Submission No 12

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Goulburn Mulwaree Council

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Contact: Brian Faulkner
Reference: BIODIVERSITY

The Director
Portfolio Committee No. 7 – Biodiversity inquiry
Parliament House, Macquarie Street
Sydney, NSW 2000

Dear Sir/Madam,

Subject: Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme
Submission by Goulburn Mulwaree Council

Goulburn Mulwaree Council wishes to thank the Portfolio Committee No. 7 – Planning and Environment for the opportunity to make a submission on the inquiry into the integrity of the Biodiversity Offsets Scheme.

Goulburn Mulwaree Council is located in the south east of the Southern Tablelands and enjoys a rich variety of biodiversity. Goulburn Mulwaree Council is concerned about the current legislation relating to conservation of biodiversity values and the results/impacts of its application.

The following comments are offered for consideration to some of the key questions:

A **Question: The effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales, the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight?**

A. Is the scheme halting or reversing the loss of biodiversity values?
Goulburn Mulwaree Council's experience is that the scheme is not halting or reversing the loss of biodiversity values. At best it appears to be slowing down or partially impeding the rate of clearing of native vegetation (and consequently the rate of loss of biodiversity,) but overall clearing is not being adequately compensated for and there is a continuing overall net loss of biodiversity within our Local Government Area.

The legislation relating to clearing of native vegetation is complicated and often difficult for proponents to understand. As a result, there have many been instances where landowners have cleared native vegetation because they did not understand or know that they were not allowed to do this without assessment and approval. In other cases, proponents have carried out clearing under other legislation prior to submitting Development Applications, apparently specifically to avoid BOS requirements.

This submission includes a series of recent examples experienced by Council, illustrating a range of issues relating to the BOS. Specific details have been omitted to protect privacy and confidentiality of the persons involved, but these are all genuine instances

where Council has been concerned about the BOS and its failure to address loss of biodiversity.

Example A1.
A landowner has a property that contained several hectares of Box Gum Woodland, with the dominant canopy trees being Yellow Box (*Eucalyptus melliodora*) and Blakely's Red Gum (*Eucalyptus blakelyi*).
The site had been infested with Serrated Tussock (*Nassella trichotoma*) and a variety of other weeds including African Love Grass (*Eragrostis curvula*), St John's Wort (*Hypericum perforatum*) and Paterson's Curse (*Echium plantagineum*). There was also some woody weed growth present, including some clumps of Blackberry (*Rubus fruticosus*) and large African Box Thorn (*Lycium ferocissimum*), which were providing harbour for rabbits.
Despite the weeds being present, the groundcover layer had been identified as containing a good diversity of native grasses and forbs by flora and fauna assessments conducted prior to the implementation of the Biodiversity Conservation Act 2016. Even though degraded, the site had considerable potential for restoration.
Due to the presence of the weeds, the landowner was issued with a Biosecurity Direction to control the weeds (under provisions of the Biosecurity Act 2015) and an Unkempt Land Order (under provisions of the Local Government Act 1993).
On the advice of an agronomist, the landowner applied a broad spectrum herbicide to kill the shrubs and groundcover vegetation, ploughed the land, applied fertilizers and sowed the area down to exotic pasture grasses, effectively completely eliminating the groundcover and leaving only scattered remnant canopy trees.
The landowner argued that:

- They did not know that groundcover species counted as native vegetation.
- They did not know that groundcover species were an important component of Box Gum Woodland. They believed that the definition of "woodland" only referred to trees.
- They believed that the Biosecurity Direction and the Unkempt Land Order obliged them to remove the weeds and that this could only be done by applying a broad spectrum herbicide and the other actions taken.
- They believed they were genuinely complying with requirements of the Biosecurity Act 2015 and the Local Government Act 1993. They believed these legislative instruments negated the Biodiversity Conservation Act 2016.
- They believed that pasture improvement was an allowable agricultural activity.
- They believed they were improving the land and had acted in good faith on advice from a professional agronomist.

