

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

Name: Name suppressed

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Submission to the NSW Portfolio Committee No. 7 regarding the Inquiry into the integrity of the NSW Biodiversity Offsets Scheme

BACKGROUND

I am ecologist with more than 30 years' experience in the flora, fauna and ecosystems of north west NSW. As an ecologist I care about sustainable land management that supports the maintenance/protection of our native plant and animal populations. Our native species and the ecosystems they form provide an important range of ecosystem services (clean water, oxygen production, recycling of nutrients, pollination, pest control and maintenance of soil structure/fertility). Services that are essential to the on-going success of our agricultural industries and possibly more so in a changing climate.

I have also been an assessor for numerous areas on private land proposed for Voluntary Conservation Agreements/Wildlife Refuges, previously under the NSW *National Parks and Wildlife Act 1974* and now under the NSW *Biodiversity Conservation Act 2016* (BC Act). I have also acted as an expert witness in numerous compliance actions regarding illegal clearing of native vegetation under NSW and Commonwealth legislation.

I thank you for this opportunity to make a submission to this inquiry.

SUBMISSION

Terms of Reference

- (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,***

The effectiveness of the scheme to halt or reverse the loss of biodiversity values,

As stated on the DPIE website: *'Biodiversity offsetting is 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'.*

This premise is absolutely false in practice. The biodiversity offset scheme currently in place for developments in NSW and Australia does NOT enhance or even maintain biodiversity values at a site or landscape scale. Nor does it protect species' populations (threatened or otherwise) from extinction either at a local or landscape scale (ie compensate for the biodiversity values lost to development).

Removing one area of extant vegetation with all its habitat values in exchange for:

- marginal gains achieved by changes in management in remaining areas of extant vegetation, or
- replanting of a second area where some habitat values may not be achieved for over 100 years (ie tree hollows), or
- paying money into the Biodiversity Conservation Fund for captive breeding programs research or education,

is extremely problematic and unlikely to be successful in the recovery of our threaten species/ecosystems.

Any vegetation community that regrows or replaces that which has been cleared, whether natural regeneration or planted, does not usually replace the communities that have been lost. Even if the original plant community is allowed to naturally regenerate, it often starts as an unnaturally dense monoculture and takes many decades, if not hundreds of years, to develop the same community of mixed-age trees and habitat values (fallen logs, tree hollows, species composition and soil biota).

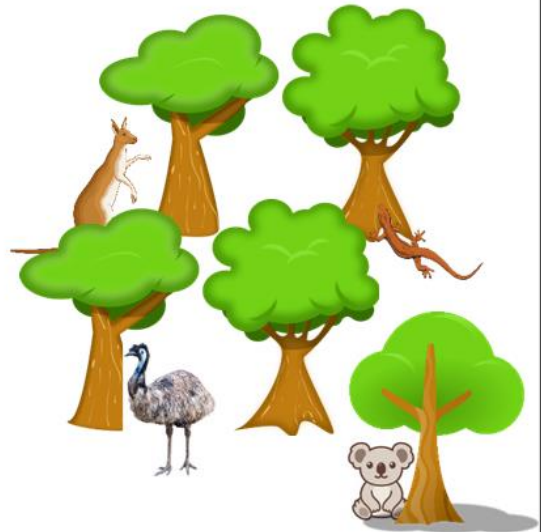
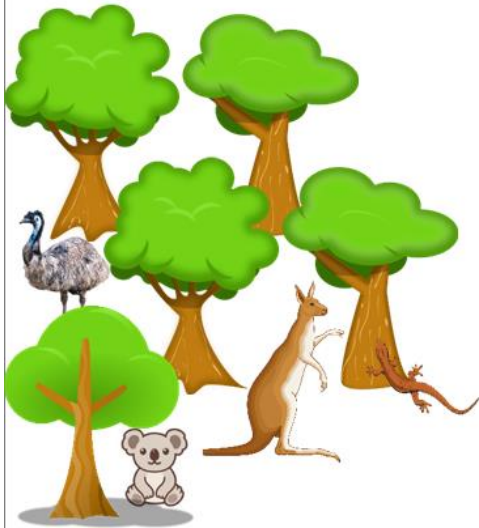
Simple mathematics tells you that one patch of extant vegetation plus another patch of extant vegetation equals two patches of vegetation. If you remove one patch for development, even with a change in the management of the remaining patch, you only have one remnant habitat patch (refer Figure 1). Proof of this simple mathematical function, and the detrimental effect this offsetting policy is having on the environment, is evidenced by the continuing declining status of our threatened species, including iconic species such as the koala.

