

Submission
No 22

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Kempsey Shire Council

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31 August 2021

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Dear Ms Faehrmann

**RE: SUBMISSION BY KEMPSEY SHIRE COUNCIL TO THE INQUIRY INTO THE INTEGRITY OF
THE NSW BIODIVERSITY OFFSETS SCHEME**

Kempsey Shire Council (KSC) welcomes the opportunity to comment and provide information regarding the integrity of the NSW Biodiversity Offsets Scheme (BOS).

Please find attached KSC's submission, which has been prepared by Council officers 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.

As a consent authority administering the BOS, KSC officers have commented on the Terms of Reference 1 (a), (b), (c) and (d) as they relate to Council matters. This submission can be made public and identified as being by KSC.

Yours sincerely

Craig Milburn
General Manager



Submission by Kempsey Shire Council to the Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme August 2021

General

This submission has been prepared by Council officers at Kempsey Shire Council (KSC) 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 KSC.

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.

KSC welcomes the opportunity to comment and provide information regarding the integrity of the NSW Biodiversity Offsets Scheme (BOS). As a consent authority administering the BOS, KSC officers have commented on 1 (a), (b), (c) and (d) as they relate to Council matters.

(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 effectiveness of the BOS to halt or reverse the loss of biodiversity values is currently unable to be quantified. The DPIE describes biodiversity offsetting as *'based on the theory that biodiversity values gained at an offset site will compensate for biodiversity values lost to development at another location to achieve a standard of 'no net loss' of biodiversity'*¹. The BOS requires Proponents of developments to use the 'avoid, minimise, offset' hierarchy sequentially to eliminate impacts or if this is not possible, provide a more acceptable impact. If there are unavoidable biodiversity impacts from a development, an offset credit obligation is

¹ DPIE, 2021. How does the BOS work? Available at: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/how-the-biodiversity-offsets-scheme-works#:~:text=Biodiversity%20offsetting%20is%20based%20on%20the%20theory%20that,a%20standard%20of%20%E2%80%98no%20net%20loss%E2%80%99%20of%20biodiversity>.

generated. Proponents of a development can then meet their offset credit obligations in one of three ways:

1. Establish a Biodiversity Stewardship Site;
2. Purchase offset credits on the market; or
3. Pay into the BOS fund via the BCT.

KSC has found that Proponents of most developments which require an offset credit obligation in Kempsey LGA choose to meet their offset credit obligations via the payment of offset credits into the BOS fund (via the BCT). While paying into the BOS fund is the most expensive option, it is also currently the most efficient for Proponents. This is due to the time and cost associated with establishing a Biodiversity Stewardship Site and the challenges associated with the purchase of offset credits in the current credit market.

Establishing a Biodiversity Stewardship Site requires an assessment report and management plan (including ecosystem credits and species credit surveys) which can range anywhere from \$50,000 to \$100,000 and can take between 12 to 15 months to complete². Assuming no further documentation or amendments are required by the BCT post lodgement, the Biodiversity Stewardship Site requires intensive management for at least the first five years with ongoing site maintenance and monitoring to ensure the site is successful. There are also several elements and associated fees under the BOS as set out in the Biodiversity Conservation Regulation 2017, with moderate adjustments each financial year (Table 1).

Table 1: Biodiversity Conservation Trust lodgement and reporting fees 2021-22

Transaction	Fees 2020-2021	Fees 2021-22
Application to become an accredited assessor	\$210	\$212
Accreditation term fee (3 years duration)	\$315	\$318
Transfer of biodiversity credit	\$1575	\$1590
Retirement of biodiversity credit	\$1575	\$1590
Application to enter biodiversity stewardship agreement	\$2625	\$2650
Application to vary biodiversity stewardship agreement – to create additional credits	\$6825	\$6890

² This information was provided in a report prepared for Mid North Coast Joint Organisation as part of the Biodiversity Stewardship Project in July 2021.

Transaction	Fees 2020-2021	Fees 2021-22
Application to vary biodiversity stewardship agreement – to include additional owners	\$11,025	\$11,130
Application to vary biodiversity stewardship agreement – any other case	\$1575	\$1590
Annual administration contribution – owners of biodiversity stewardship sites	\$1575	\$1590
Request for termination of agreement	\$2625	\$2650
Application for biodiversity certification	\$5250. For proposals over 100 hectares, an additional \$1050 applies plus \$1050 for each 100 hectares that exceeds 100 hectares.	\$5300. For proposals over 100 hectares, an additional \$1060 applies plus \$1060 for each 100 hectares that exceeds 100 hectares.

Table Source: BOS fees. Available at: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/resources-tools-and-systems/scheme-fees>

Currently, the offsets credit market is limited. The demand for offset credits and the value of each offset credit is critical information for Proponents to assess the feasibility of establishing a biodiversity stewardship site. This information is currently extremely limited with little to no trading data available for our region under the Spot Price Index (SPI)³. According to a recent webinar delivered by the DPIE/BCT (held on Thursday 17 June 2021) entitled "A new approach to establishing the developer charge for payments into the Biodiversity Conservation Fund"⁴, 952 species credits and 310 ecosystem credits transactions within the BOS trading market have no trades. Of those offset credits that have been sold, most have occurred within the Greater Sydney Region. As the BOS develops, trades may increase and better information may be available to guide the process for potential participants, however at present KSC notes Proponents are choosing to meet their offset credit obligations via the payment of offset credits into the BOS fund (via the BCT).