Prior to clearing the vegetation on the site would clearly have met criteria for identification as the critically endangered ecological community White Box - Yellow Box - Blakely's Red Gum Grassy Woodland and Derived Native Grassland in the NSW North Coast, New England Tableland, Nandewar, Brigalow Belt South, Sydney Basin, South Eastern Highlands, NSW South Western Slopes, South East Corner and Riverina Bioregions.
The issue only came to light when the landowner subsequently submitted a Development Application to subdivide the land and the biodiversity assessment report identified the

previous state of the vegetation, the agricultural practices that had been applied and the current minimal biodiversity values of the site. As the groundcover had been effectively eliminated and the Biodiversity Assessment Method cannot be applied retrospectively, there was no mechanism to adequately compensate for the loss of biodiversity in this situation.

Example A2.
A landowner cleared a substantial amount of unimproved pasture (native grassland) on their property to create an access road and install stock handling facilities. They argued that this was an allowable agricultural activity under the Local Land Services Act 2013 as their land is Zoned RU1 Primary Production.
The landowner then submitted a Development Application for a dwelling, to be located precisely at the point where the new access road terminated.
If the clearing for the new access road had been included in the area calculations as part of the Development Application, the Biodiversity Offset Scheme area clearing threshold would have been triggered and a Biodiversity Development Assessment Report would have been required.
However as the clearing had already occurred, and had been justified as an allowable agricultural activity, the area clearing threshold was not triggered as part of the Development Application and a Biodiversity Development Assessment Report was not required. There has been therefore been no offsetting to compensate or mitigate for this clearing.
This process appears to be happening repeatedly on rural properties in our Local Government Area.

Example A3.
A landowner wanted to clear native vegetation along their boundary fence line. The land is zoned RU2 Rural Landscape and is a large lot. On advice from Local Land Services, the landowner was advised that they would be able to clear all trees within 15 m of each side of the boundary fence as an allowable agricultural activity under provisions of the Local Land Services Act 2013.
This was despite notification that several of the trees involved were mature Black Gums (*Eucalypus aggregata*) which is listed as vulnerable under both NSW and Commonwealth legislation. Others included very large Ribbon Gums (*Eucalyptus viminalis*), which is listed as a Koala feed tree/use tree under both State Environmental Planning Policy (Koala Habitat Management) 2020 and State Environmental Planning Policy (Koala Habitat Management) 2021.
Advice from the Commonwealth agency was also that as this an allowable activity under the Local Land Services Act 2013, a referral to the Commonwealth would not be necessary.
There was no provision for any kind of offsetting or compensation for this loss of biodiversity. This clearing activity along fence lines has since been replicated by several other property owners in the local area, so the cumulative impact on loss of local biodiversity values has been significant.
If this kind of clearing is happening across the whole of NSW, the potential cumulative loss of biodiversity on a state wide basis is enormous.
It is clear that this is but one example where the controls applying to clearing of native vegetation and hence loss of biodiversity are vastly different when comparisons are made between rural zoned land (administered under the Local Land Services Act 2013) and other zoned land (administered under the Biodiversity Conservation Act 2016).

These apparent discrepancies are particularly highlighted when adjoining properties, with almost identical vegetation and land management practices, are zoned differently, for example where one parcel of land is zoned RU2 Rural Landscape and the adjoining property is zoned E3 Environmental Management. While the owner of the land zoned RU2 can apparently clear large amounts of vegetation with little difficulty or need for approval, the owner of the land zoned E3 has a much harder time in acquiring approval and is much more likely to have to enter into the BOS and hence incur considerable expense.

Example A4.
A property owner cleared vegetation on part of their land with a bulldozer as they proposed to build a house on the site. Council received a number of complaints about the issue and when it was investigated it was determined the area that had been cleared was habitat for a critically endangered plant and that it was flagged on the Biodiversity Values Map.
This means that any application to remove the vegetation would have automatically triggered entry into the Biodiversity Offsets Scheme and the requirement for a Biodiversity Development Assessment Report, and the generation of offset requirements.
Department of Planning, Industry and Environment compliance staff, in conjunction with Council officers, investigated but it was determined that they would not be able to take action as the property owner was:

- From a non-English speaking background and had limited understanding of legislation
- Genuinely unaware of the Biodiversity Values Map and that it applied to the property
- Unaware of the potential presence of the critically endangered plant
- Did not understand that the definition of native vegetation includes groundcover species
- Did not understand that they had to seek approval to clear the area

Extract from the Biodiversity Conservation Act 2016, Part 2 Division 1:
2.4 Damaging habitat of threatened species or ecological community
(1) A person—
(a) who damages any habitat of a threatened species or threatened ecological community, and
(b) who knows that it is the habitat of any such species or community,
is guilty of an offence.
Maximum penalty—Tier 1 monetary penalty or imprisonment for 2 years, or both.
(2) A person who damages habitat of a threatened species or threatened ecological community in the course of carrying out any unlawful activity is taken to know that it was habitat of that kind unless the person establishes that the person did not know that it was habitat of that kind.