The fallacy in the theory of biodiversity offsets is that wildlife (in particular animals) is capable of moving from the patch targetted for clearing to some other patch of remnant habitat. But as a result of the last 230 years European management, land clearing and offsetting occurs in an already highly cleared and fragmented landscape. Across NSW, patches of remnant vegetation/habitat generally lie in an extensive matrix of land cleared for urban and agricultural development. Consequently, only highly mobile species capable of crossing the gaps between habitat patches can move. These include; medium to large birds (magpies, eagles, ravens), large reptiles (goannas) and large mammals (flying foxes, kangaroos). Smaller and/or less mobile species including; small birds (wrens, warblers, thornbills, robins, willie wagtails), small/medium reptiles (skinks, geckos, turtles, pale-headed snakes), small/medium mammals (dunnarts, planigales, antechinus, koalas, long-eared microbats) and amphibians often cannot cross the gaps between habitat patches in the landscape. So many of these smaller, less mobile species die in the clearing process, or shortly thereafter due to a lack of food, shelter and/or increased predation.

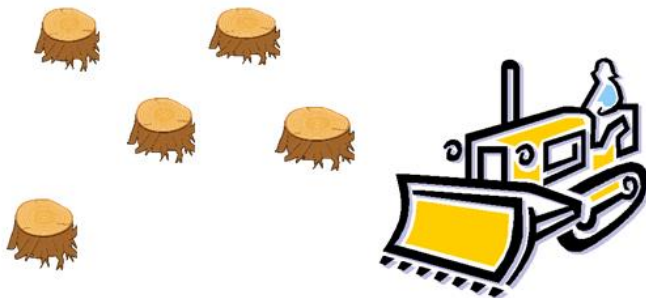
However, the story doesn't end there. Any animal refugees that succeed in reaching distant remnant habitat patches (that may or may not be offsets) are then confronted with the existing animal residents in that patch. As a consequence, there is increased competition/conflict between the resident and refugee populations for the resources available (tree hollows, nesting sites, fallen logs, food species etc). This in turn results in increased stress and disease, not only in the refugee populations that escaped the clearing but in the resident population. Basically, it is an all-round lose-lose situation.

FIGURE 1:

Before Biodiversity Offsetting



After Biodiversity Offsetting



All that happens in reality as a result of the BOS, is that more areas of extant native vegetation and habitat are lost, along with their resident suite of species (plants and animals), habitat fragmentation is increased and essential wildlife resources (food, shelter, breeding sites, places to grow and pollinate) are depleted, resulting in declines in all remaining wildlife populations.

Additionally, it is difficult to see how the BOS can reverse the loss of biodiversity when any conservation agreement between a private landholder and the government can be terminated by the Minister, at the Minister's discretion, and without the consent of the owner/s under sections 5.16(6) and 5.18(1) BC Act¹. This clause ensures development by a public authority or activities authorised by a mining and petroleum development are NOT affected by any existing conservation agreement. Very convenient for the Government and developers, but does nothing for maintaining or improving the biodiversity of NSW.

An example of failure of the Biodiversity Offset Scheme to provide adequately offsets for a Critically Endangered Ecological Community

Less than 5% of the *White Box Yellow Box Blakely's Red Gum Grassy Woodlands and Derived Native Grasslands* (aka grassy box-gum woodland) a Critically Endangered Ecological Community (CEEC) listed under both NSW and Commonwealth legislation remains across Australia (NSW Threatened Species Scientific Committee 2020). Yet the NSW and Commonwealth biodiversity offset schemes allow the continuing clearing of this community in exchange for dubious management/protection/replanting of other areas which may or may not be, or have previously been, this CEEC.

