Squirrel Glider *Petaurus norfolcensis* (also a tree-dwelling marsupial that occurs in mature forests and woodlands with abundant tree hollows and requires tree hollows for shelter and breeding). Is a 'species credit' species which means that it must be surveyed-for during any general development BDAR or BCAR and can only be offset through the retiring of Squirrel Glider credits (or equivalent). Thus, the species cannot be simply offset through retiring the same PCT (or vegetation trading group), the species can only be offset through retiring Squirrel Glider credits.

Another example is as follows; the BC Act vulnerable Brown Treecreeper (eastern subspecies) (*Climacteris picumnus victoriae*) is a rare woodland bird that only occurs in open woodlands in eastern NSW. The western boundary of the range of the subspecies runs approximately through Corowa, Wagga Wagga, Temora, Forbes, Dubbo and Inverell and along this line the subspecies intergrades with the arid zone subspecies of Brown Treecreeper which then occupies the remaining parts of the state. The Brown Treecreeper (eastern subspecies) is a sedentary, territorial bird species which breeds in family groups and requires hollow-bearing trees and fallen woody debris in order to exist in a location. Brown Treecreeper are sensitive to vegetation impacts and aggressive species such as Noisy Miner *Manorina melanocephala* thus habitat which is seemingly suitable can be devoid of the Brown Treecreeper.

The BOS will result in a net loss of Brown Treecreeper (eastern subspecies) populations because this rare and declining bird is only defined as an Ecosystem credit. Under the current arrangement, a development can result in the clearing of habitat for an entire local population of the species, causing its local extinction, as long as the same or a similar PCT containing hollows is protected elsewhere. Under the BOS, it is assumed that the Brown Treecreeper occurs wherever suitable PCT and tree hollows occur, and this is frankly wrong. I have personally assessed four proposed BSA sites where Brown Treecreeper is assumed to occur, and the species is only known to occur on one of these sites, despite seemingly suitable habitat (suitable PCT containing hollows occurs). This is another failure in the BOS.

The issue with this system is the lack of consistency as follows:

1. Two species with the same threat status, and the same (or similar) habitat requirements, with reliance on the same attribute (e.g. large tree hollows) are provided different 'offset status' with no reasonable explanation or consistency.
2. A population of Yellow-bellied Glider in a patch of native vegetation can be extirpated by vegetation clearing associated with a development impact, without further consequence if a patch of same or similar vegetation containing hollows is protected in a BSA to 'ecosystem credits' even if there are no Yellow-bellied Gliders present in the offset site.
3. In contrast, a population of Squirrel Glider in the same patch of vegetation can only be impacted by a vegetation clearing associated with a development if credits generated from

the protection of another population of Squirrel Glider is protected in a BSA site and that BSA site contains hollows.

4. This system results in the following:
 - a. Net decrease in populations of Yellow-bellied Glider across NSW as the species is not being directly offset
 - b. Net maintenance in populations of Squirrel Glider across NSW as the species is being directly offset.

This system is an example of speciesism and provides no adequate rationale. It results in uneven, discriminatory loss of some species, and protection of others.

I have put together a table showing the inconsistency of the BOS in allocating species and ecosystem credits.

The system for allocating fauna to 'species' credit and 'ecosystem' credit streams is inconsistent and deeply flawed.

The system needs to be rationalised with an appropriate, consistent system applied to allocating threatened fauna species to 'ecosystem' and 'species' streams.

Table 1. Examples of Inconsistency in the assignment of Species Credit and Ecosystem Credit Fauna Species under the NSW Biodiversity Offset Scheme

Example	Species	NSW BC Act Status	Habitat the Species Reliant On	Credit Status	Status in BSA (Offset) Sites with Suitable PCT / Habitat
Birds Woodland birds <i>These three birds all share the same habitat requirements yet only one is a species credit species.</i>	Superb Parrot (<i>Polytelis swainsonii</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Open woodland ▪ Hollows for breeding 	Species Credit (breeding)	Assumed absent until confirmed present
	Brown Treecreeper (eastern subspecies) (<i>Climacteris picumnus victoriae</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Open woodland ▪ Coarse woody debris ▪ Hollows for breeding 	Ecosystem Credit	Assumed present even if absent
	Turquoise Parrot (<i>Neophema pulchella</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Open woodland ▪ Hollows for breeding 	Ecosystem Credit	Assumed present even if absent
Birds Diurnal raptors <i>These four birds all share the same habitat requirements yet only two are species credit species.</i>	Black Falcon (<i>Falco subniger</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Woodlands ▪ Tall trees near watercourses to nest in 	Ecosystem Credit	Assumed present even if absent
	Black-breasted Buzzard (<i>Hamirostra melanosternon</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Woodlands ▪ Tall trees near watercourses to nest in 	Species Credit (breeding)	Assumed absent until confirmed present
	Little Eagle (<i>Circus assimilis</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Woodlands ▪ Tall trees near watercourses to nest in 	Species Credit (breeding)	Assumed absent until confirmed present
	Spotted Harrier (<i>Circus assimilis</i>)	Vulnerable	<ul style="list-style-type: none"> ▪ Woodlands ▪ Tall trees near watercourses to nest in 	Ecosystem Credit	Assumed present even if absent
Birds Large nomadic	Black-necked Stork (<i>Ephippiorhynchus asiaticus</i>)	Endangered	<ul style="list-style-type: none"> ▪ Highly nomadic ▪ Strong nest fidelity ▪ Rare in QLD, rare in NSW 	Species Credit (breeding)	Assumed present