Subsequently the owner of the property commissioned an ecologist to assess the property. The ecologist's report unsurprisingly concluded that the property did not contain habitat for the endangered plant and that the plant was not present on the land. The property owner was then able to use this report to request that the property be removed from the Biodiversity Values Map, which has now occurred. This is clearly an example where the BOS has failed to halt or reverse the loss of significant biodiversity.

Example A5.
A landowner who owned a property comprising land flagged on the Biodiversity Values Map slashed the undergrowth because neighbours had complained about the fire hazard posed by “the scrub”. Following the slashing and clearing of the shrub layer and removal of all fallen timber, the landowner then stocked the property with horses for a period of several months.
The landowner then commissioned an ecologist to conduct a biodiversity assessment on the property, which was flagged on the Biodiversity Values Map because it provided potential habitat for a threatened plant species. The ecologist conducted extensive surveys correctly following threatened species guidelines and concluded that the threatened plant was not present. As a result the landowner was able to request successfully that the property be removed from the Biodiversity Values Map. The landowner then sold the property shortly after.
This example was brought to Council’s attention by the ecologist, who was informed of the prior clearing by a neighbour who was full of praise for the action of the landowner clearing out all the scrub and grazing the land down with horses. The ecologist contacted Council to raise concerns about other landowners utilising similar practices to eliminate biodiversity values from properties containing significant remnant vegetation.

B. Question: Does the BOS scheme encourage and assist landowners to protect biodiversity?

As shown by the preceding examples, Council has experienced many instances where the BOS has been ineffective in preventing loss of biodiversity and where clearing of native vegetation has occurred without any compensatory mechanism to replace losses.

Unfortunately it also seems that in some instances the BOS does nothing to encourage and assist landowners who genuinely wish to conserve biodiversity values on their land. In some instances indeed it seems to actively and unfairly punish those who cherish the natural values of their land and who aspire to protect biodiversity.

Example B1.
Council recently encountered a situation where property owners invested their life savings to purchase a 120 hectare rural property. The land is zoned RU2 Rural Landscape. The land is not flagged on the Biodiversity Values Map or the Native Vegetation Regulatory Map and the area clearing threshold for the property is 1 hectare.
The owners purchased the land on the understanding that they would be able to build a dwelling and their plans were to conserve remnant natural vegetation on the site, which comprised unimproved pasture land dotted with Snow Gums (*Eucalyptus pauciflora*).
The Statement of Environmental Effects prepared to accompany the Development Application (submitted on behalf of the owners by the builder) incorrectly stated that no native vegetation would be cleared and there would be no impacts on biodiversity. Neither the builder nor the owners were aware of the BOS or its implications at the time they submitted the Development Application.
Investigation by Council found that, although the land is not flagged on the Biodiversity Values Map or the Native Vegetation Regulatory Map, it is flagged on the Werriwa & Monaro CEEC advisory layer, as being highly likely to contain the Critically Endangered Ecological Communities: Monaro and Werriwa Tablelands Cool Temperate Grassy Woodlands.