The dubious nature of offsets with regards to management/protection/replanting is based on my extensive knowledge of this community and experience in auditing a particular set of offset areas for the Environmental Defenders Office. This audit involved ground-truthing areas mapped as grassy box-gum woodland CEEC by the proponent's consultant, and subsequently purchased as an offset for a mining development near Boggabri. Our audit clearly demonstrated that less than 29% of the area they claimed was the grassy box woodland CEEC, was actually the CEEC. So, 71% of the area mapped and accepted by NSW and Commonwealth Government agencies in their approval of the development is NOT the CEEC. Basically, the consultant hired by the mining company lied in their assessment of the offset areas, and no suitable field checking by the responsible government agencies was undertaken prior to approval of the development.

In my opinion, if Australian governments were serious about recovering grassy box-gum woodland CEEC then no more clearing of this community would be permitted, and management/protection/replanting of other areas would be more actively encouraged to increase the extent and quality of what remains of this ecological community.

¹**Section 5.16 (6) (BC Act):** *The Minister may, by notification in the public register of private land conservation agreements under Part 9, vary or terminate the biodiversity stewardship agreement relating to a biodiversity stewardship site without the consent of the owner of the site if consent to development is granted under this section and the variation or termination is necessary to enable the public authority to carry out the development.*

Section 5.18 (1) (BC Act): *The Minister may, by notification in the public register of private land conservation agreements under Part 9, vary or terminate a biodiversity stewardship agreement without the consent of the owner of the biodiversity stewardship site if a mining or petroleum authority is or has been granted in respect of the site and the Minister is of the opinion that the activity authorised by the mining or petroleum authority—*

- (a) will adversely affect any management actions that may be carried out on the land under the biodiversity stewardship agreement, or*
- (b) will adversely affect the biodiversity values protected by the biodiversity stewardship agreement.*

Notwithstanding the above, the BOS is doomed to failure in its objective to ‘*compensate for biodiversity values lost to development*’ in NSW, given:

- the existence of an ‘extinction debt’² that is yet to be paid as a result of the last 230 years of land clearing and development, and
- the weakening of the requirement that offset sites be ecologically equivalent to impacted sites, and allowing significant variations to like-for-like offsetting, and
- all the permissible and exempt clearing of native vegetation/habitat that occurs under the *Local Land Services Act 2013* and *Local Land Services Regulation 2014*, and
- unregulated clearing of koala food trees and habitat on private rural land (which is where the majority of koala populations occur in NSW) due to its exclusion from *State Environmental Planning Policy (Koala Habitat Protection) 2021*, and
- on-going illegal clearing of native vegetation/habitat which has accelerated in many agricultural areas since the introduction of the *BC Act*, and
- provisions under the *BC Act* that allow offset areas to be subsequently cleared (subject to further offsetting) at the whim of the Minister.

In short, the BOS is CANNOT be effective in halting or reversing the loss of biodiversity values given the existing landscape and legislative framework of NSW. The BOS can only be potentially successful ecologically when:

- an overhaul of existing land clearing legislation is undertaken to tighten native vegetation clearing laws on private rural land, and
- adequate compliance is undertaken to ensure native vegetation clearing laws are being adhered to, and
- no further clearing of critically endangered communities and species habitat is permitted until significant recovery in extent and condition of these communities and species’ habitats is achieved, and
- it can clearly demonstrate ecological equivalence (like for like) between the impact site and offset site, and does not permit variations to the like-for-like offsetting or allow development without like-for-like offsets (ie payments to the Biodiversity Conservation Fund), and
- offsets are legally enforceable and protected in-perpetuity, and not subject to Ministerial discretion, and
- Government agencies employ stringent in-field review processes by suitably qualified persons to ensure offsets proffered by developers are what they claim they are.

² ‘Extinction debt’ refers to delayed species extinctions expected as a consequence of historical habitat loss, degradation and fragmentation. What this means is that even if no more vegetation/habitat was cleared in NSW, we would still lose species at site and landscape levels.

