

**Submission
No 13**

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Coffs Harbour City Council

Date Received: 23 August 2021

**SUBMISSION BY COFFS HARBOUR CITY COUNCIL TO THE LEGISLATIVE
COUNCIL - INQUIRY INTO THE INTEGRITY OF THE NSW BIODIVERSITY
OFFSETS SCHEME
AUGUST 2021**

This submission has been prepared by Council officers at the Coffs Harbour City Council, for lodgement with the NSW Legislative Council's Portfolio Committee No. 7, as a response to the inquiry into the integrity of the NSW Biodiversity Offsets Scheme, the consultation period closes on 31 August 2021.

This submission can be made public and identified as being by Coffs Harbour City Council.

Terms of Reference

1. That Portfolio Committee No. 7 - Environment and Planning inquire into and report on the integrity of the NSW Biodiversity Offsets Scheme, and in particular:

(a) 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,

(b) the use of offsets by the NSW Government for major projects and strategic approvals,

(c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and

(d) any other related matters.

Submission

(a) the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales,

In relation to the avoidance of impacts via the Part 4 development application process under the *Environmental Planning and Assessment Act 1979* (EP&A Act), Coffs Harbour City Council has found that the scheme is an improvement on the previous *Threatened Species Conservation Act 1995* where development very rarely triggered a Significant Impact Statement.

Council has found that development can be encouraged to avoid impacts as the additional costs of entering the Biodiversity Offset Scheme (BOS), both by preparing the required ecology reports and then retiring the credits, can be formidable and applicants tend to want the easiest path possible to a determination.

Council has also utilised the BOS to good effect in strategic planning when preparing planning proposals under Part 3 of the EP&A Act. Again applicants can be encouraged to find designs that will avoid entering the BOS at later development application stages.

This approach by Council to promote avoidance of impacts has so far yielded very few development applications that require entry into the BOS and in this regard the scheme has been effective at the local level.

Council does have concerns with the lack of a robust credit market, particularly outside the metropolitan centres. This results in developments in regional areas being approved in the knowledge that it is highly unlikely that the required credits are going to be retired in the same bio-region. Additionally, the continued increases in the value of coastal real estate mean that popular coastal areas are likely to become a biodiversity sink with credits being retired in less costly areas. The lack of robust credit market also makes the full cost of development hard to anticipate.

Council also has concerns with the lack of willingness by the NSW government to accept data from Council to update the NSW Biodiversity Values Map. As per s7.3(3)(j) of the *Biodiversity Conservation Regulation 2017*, Councils can submit data to the Minister for inclusion in the map. Council has formally requested that threatened species data held by Council be included to improve the NSW Biodiversity Values Map. Unfortunately, Council has been told that the NSW Government is not ready for any data to be submitted by local government.

There have been many media reports about the wide scale clearing that has occurred under the biodiversity reforms, particularly in rural areas. In recent years, Council has also raised concerns about the loss of habitat in rural areas though a number of submissions including:

- the review of State Environmental Planning Policy 44, December 2016;
- the development of a NSW Koala Strategy, February 2017;
- the draft Koala Habitat Protection Guidelines, March 2020;
- the draft Private Native Forestry (PNF) Codes of Practice, April 2020; and
- the Inquiry into the Local Land Services Amendment (Miscellaneous) Bill 2020, January 2021.

Vegetation removal in rural areas under the *Local Land Services Act 2013* (LLS Act) is not subject to the same level of oversight or offsets as for the Biodiversity Offsets Scheme and even when set aside areas are required they are not enforced as compliance resources are severely limited.

Removal of large amounts of vegetation is also occurring via Private Native Forestry agreements that are approved without even a basic flora and fauna report and are exempt from any offsets calculated by the BOS or from set aside areas under the LLS Act.

(a) *cont...*the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,

There is little meaningful information available regarding the administration of the BOS by the Biodiversity Conservation Trust (BCT).

It would assist councils if an annual report on a LGA basis could be generated that detailed the Ecosystem and Species credits generated and retired. Councils could then review local Development Control Plan and Local Environmental Plan provisions to better reflect the biodiversity values in need of increased protection. This information may also be used to assess the cumulative impacts of the BOS itself and should be made publically available to ensure that the efficacy of the BOS is able to be determined.

The BCT is also responsible for the assessment and administration of Biodiversity Stewardship Sites. Council has received feedback from landholders that establishing stewardships sites is complex, costly and outside the capacity of most landholders.

Additionally, given the lack of trading in the credit market, it is difficult for landholders to approximate the financial incentives. The BCT should be better resourced to assist landholders through this complex and costly process if the NSW Government wants this program to be successful.

(b) the use of offsets by the NSW Government for major projects and strategic approvals,

While information regarding offsetting is available on a project by project basis a collated yearly report would inform the community on the outcomes for offsetting in relation to major projects and strategic approvals.

(c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, and

As already discussed the lack of a robust credit market makes financial decisions difficult both in relation to estimating the cost of development and when considering the viability of creating a Biodiversity Stewardship Site.

(d) any other related matters.

The BOS is overly complex and difficult to navigate even for those who have had specific training. It has been noted that proponents and Council staff are forced to rely on limited resources to provide information and undertake the required assessment.

Trigger and entry into the BOS may be easily avoided through the staging of development or in rural areas, via clearing permitted under the LLS Act prior to biodiversity assessment and lodgement. Such manipulation of the BOS results in a lack of understanding of the overall impacts, as they are incorrectly measured through a piecemeal approach rather than being avoided or minimised.