Site investigation confirmed that the property was entirely dominated by native vegetation meeting criteria for identification as the Critically Endangered Ecological Community Werriwa Tableland Cool Temperate Grassy Woodland.
The owners of the property have now been made aware of this issue and advised that they must demonstrate that their proposal does not exceed the clearing threshold and that the must engage a qualified ecologist to conduct a Threatened Species Test of Significance (as required under Section 7.2 of the Biodiversity Conservation Act 2016).
If the proposed activity exceeds the clearing threshold and/or shows that a significant impact on the CEEC present on the site is likely, a full Biodiversity Development Assessment Report will be required to be prepared by a Biodiversity Assessment Method accredited assessor, which will also generate requirements for Biodiversity Offset Credits.
The cost of a Biodiversity Development Assessment Report alone, let alone the credits, will generate a significant cost to the proponents (in the order of several thousand dollars).
It has been suggested that the proponents investigate the option of creating a Biodiversity Stewardship Site on the property to meet their potential biodiversity offset credit requirements. The owners of the property are fully in favour of this in principle, as it was their intention all along to conserve the native vegetation. However they do not have the finances available to pay a consultant to prepare a Biodiversity Stewardship Site Assessment Report and set up a stewardship site.
The potential costs and implications of the BOS to these landowners have been absolutely devastating and this has caused immense distress. They have an extremely tight budget and are struggling to pay for the initial biodiversity assessment and Threatened Species Test of Significance.
While this is perhaps an extreme example of the BOS unfairly punishing “Mum and Dad” developers who merely want to retire to a bush block, build their dream home and live out their years surrounded by nature, it is far from being an isolated case.

Council’s experience is that the complexities and costs of implementing the BOS cause small scale proponents to experience significant financial, emotional and psychological stress, without necessarily achieving any impacts on halting or reversing loss of biodiversity.

Large scale investors and property developers on the other hand are hardly impacted as they merely view the BOS as just another hoop to jump through and pass costs on to the end consumer.

C. Question: Any other related matters.

C1. Biodiversity Assessment Method (BAM) Accredited Assessors and perceived or actual conflict of interest
Unfortunately, although the BOS aims to prevent loss of biodiversity, in reality it effectively puts a dollar value on the **cost of destroying biodiversity**. This means that BAM accredited assessors are under enormous pressure from their clients to find ways to either avoid the BOS and the need to prepare a BDAR (Biodiversity Development Assessment Report), or to minimise the cost of credits generated by the assessment process if a BDAR is unavoidable.

Goulburn Mulwaree Council has a qualified Ecologist and BAM (Biodiversity Assessment Method) accredited assessor on the staff, who is very experienced in vegetation identification and assessment, and who is not afraid to challenge suspect biodiversity assessment reports, including BDARs. This means the GMC DA assessment team is able

to rigorously assess BDARs submitted by proponents and their ecological consultants when applying for approval for any activities that are likely to impact on biodiversity. However many other Councils do not have this luxury and their DA assessment staff must rely on BDARs being prepared correctly and submitted in good faith by private consultants. The pressure put on these consultants to minimise costs for their clients surely creates a potential conflict with the aims of the BAM and the BOS to prevent loss of biodiversity?

A second potential source of conflict of interest exists where an accredited assessor is commissioned to prepare a BDAR to calculate biodiversity offset credits for a proposed activity, and then is also commissioned by the same proponent to prepare a BSSAR to set up a Biodiversity Stewardship Site to meet those offset requirements.
Clearly there is immense pressure on the assessor to minimise the credit requirements generated by the BDAR and simultaneously to maximise the credits generated by the BSSAR.

C2. BAM Accredited Assessors and flora survey skills
Biodiversity assessors accredited under the BAM are able to work in any area of NSW. There is an issue with this, as accurate plant and plant community identification is a high level skill and it can be difficult, even for experienced ecologists, to identify plants that they are not familiar with. This is partly because accurate identification via a dichotomous key usually requires presence of flowers and/or fruiting structures and most plants are only in flower for a short period of time each year. To really learn the local flora and be confident in identifying plants requires extensive experience over a number of seasons, and seeing a plant in all phases of its life cycle. It has been Council's experience that when ecological consultants (who are not familiar with the Southern Tablelands) conduct biodiversity assessments in our LGA, they frequently misidentify local plants and local plant communities. This can be problematic when assessing the biodiversity values of a site and implementing requirements of the BOS.

C3. Difficulty for Council staff to become BAM accredited.
The current requirements for BAM accreditation mean that it is extremely difficult for Council officers to become BAM accredited and develop the skills and knowledge to adequately assess BDARs. The requirements to maintain ongoing accreditation are also difficult. On the other hand, it seems to be relatively easy for private consultants to become BAM accredited, as the accreditation process relies largely on logged hours of fieldwork (not necessarily on actual demonstrated high level flora survey skills or understanding of the relevant legislation). This imbalance in the accreditation scheme needs to be addressed: Council suggests there needs to be more support provided by the Biodiversity Conservation Trust to agencies that are involved in assessing and interpreting BDARs (and other biodiversity assessment reports).