Once a Proponent has satisfied their obligation to retire their offset credit obligations (as per section 6.30(1) of the BC Act), the obligation to procure the offset credits then transfers to the BCT. It is uncertain when (or if) offset credits from developments have been secured under the BOP for the same biodiversity values that have been lost to an approved development. It

³ This information was provided in a report prepared for Mid North Coast Joint Organisation as part of the Biodiversity Stewardship Project in July 2021.

⁴ Webinar available through DPIE Training and Education. Available at: <https://vimeo.com/showcase/6271450/video/565927652>



is also uncertain where (or if) offset credits will occur i.e. within our LGA, our region or elsewhere entirely.

In addition, KSC has found that single property owners are often amenable to designing their projects to avoid impacts to biodiversity at the outset. It should be noted that the cost of undertaking ecological reports required for development activities under the threshold to entry into the BOS can be prohibitive to single property owners, let alone the additional costs that would be required to enter the BOS (as outlined above). The approach by KSC to promote avoidance of impacts has an effect at the local level but can't necessarily be directly attributed to the BOS itself.

the role of the Biodiversity Conservation Trust in administering and whether the Trust is subject to adequate transparency and oversight,

The administration of the BOS is exceedingly complex and difficult to navigate, even for those who are accredited assessors under the BC Act. Limited information has been provided to KSC regarding the administration of the BOS either by the DPIE or the BCT. KSC notes that both Proponents and Council staff are expected to rely on limited resources to provide information and undertake the required assessments for the BOS. Recent changes to the Biodiversity Assessment Method (BAM) have created further confusion and time delays to assess development applications. This has been driven largely by on-going inconsistencies within submitted Biodiversity Development Assessment Report's (BDAR's) and application of the numerous legislative changes currently associated with development in NSW. Although the Department of Planning, Industry and Environment (DPIE) initiated BOS Support – a series of webinars to support accredited assessors and local government in implementing the BOS; most webinars are focussed on accredited assessors.

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

Information on the offset requirements for NSW Government major projects and strategic approvals is available to KSC on a project-by-project basis. However as previously outlined; the Proponents of most developments which require an offset credit obligation in Kempsey LGA have chosen to meet their offset credit obligations via the payment of biodiversity credits into the BOS fund (via the BCT). As part of the certification of the development, KSC requires the Proponent to provide evidence that they have satisfied their obligation to retire their offset credit obligations (as per section 6.30(1) of the BC Act). This occurs via the production of a '*Statement confirming payment into the BCT fund for an offset obligation*' pursuant to section 6.33 of the BC Act and is supplied to the Proponent by the BCT. The obligation to procure the offset credits then transfers to the BCT.

Currently, limited information is available to KSC, or our community; on the type, number, location, status or timing of offset credits secured under the Biodiversity Offsets Program (BOP) – the program responsible for securing biodiversity offsets on behalf of development proponents.

While KSC has sought spatial data of current BCT agreements in our LGA via DPIE's information management unit, the dataset is limited to wildlife refuges, in perpetuity agreements and termed agreements. It is therefore uncertain when (or if) offset credits from major projects have been secured under the BOP for the same biodiversity values that have



been lost to an approved development. It is also uncertain where (or if) offset credits will occur i.e., within our LGA, our region or elsewhere.

KSC recommends that information is made publicly available on the type, number, location, status of offset credits secured under the BOS for our LGA. This information could then be used by KSC in updates to our DCP and LEP provisions to better reflect the status of biodiversity values within our LGA.

(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

While there is opportunity for private landowners to engage in the BOS, as outlined in response to (a), the costs associated with establishing a biodiversity stewardship site are prohibitive for most private landholders.

KSC notes opportunities exists in Kempsey LGA for the establishment of biodiversity stewardship sites on private land to assist in meeting the current shortfall in offset credits in the market. However, KSC recommends the BCT work with private landholders to close the current financial barrier to entry into the BOS.

(d) any other related matters.

The relationship between BOS and other legislative instruments

The relationship between the BOS and State Environmental Planning Policy (SEPP) Koala Habitat Protection 2020/2021 remains unclear. For example, an offset may be required under the SEPP Habitat Protection 2020/2021 and under the BOS. This could be viewed as 'double dipping'. Given an offset obligation is a 'retired credit' into the BCT, offsets within the LGA where the biodiversity is lost, should be more clearly articulated to the decision-making authority in that LGA.

The relationship between the BOS and the *Local Land Services Act 2013* (LLS Act) remains unclear. In rural areas, there is the potential for Proponents to avoid entry into the BOS by undertaking clearing of native vegetation permitted under the LLS Act and under Private Native Forestry (PNF) prior to lodging a biodiversity assessment. Vegetation removal under the LLS Act is not currently subject to the same level of oversight or offset requirements as it is the for the BOS. KSC recommends further guidance is required on how previous clearing of native vegetation should be considered in relation to the BOS.