

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Blacktown & District Environment Group Inc
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Integrity of NSW Biodiversity Offsets Scheme

This is the submission of Blacktown & District Environment Group with respect to the subject Inquiry. Our members have seen and heard much of concern with the Scheme.

Acronyms (used in this submission)

BAM – NSW Biodiversity Assessment Methodology

BAM 2017 – Previous NSW Biodiversity Assessment Methodology

BAM 2020 – Current NSW Biodiversity Assessment Methodology

BCT – NSW Biodiversity Conservation Trust

BOS – NSW Biodiversity Offset Scheme

COI – Conflict of Interest

DPIE – NSW Department of Planning, Industry & Environment

NNL – No Net Loss

Part A payments – annual management & profit returns for the restoration of a biodiversity offset

Part B payments – upfront cash-in-hand provided for 'lost opportunity' when conserving a biodiversity offset

(A)(i) 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 scheme has proven grossly inadequate in halting the loss of biodiversity values in NSW.

The scheme seeks to 'offset' (mitigate) land clearing through conservation of land (averted loss) and through active management (restoration gain).

The majority of funding (>70%) has been directed to land conservation (part B payments), constituting an investment of hundreds-of-millions of dollars to date. However, the scheme is notorious for its failure to enforce land conservation. At least 1 in 10 Biobank/Stewardship sites in the Cumberland Plain have actively cleared/harmed native vegetation in the last decade (local observation).

These conservation funds would have achieved far superior results if directed to extending our National Parks estate. The value-for-money provided through the BOS scheme has been exceptionally poor.

The other component of the scheme is habitat restoration. To date hundreds-of-millions of dollars have been spent on the land conservation component of biodiversity offset in NSW. However, the land management standard at BioBank/Stewardship sites is the lowest of all NRM programs in NSW. Even the management of

Wildlife Refuges, which are self-funded by landowners, greatly exceeds the quality of most BioBank/Stewardship sites.

This woeful restoration standard, despite exceptionally good funding, is the result of multiple factors:

- Generally poor departmental management of the BOS scheme
- Almost complete lack of local bush regeneration expertise in BCT staff
- Limited or negative interest of many offset site owners in conservation of the land
- Limited or no financial incentive for restoration

Personal observation by government staff in Western Sydney suggests that at least 1 in 5 BioBank sites have failed basic restoration requirements. Ignoring the small number of ‘showcase’ sites which the BCT actively promote, the standard of work at most Offset sites falls below that which would be accepted in evidence to acquit a grant from the NSW Environment Trust or Local Land Services.

No biodiversity monitoring^[1] data is collected on most BOS sites in NSW, although the BCT have a number of ‘showcase’ sites (the results of which are not representative). As such only anecdotal evidence is available. The standard of restoration management observed at most sites is lower than any other biodiversity restoration program in NSW. At most BOS sites in the Cumberland Plain the restoration management consists of:

- broad-acre spray of terrestrial weeds
- basal barking of the more obvious woody weeds (e.g. Olive/Privet)
- planting of trees (frequently exceeding natural levels, to the exclusion of threatened grassy woodland species)
- shooting one or two foxes one night every quarter

Local government staff advise that the standard of restoration at most sites is substantially lower than any other restoration program in living memory. This is a far cry from what should be expected by the tens of millions of dollars invested in the scheme.

A key challenge in improving outcomes of the BOS scheme is the issue of land access. Whenever the BCT is criticised for site management the result is invariably a visit to one of the ‘showcase’ sites where works are proceeding well. Only local government staff and others who regularly visit local properties on a regular basis are aware of the state of more representative sites. This situation only makes it more vital that independent monitoring is undertaken.

The BOS constitutes the single greatest program expenditure on biodiversity recovery ever conducted in NSW, however there is no representative monitoring program to inform any review of its performance.

We encourage the Inquiry to consider the opportunities which would be presented by engaging an independent group (for example the NSW Environment Trust) to independently undertake time-series monitoring at all offset sites to clarify the actual biodiversity outcomes of this program.