C4. Complexities of legislation relating to the BOS
As has been discussed previously, the legislation relating to impacts on biodiversity is complex and often difficult to interpret, even for experienced professionals including BAM accredited assessors. Some of the many factors that need to be considered include:

- Zoning of the land (Local Land Services Act applies to agricultural activities on rural zoned land, but Biodiversity Conservation Act applies to other land zones).
- Size of the property and the area clearing thresholds.

- What the proposed activity involves and the provisions of the Environmental Planning & Assessment Act and State Environmental Planning Policy (Infrastructure) 2007.
- Correct identification of plants, plant community types and habitat assessment.
- Detailed understanding of the biology of local threatened species, their life cycles and their habitat requirements.
- Biodiversity Values Map/Native Vegetation Regulatory Map & other mapping layers such as CEEC_NSW and Monaro Werriwa CEEC (available via the SEED portal).
- EPBC protected matters search tool, NSW BioNet Atlas and other online databases.
- Provisions of other legislation, such as Commonwealth Environment Protection and Biodiversity Conservation Act 1999, Rural Fires Act 1997, Biosecurity Act 2015, Water Management Act 2000, Roads Act 1993, State Environmental Planning Policy (Koala Habitat Management) 2020, State Environmental Planning Policy (Koala Habitat Management) 2021, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Protection of the Environment Operations Act 1997, State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011, Local Government Act 1993, Council Local Environment Plans and Council Development Control Plans.

The complexity of the factors needing to be considered when applying the BOS make it unwieldy and impractical on many levels. It is Council's experience that it is particularly onerous when applied to small lots in urban zones and that it often creates extra work and delays for Development Assessment staff for what would otherwise be relatively simple and straightforward projects. It is also Council's experience that DA assessment staff are required to spend a significant amount of time explaining and interpreting the complexities of the BOS and related legislation to proponents.

C5. Apparent conflict between provisions of the NSW Roads Act 1993 and the NSW Biodiversity Conservation Act 2016, and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
NSW ROADS ACT 1993

Section 88 TREE FELLING
A roads authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a public road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.

> *"road" includes--*
> *(a) the airspace above the surface of the road, and*
> *(b) the soil beneath the surface of the road, and*

(c) any bridge, tunnel, causeway, road-ferry, ford or other work or structure forming part of the road.

"road work" includes any kind of work, building or structure (such as a roadway, footway, bridge, tunnel, road-ferry, rest area, transitway station or service centre or rail infrastructure) that is constructed, installed or relocated on or in the vicinity of a road for the purpose of facilitating the use of the road as a road, the regulation of traffic on the road or the carriage of utility services across the road, but does not include a traffic control facility, and "carry out road work" includes carry out any activity in connection with the construction, erection, installation, maintenance, repair, removal or replacement of a road work.

Council's interpretation of this legislation has been that as the shoulder and roadside drainage system are considered to be part of the road and integral to the safe use and function of the road, road works to maintain these structures and the road in a safe and trafficable condition is permitted despite the potential harm to any threatened species that might be present in the shoulder and roadside drain. However Council has also received conflicting advice that the Roads Act 1993 is over-ridden by the Biodiversity Conservation Act 2016 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.

Clearer guidance regarding interactions between the Biodiversity Conservation Act 2016 and other legislation such as the Roads Act 1993 is needed. If the Biodiversity Conservation Act 2016 really does over rule the Roads Act 1993, this potentially has enormous implications for roads authorities charged with maintaining extensive rural road networks, where road side verges often provide potential habitat for a range of threatened species.

Within the Goulburn Mulwaree Council LGA there are a number of threatened flora species that are opportunist colonisers of recently disturbed ground, such as the Matted Bush Pea (*Pultenaea pedunculata*), the Michelago Parrot Pea (*Dillwynia glaucula*), the Few Seeded Bossiaea (*Bossiaea oligosperma*), the Delicate Pomaderris (*Pomaderris delicata*) and the Hoary Sunray (*Leucochrysum albicans* variety *tricolor*).
Council is committed to the hierarchy of avoid, minimise and mitigate impacts and strives as far as is practically feasible to protect threatened species. However, these plants may be present within a few centimetres of the sealed road edge, growing in the roadside shoulder and roadside table drain. As these roadside structures require regular maintenance, including grading and re-construction, it is impossible to avoid some impact on these threatened species.