					even if absent
	Australian Bustard (<i>Ardeotis australis</i>)	Endangered	<ul style="list-style-type: none"> Highly nomadic Breeds wherever conditions are suitable Common in QLD, rare in NSW 	Ecosystem Credit	Assumed absent until confirmed present
Birds	White-eared Monarch (<i>Carterornis leucotis</i>)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Species Credit	Assumed absent until confirmed present
Rainforest	Rose-crowned Fruit-dove (<i>Ptilinopus regina</i>)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Ecosystem Credit	Assumed present even if absent
<i>These birds all share the same habitat requirements yet only two are species credit species.</i>	Superb Fruit-dove (<i>Ptilinopus superbus</i>)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Ecosystem Credit	Assumed present even if absent
	Wompoo Fruit-dove (<i>Ptilinopus magnificus</i>)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Ecosystem Credit	Assumed present even if absent
	Podargus ocellatus (Marbled Frogmouth)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Ecosystem Credit	Assumed present even if absent
	Alberts Lyrebird (<i>Menura alberti</i>)	Vulnerable	<ul style="list-style-type: none"> Nests in good condition rainforest Breeds only in northern NSW 	Species Credit	Assumed absent until confirmed present
Reptiles	Little Whip Snake (<i>Suta flagellum</i>)	Vulnerable	<ul style="list-style-type: none"> Natural Temperate Grasslands and grassy woodlands Also occurs in secondary grasslands derived from clearing of woodlands. Found on well drained hillsides, mostly associated with scattered loose rocks. 	Ecosystem Credit	Assumed present even if absent
Grassland Reptiles	Striped Legless Lizard (<i>Delma impar</i>)	Vulnerable	<ul style="list-style-type: none"> Natural Temperate Grasslands and grassy woodlands Also occurs in secondary grasslands derived from clearing of woodlands. Found on well drained hillsides, mostly associated with scattered loose rocks. 	Species Credit	Assumed absent until confirmed present
<i>These three reptiles all share the same habitat requirements yet species (Little Whip Snake) one has been excluded from species credit status for no good reason.</i>	Pink-tailed Worm Lizard (<i>Aprasia parapulchella</i>)	Vulnerable	<ul style="list-style-type: none"> Natural Temperate Grasslands and grassy woodlands Also occurs in secondary grasslands derived from clearing of woodlands. Found on well drained hillsides, mostly associated with scattered loose rocks. 	Species Credit	Assumed absent until confirmed present
Reptiles	Long-legged worm skink (<i>Anomalopus mackayi</i>)	Endangered	<ul style="list-style-type: none"> Western slopes in north-east NSW Under fallen timber and rocks Forest and woodland growing on cracking black clay and clay loam soils 	Ecosystem Credit	Assumed present even if absent
Brigalow Belt Reptiles					

<p>These two reptiles both share the same habitat requirements yet one has been excluded from species credit status for no good reason.</p>	<p>Dunmall's Snake (<i>Furina dunmalli</i>)</p>	<p>Not Listed</p>	<ul style="list-style-type: none"> ▪ Western slopes in north-east NSW ▪ Under fallen timber and rocks ▪ Forest and woodland growing on cracking black clay and clay loam soils 	<p>Species Credit</p>	<p>Assumed absent until confirmed present</p>
<p>Mammals</p> <p>Gliders</p> <p>These three arboreal mammals all share the same habitat requirements, yet two are species credit species, and one is an ecosystem credit species.</p>	<p>Yellow-bellied Glider (<i>Petaurus australis</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Woodlands and forests ▪ Requires large hollow-bearing trees for shelter and breeding 	<p>Ecosystem Credit</p>	<p>Assumed present even if absent</p>
	<p>Squirrel Glider (<i>Petaurus norfolcensis</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Woodlands and forests ▪ Requires large hollow-bearing trees for shelter and breeding 	<p>Species Credit</p>	<p>Assumed absent until confirmed present</p>
	<p>Greater Glider (<i>Petauroides volans</i>)</p>	<p>Not Listed</p>	<ul style="list-style-type: none"> ▪ Woodlands and forests ▪ Requires large hollow-bearing trees for shelter and breeding 	<p>Species Credit</p>	<p>Assumed absent until confirmed present</p>
<p>Mammals</p> <p>Macropods</p> <p>These four small macropods all occur in similar habitats and all 'critical weight range' mammals vulnerable to fox predation. All can be easily surveyed using cameras. Only one is a species credit, the others are ecosystem credits.</p>	<p>Rufous Bettong (<i>Aepyprymnus rufescens</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Requires dense undergrowth for shelter ▪ Critical weight range (predated by foxes) ▪ Surveyed with cameras ▪ Absent from areas of suitable habitat ▪ Not capable of extensive dispersal 	<p>Species Credit</p>	
	<p>Parma Wallaby (<i>Macropus parma</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Requires dense undergrowth for shelter ▪ Critical weight range (predated by foxes) ▪ Surveyed with cameras ▪ Absent from areas of suitable habitat ▪ Not capable of extensive dispersal 	<p>Ecosystem Credit</p>	<p>Assumed present even if absent</p>
	<p>Red-legged Pademelon (<i>Thylogale stigmatica</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Requires dense undergrowth for shelter ▪ Critical weight range (predated by foxes) ▪ Surveyed with cameras ▪ Absent from areas of suitable habitat ▪ Not capable of extensive dispersal 	<p>Ecosystem Credit</p>	<p>Assumed present even if absent</p>
	<p>Black-striped Wallaby (<i>Macropus dorsalis</i>)</p>	<p>Vulnerable</p>	<ul style="list-style-type: none"> ▪ Requires dense undergrowth for shelter ▪ Critical weight range (predated by foxes) ▪ Surveyed with cameras ▪ Absent from areas of suitable habitat ▪ Not capable of extensive dispersal 	<p>Ecosystem Credit</p>	<p>Assumed present even if absent</p>