(A)(ii) the role of the Biodiversity Conservation Trust in administering the scheme and whether the Trust is subject to adequate transparency and oversight,

We recommend that the Inquiry consider **both the Trust and the DPIE**, as both are responsible for administering the scheme. We note that recent misconduct allegations have largely centred on staff within DPIE, not the BCT

Transparency, oversight and public participation are areas of increasing concern at both DPIE and the BCT. Over time the DPIE and BCT have removed existing public oversight and disclosure, to the extent that there is now almost no public reporting on the basic operation of the NSW BOS. Corruption and maladministration are

serious areas of concern for the NSW BOS

The risk of *Internal Trading* by staff has now received public attention. This may respond to COI processes, such as have recently been retrospectively applied. However, COI and internal processes are not considered a full solution to misconduct. These processes need to be paired with Public Transparency. This is necessary to:

- Provide an additional layer of protection ('backstop') against misconduct
- Restore public faith in the scheme

Until 2018 the former BioBanking Public Register provided most of the data necessary to achieve these goals. This included:

- Copies of all BioBanking Agreements (equivalent to Stewardships under BC Act) including
 - Maps of Offset Boundaries
 - Tables of credit allocations
 - Numerical data on any Additionality discounts
- Copies of all BioBanking Statements (equivalent to BDAR under BC Act)
 - Searchable register of all trades, with traders identified by Unique Identifying Number or name

The Public Register has since been replaced with the BOS Register. The BOS removes *all* useful information from public view, including all items listed above, and provides literally nothing more than an LGA and item number. *This constitutes a massive reduction in public accountability & reporting within the offset scheme, undertaken during the same period from which we now see allegations of serious misconduct arising*

This has not been a coincidental process – it has been a long-running effort by the DPIE and BCT to reduce public transparency.

We encourage the Inquiry to consider the history of the *Biodiversity Investment Spatial Viewer (BISV)*, 'a spatial database that identifies land subject to conservation commitments across the State'. This was publicly advertised nearly two decades ago as part of the Biodiversity Offset regulation package. When offset legislation was first approved the BISV was advised to be 'in progress' as a foundational part of that package. The project was being delivered by the Business System Tools and Information Unit in Environmental Programs Branch. After many years delay, it was relabelled as an upcoming all-of-government viewer only. Then this was revised to provide access for DPIE and BCT. As far as we know it has never been released in any form. Today, most government employees in NSW do not even have access to spatial data on the location & extent of biodiversity offsets in their area of operation. How then can we expect the scheme to deliver?

In relation to item (B) there is a particular need to improve public accountability, participation and disclosure in relation to Major Projects. Government programs responsible for reporting against Offset obligations are woefully non-compliant. The NSW Growth Centres Biodiversity Offset Program has not lodged a Final Report since July 2019 (2 years overdue) and the Federal Western Sydney Airport Biodiversity Offset Delivery Plan has not released an Implementation Report since July 2018 (also 2 years overdue). These 'delays' are not conducive to public accountability and of concern given the volume of public funds being expended.

Thanks to *The Guardian* newspaper we now know about concerning Offset activity which occurred before 2018. It is likely that *The Guardian* investigations relied on the former Public Register to identify and/or confirm these allegations. *The new (empty) BOS Register effectively ensures against future public exposure of similar misconduct.*

We encourage the Inquiry to investigate the new register and its suitability in providing for public accountability, including:

- the ability to trace trades and link individual developments with their associated offsets
- clear maps of offset sites with tables of all credit allocations and Additionality discounts
- clear maps of offset-generating developments (e.g. BDAR) with tables of all credit allocations and Additionality discounts
- Searchable register of all trades, with traders identified by Unique Identifying Number or name

- Public data on expenditure and results of investment by Major Projects/Biocertification (e.g. Growth Centres) and penalties for failure to disclose this in a timely manner
- Public data on expenditure of the BCT *Biodiversity Conservation Fund*, including tables identifying the specific spatial boundaries and prices for each individual sale
- Time-series quantitative on-ground vegetation metrics and threatened species counts all biodiversity offset sites (not just showcase sites!)

We similarly encourage the Inquiry to consider the potential for legislative provisions to ensure that suitable public information requirements are maintained, both in a Public Register and through Biocertification Annual Reports.