As a rural road may consist of many kilometres of potential habitat for threatened species, at what point does the roads authority need to comply with the provisions of the Biodiversity Conservation Act 2016, the BOS and need to either prepare a SIS (Species Impact Statement) or a BDAR?

C6. The need for education of professionals, trades personnel and other stakeholders involved in land sales, property development, construction and vegetation clearing

It has been Council's experience that in general there appears to be a great lack of awareness and understanding of the BOS and its requirements amongst key stakeholders, in particular:

- Real Estate Agents
- Conveyancers
- Stock and Station Agents
- Agronomists and other agricultural consultants
- Earth works contractors/landscapers
- Builders
- Property Developers
- Arborists and tree removal contractors
- Elected councillors

The Goulburn Mulwaree LGA has large tracts of land that are dominated by remnant native vegetation. In recent years there has been a surge of interest from cashed up residents of Sydney and Canberra in purchasing cheap, rural properties in the area either for investment purposes or looking to make a “tree change”.
In many cases these people have bought properties on the advice of real estate agents (and/or other parties as listed above) that they would have no issues with clearing trees and other vegetation in developing the land.
Every week Council’s Environment and Biodiversity Assessment Officer handles calls from people reporting illegal clearing of land or from agitated land owners who have discovered that in fact they cannot clear great swathes of their property without approval and that they must comply with the provisions of the Biodiversity Conservation Act 2016 and the BOS (and other relevant legislative instruments).
There is a desperate need for the Biodiversity Conservation Trust as administrators of the BOS to run a campaign to inform, raise awareness and educate all involved in land sales and development, in particular real estate agents and conveyancers, of all requirements of the BOS.
There is also a strong case to be made for toughening compliance and potential penalty provisions to ensure that stakeholders are made more accountable for providing misleading or inaccurate advice on issues related to the BOS.

Example C1
Council’s Environment and Biodiversity Assessment Officer received a call from a person who was about to exchange contracts for purchase of block of land comprising approximately 4 hectares, located at Tallong NSW 2580.
The prospective purchasers were intending to clear the property and subdivide the land into 10 residential lots. They had been assured by a real estate agent that there would be no biodiversity issues and that Council was entirely supportive of development such as this in the local area.
Tallong is well known for providing habitat for the Tallong Midge Orchid (*Genoplesium plumosum*) which is listed as critically endangered in NSW and as endangered under Commonwealth legislation, and the Pot Bellied Greenhood Orchid (*Pterostylis ventricosa*) which is listed as critically endangered in NSW. The prospective purchasers had been advised by a local resident during a casual conversation that under due diligence that they “probably should double check with Council” before buying the property, hence the last minute phone call.
On investigation it was found that the only access point to the property is flagged on the Biodiversity Values Map and that it is indeed critical habitat for the Tallong Midge Orchid.

Attempting to construct access driveways through this area would automatically trigger entry into the BOS, both by virtue of it being flagged on the Biodiversity Values Map and because the substantial clearing required would undoubtedly have a significant impact on a critically endangered orchid species.
Secondly, the remainder of the property is dominated by extensive stands of mature Black She Oak (*Allocasuarina littoralis*) which provides key foraging habitat for both Glossy Black Cockatoos (*Calyptorhynchus lathamii*) and Gang Gang Cockatoos (*Callocephalon fimbriatum*).
Both these species are listed as vulnerable under the NSW BC Act and both are well-known from the local area. The site clearly has significant biodiversity values and clearing of this property would trigger the BOS both by triggering the area clearing threshold (0.25 hectares) and by impacting on significant habitat for threatened species.
The prospective purchasers of this block of land had absolutely no knowledge of the BOS and its implications prior to contacting Council about their intention to purchase the land.