The role of the Biodiversity Conservation Trust in administrating the scheme

As I understand it, the BCT has the following roles within the BOS:

- facilitating the supply of biodiversity credits through biodiversity stewardship agreements (BSA). The BCT negotiates, assesses and approves BSA with landholders looking to generate and sell biodiversity credits.
- managing the Biodiversity Stewardship Payments Fund which holds the total monies owed to landholders with BSAs and pays out annual biodiversity stewardship payments to landholders with a BSA.
- acting as a broker, securing biodiversity offsets on behalf of developers who rather than finding/purchasing the required offsets for their development can opt to pay into the Biodiversity Conservation Fund.
- securing offsets required for various place- specific biodiversity offsets as stipulated by the NSW Government.

The issue that exists with the role BCT has within the BOS primarily arises from their function as an offsets broker, and the option developers have to elect to pay the value of their required offsets into the Biodiversity Conservation Fund. Thus, developers can abdicate the offset obligations of their development approval to the BCT.

This process, in my opinion, undermines the requirements of developers under the section 1.3(k) BC Act to 'avoid or minimise' impacts on biodiversity before resorting to offsetting. Best practice offsetting schemes require that impacts be first avoided or then mitigated and that biodiversity loss be permitted only as a last resort. In my opinion, this is not the case in NSW. The Biodiversity Conservation Fund and the offsetting process as practiced, fails to encourage developers to minimise biodiversity losses and allows them to throw money at the problem of offsets without a further thought of the potential and ongoing biodiversity losses created by their development.

What are the contingencies? What happens if appropriate offsets for any particular development aren't readily available (for example box-gum grassy woodland CEEC)? As I understand it the BCT has the option to fund supplementary actions including captive breeding programs, research and education rather than invest on actual on-ground offsets. So what happens is, the development proceeds because the developer has paid money to a Government agency (BCT) and biodiversity losses are accrued, and there are not even theoretical biodiversity gains. This process definitely favours the developer and runs contrary to the requirements of the BC Act. It also conflicts the BCT, who I believe are reliant on monies raised to help fund a proportion of their activities.

Whether the Trust is subject to adequate transparency and oversight

The BCT is subject to the control and direction of the Minister, except in relation to payments from the Biodiversity Conservation Trust Public Fund. Even though the Trust must publish any directions made by the Minister, it means the maintenance and protection of biodiversity in NSW is subject to political whims and will not always be based on science. This conclusion is based on 17 years in the public service, 11 years of which were as a regional ecologist. I witnessed first-hand political interference in departmental administration of the *SEPP 46* and the *Native Vegetation Conservation Act 1997*. Political interference was the primary reason illegal clearing prospered and continues to prosper in NSW, why Glenn Turner was murdered and why subsequent legislation (*Native Vegetation*

Act 2003 and Biodiversity Conservation Act 2016) has been watered down. So no, I do not think the Trust is subject to adequate transparency and oversight.

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

I have very little experience of this so cannot comment.

(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

Non-additional offsetting practices

For the BOS to have any efficacy whatsoever, biodiversity offset actions must be additional to what is already required by law. So at least theoretically the BOS can deliver gains in biodiversity that would not have otherwise occurred. For example, non-additional offsetting practices such as using of mine rehabilitation sites to provide offset credits is an ecological nonsense. Mine rehabilitation is not an additional obligation of a mining company, it should be a standard condition of consent as it was in the past. Even so it is highly unlikely the biodiversity values of any former mine site can be restored to a sufficient quality that would merit the use of these sites as an offset for extant vegetation.

Offset prices and opportunities for landholders to engage in the scheme

I'm not aware of BOS offset prices so cannot comment. I do know, having spoken to a number of landholders enquiring about conservation agreements, that fixed price offers (per ha) in priority areas are insufficient to entice landholders to enter into conservation agreements. Basically out on the western plains landholders can make more money/ha illegally clearing their land and converting it to cropping (this includes paying the fine if caught and/or prosecuted - which is currently not a high risk).

(d) any other related matters.

Lots but I don't have enough time to write a thesis!