

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Yancoal Australia Ltd

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Ms Cate Faehrmann, MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Cate,

INQUIRY INTO THE INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME – YANCOAL SUBMISSION

We understand the NSW Legislative Council is examining the integrity of the NSW Biodiversity Offsets Scheme, 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.*

Yancoal is a proponent of various major projects in NSW and has extensive experience with the current and previous biodiversity offset schemes in NSW, as well as offset schemes in other Australian States and under the Federal environment legislation. Thank you for the opportunity to provide a submission to the inquiry.

Summary of Yancoal Comments

We have **material reservations** regarding the current NSW Biodiversity Offset Scheme and its **effectiveness in achieving positive biodiversity outcomes**. Our primary reservations are as follows:

- Development of a Biodiversity Stewardship Application has very high upfront costs, which creates a barrier to entry and limits participation in the scheme. This artificially constrains the amount of land and credits available in the biodiversity offsets system and therefore results in a system with artificially inflated credit prices that is exploitable by a small minority with the expertise to navigate it.
- The credit calculator is overly complex and was not sufficiently tested prior to implementation. As a result, the credit calculator often drives perverse biodiversity outcomes.
- The complexity of the application process is resource-intensive for NSW regulatory bodies. Significant processing times for applications result in delays to the protection and enhancement of biodiversity offset lands.
- The total fund deposit does not promote use of the Biodiversity Stewardship system, is prohibitively expensive and may result in biodiversity management being materially and unnecessarily delayed.
- There is a lack of transparency and oversight of changes to the credit calculator and survey guidelines.

Due to the above, the Biodiversity Offset Scheme has failed to establish an efficient market for biodiversity offset credits. This has artificially increased the value of credits and the associated cost of paying into the fund, which significantly deters industry development and investment.

Further information regarding each of these points is provided below.

Upfront Costs and Barriers to Entry

Section 1.2 of the *Biodiversity Conservation Act 2016* outlines the Purpose of the Act, including to “*encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity*”.

The *Biodiversity Assessment Method* (176 pages) is supported by three stages of operational manuals (totaling a further 157 pages), which are further supported by over 20 guidelines and policies. Landholders are required to obtain expert advice from:

- accredited biodiversity assessors who collect flora and fauna data in accordance with the strict guideline requirements;
- experts in the fields of conservation land management, including fire, weed and pest management, to determine ongoing land management requirements and costs;
- lawyers to provide advice on issues of land title, land eligibility and other legal matters; and
- accountants to advise on tax implications of entering conservation agreements.

These expert fees cost **hundreds of thousands of dollars** and their advice could at any point preclude the land from being suitable as a biodiversity offset, rendering any prior expenditure fruitless.

This represents a significant barrier to entry and limits landholder participation in the scheme, which results in **less land being set aside for biodiversity offsets**. This also decreases the number of offset credits generated for the market, which artificially inflates the value of the offset credits generated by the minority of landholders with either the funds, or the expertise required to navigate the scheme.

Biodiversity Credit Calculator

The biodiversity credit calculator is perceived by most participants in the biodiversity offset scheme (including regulators) as a ‘black box’ due to the complexity of the Biodiversity Assessment Method (i.e. some 30+ equations are applied to more than 15 different vegetation attributes to determine the number of credits generated by each vegetation community in an offset area).

A failure by regulators to fundamentally understand and adequately test the calculator prior to implementation has resulted in it driving a variety of perverse biodiversity outcomes, including for example:

- Discouraging active restoration as it generates very few offset credits. Restoration risk weightings applied to the potential success of tree plantings results in these activities generating disproportionately low credits and discouraging landholders from implementing tree planting programs.
- Calculating fauna species credits based on improvements in vegetation integrity, which may be unrelated to the quality of the habitat for many species. Credits for animal species that favour rocky habitats are influenced by unrelated plant growth.
- Placing far too much weight on seasonal litter cover in derived native grassland communities, as it is the only vegetation attribute that affects the number of credits required/generated in these communities. Appropriate weighting should apply to the structure and composition of vegetation.

Application Processing Times

The *Biodiversity Offset Payment Calculator Technical Review [Extract]* prepared by EY Port Jackson Partners (30 September 2020) states (emphasis added):

Biodiversity Stewardships Agreements can take up to three years from inception to come into existence. There is a longer lag still from the time when landholders first consider entering a BSA.

In Yancoal's experience, the biodiversity offset application process can **exceed five years**. This significantly delays the security and protection of biodiversity offset lands and, potentially, the commencement of developments.

For landholders looking to place their biodiversity credits on the market, there would be a longer lag still until the credits can be sold and the application costs recouped. This acts as a further deterrent to participation in the Biodiversity Offset Scheme.

Function of the Total Fund Deposit

The management of Biodiversity Stewardship Sites is funded by a large, upfront 'total fund deposit', which is "*the amount of money that needs to be invested in the present time for management of a stewardship site into the future*".

The total fund deposit is calculated using a spreadsheet developed by the Biodiversity Conservation Trust. Guidance material published by the Biodiversity Conservation Trust drives the inclusion of overly conservative cost estimates in the total fund deposit spreadsheet, which increases the costs of the application and artificially increases the value of offset credits.

In addition, the annual expenditure payments are required to be discounted at a rate approaching the government's risk-free discount rate (2.6%) to derive the total fund deposit, whereas most proponents utilise a weighted average cost of capital (WACC) of 8-10%. The very low discount rate applied massively inflates the total fund deposit, significantly detracting from the commercial robustness of the scheme.

The total fund deposit is paid to the Biodiversity Conservation Trust progressively as offset credits are retired/sold. The Biodiversity Conservation Trust does not release yearly payments to owners of Biodiversity Stewardship Sites until 100% of the total fund deposit has been paid (i.e. 100% of credits retired). Active management of the offset property is not required until yearly payments commence, so biodiversity offset properties are not managed appropriately whilst surplus offset credits remain unsold. **Where there is a lack of demand for a specific type of offset credit, delays to the commencement of active management of the offset property could continue for an extended period of time, or indefinitely.**

The size of the total fund deposit and delays to the receipt of annual management payments discourages developers that have existing offset obligations from participating in the biodiversity offset scheme. It also does not account for situations where developers may have existing obligations (e.g. under a Development Consent) to manage biodiversity offset properties that they own. The biodiversity offset scheme should permit developers to defer payment of the total fund deposit whilst they are bound (e.g. by a Development Consent) to manage offset properties that they own. The total fund deposit could then be paid when the land is either sold to a third party or on retirement of the Development Consent. This would maintain the legal obligation for the management of the land in perpetuity and avoid unnecessary delays in the commencement of biodiversity management activities. It would also provide an opportunity to measure the biodiversity values of the offset land prior to and following the implementation of biodiversity management activities, so that offset credits could be generated based on the achievement of actual biodiversity outcomes rather than predictions from the credit calculator.

Lack of Transparency and Oversight

NSW regulatory agencies frequently release new guidance material, updates to the credit calculator or amendments to the required survey methodology for threatened species without consulting industry stakeholders. These changes can have a material effect on biodiversity assessment reports prepared for new developments and Biodiversity Stewardship Sites, including affecting the number of credits required/generated.

Continuous tinkering by the regulatory agencies increases uncertainty in the biodiversity offset scheme, undermines confidence in the system and further discourages participation by landholders and industry. It also increases the costs involved in preparing applications as re-work is required to address ever-changing assessment requirements.

Yours sincerely,

Mark Jacobs

Executive General Manager – Environment & Community
Yancoal Australia Ltd