C7. Part 5 Activities and potential conflict of interest
Activities assessed under Part 5 of the Environmental Planning and Assessment Act allow Council to be both a proponent and a determining authority. While this expedites the approval process through allowing a Council to assess the environmental impacts of a proposed activity by preparing a Review of Environmental Factors, there is clearly potential for a conflict of interest if the same agency is both the proponent and the determining authority. (Goulburn Mulwaree Council handles this issue by consulting and seeking guidance from the Department of Planning, Industry and Environment when there is any possibility of a conflict of interest, but it seems that this is a voluntary review mechanism).

C8. Inadequacy of the BOS to prevent cumulative small scale clearing
There are four triggers for entry into the BOS:

- Will the clearing impact on a declared Area of Outstanding Biodiversity Value?
- Will the clearing impact on an area flagged on the Biodiversity Values Map?
- Will the clearing exceed the area clearing threshold for the property?
- Will the clearing have a significant impact on any threatened species?

It has been Council's experience that there are many instances where landowners have cleared relatively small areas of native vegetation that do not activate any of these entry triggers into the BOS. While the amount of clearing on each individual property can be argued to be minor, the cumulative impact and loss of biodiversity across the entire LGA is significant.
As a consequence Council has now declared all trees and all native vegetation in non-rural zones under our Development Control Plan, under provisions of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, allowing a greater degree of control of small scale clearing. Prior to removing any trees or native vegetation on these properties, landowners must seek permission from Council, and valid reasons for the proposed clearing must be provided before clearing approval is granted. However this is a voluntary decision made by Council. Our recommendation would be that the Biodiversity Conservation Trust strongly encourage all councils to adopt this strategy as a measure to assist with managing and conserving local biodiversity values.

C9. Confusion over compliance enforcement and difficulty in implementation
As discussed above, the legislation relating to the protection and conservation of biodiversity in NSW is extremely complex and at times difficult to interpret, even for professionals in the industry. Not only do several legislative instruments apply, but also several regulatory agencies may have a potential role in compliance issues relating to impacts on biodiversity, including Council, Local Land Services, Department of Planning, Industry and Environment – Biodiversity & Conservation, NSW Department of Primary Industries, Water NSW, NSW Environment Protection Authority and the Commonwealth Department of Agriculture, Water and Environment.
There is a clear need for guidance from the Biodiversity Conservation Trust regarding actions to be taken concerning breaches of the BOS, impacts of various activities on biodiversity and which regulatory agencies have the primary compliance role in each scenario.
Secondly, it is abundantly clear that regardless of which regulatory agency is involved in any particular scenario, that there are insufficient staff available to investigate and follow up on illegal clearing activities within a timely and efficient manner. As a consequence there is by necessity a "triage system" adopted by hard pressed compliance officers, where focus is placed on the most urgent or important cases and often apparently minor breaches are not addressed.
Once again, this results in a cumulative negative impact, where repeated small-scale clearing is leading to an overall loss of biodiversity both within our LGA and across the state of NSW as a whole.

C10. Resources to communicate BOS related legislation to the general public
As discussed previously in this submission, Council's Environment and Biodiversity Assessment Officer fields numerous calls each week from members of the public seeking clarification regarding permission to clear native vegetation and the requirements of the BOS, particularly with regard to submitting development applications.
The officer concerned has developed an "in-house" guide to assist with explaining the requirements for initial biodiversity assessment, preparation of a SEE (Statement of Environmental Effects), the triggers for the BOS and what is involved in the preparation of a BDAR. Presumably this has been replicated by other Councils across the state.
However it would be extremely useful for the Biodiversity Conservation Trust to prepare a user-friendly, downloadable guide for proponents, written in plain English.
This could be modelled on "Your guide to the DA process", available through the NSW Planning Industry and Environment website:
www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Your-guide-to-the-DA-process

C11. The BOS support team
Council has found the BOS support team at all times to be extremely professional, helpful and a pleasure to deal with. However it is also abundantly clear that the BOS support team are understaffed and that they have an enormous backlog volume of work to deal with. This often leads to delays in response times.
It is our strong recommendation that further resources are allocated to the BOS support team to facilitate them in administering the BOS.

Goulburn Mulwaree Council consents to this submission and the name of the signatory being made available to the public. Should any further information be required, please contact Goulburn Mulwaree Council Environment and Biodiversity Assessment Officer Brian Faulkner: Phone: , Email:

Yours faithfully

Kate Wooll
Business Manager Strategic Planning