Improvements to public reporting would result in greater stability to scheme, greater public & trader confidence, reduced internal and external manipulation of scheme and a reduced risk of maladministration/corruption.

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

Since 2010 the NSW Government has increasingly made use of major project exemptions to avoid meeting the BOS requirements. This includes State Significant Development (SSD) and State Significant Infrastructure (SSI).

This has largely been achieved by the NSW Government consolidating minor development into ‘Growth Centres’. *This allows the provisions of the BOS to be sidelined; in general the primary change is to calculate considerably lower offset ratios, and subsidise developer offset costs with public funds.*

This process is typically argued on the basis that it assists ‘strategic’ conservation outcomes, particularly the ability to plan wildlife corridors. In reality, these instruments are generally *less* strategic than the case-by-case developments. For example, the Cumberland Plain Conservation Plan (CPCP) not only fails to secure new corridors, but fails to even recognise existing government-endorsed wildlife corridor programs within its boundaries, such as the BioMAP and Cumberland Conservation Corridors.

Today the majority of BOS activity occurs through major project exemptions, making the requirements of the BOS (offset ratios) effectively irrelevant.

This practice compromises an already weak BOS. Its particular impacts include:

- The use of public funding to source developer offsets (e.g. Growth Centres, CPCP) reduces developer costs and thereby increases bushland clearing rates
- The use of ‘Strategic’ approvals invariably reduces the total offset delivered, reducing the area conserved/restored
- The role of Government in Major Project offsets necessarily increases the risk of vested interest and interference compared to case-by-case developments

In particular, major projects increasingly use existing public land to subsidise biodiversity offsets for private developers. This is especially evident in Western Sydney: for example the decision to use Defence Establishment Orchard Hills to ‘offset’ the Western Sydney Airport; and the decision to use existing Planning land to provide the primary Koala offset for private developers under the Cumberland Plain Conservation Plan.

The practice of subsidizing developers offset requirements with public land and public funding (through Major Project provisions) is the single biggest threat to Biodiversity Offset outcomes in NSW. Its impacts include:

- Dramatically reducing the trading price of offsets, making it impossible for most landowners to conserve land through the scheme
- Severely compromising the *land conservation* (averted loss) component of offset outcomes
- Substantially increasing price instability (see example below)

- Reducing public trust and participation (see example below)
- Significantly increasing risks of maladministration and vested interests (see below)

We understand the announcement of Western Sydney Airport, and associated credit requirement, resulted in a considerable number of Western Sydney landowners considering the protection of their bushland as Stewardship sites, and a temporary increase in credit price. Subsequently, the decision was made to offset the Airport impacts primarily through an existing government facility at the Defence Base Orchard Hills.

The impacts of this decision go further than a loss of real environmental protections. Biodiversity consultancies reported client withdrawals in the region exceeding 70% in response to the announcement. The result was a decline in participation; a major increase in credit price instability; and an overwhelming reduction in public trust in the program.

The consolidation of thousands of individual offset requirements into Major Projects massively increases the **risk of vested interests, maladministration and corruption**. Standard government practice for Major Projects is to allocate the acquisition of all offsets (comprising thousands of individual developers) into a contract for a single commercial offset trader. That company is then responsible for sourcing credits from all Biodiversity Offset providers. Likewise, the task of assessing offset requirements is invariably granted to a single company, typically with a second company to undertake an independent verification.

By engaging a single company to source the offset requirements of thousands of individual developers, Major Projects are resulting in a market duopoly. Instead of a market system, DPIE, DIRD and OEH now control the majority of offsets and source these through just two companies which (for various reasons) they prefer. The impact of this practice is substantial:

- The biodiversity offset ‘market’ now exists only in the minority of trades occurring outside Major Project provisions
- Two companies (out of dozens) now effectively control all trades; landowners find it difficult if not impossible to negotiate offset sites without engaging this duopoly
- The risk of vested interest, maladministration and corruption is substantially increased by:
 - the creation of a trading duopoly rather than an open market
 - the direct involvement of government agencies
 - the dual role of government as an approval authority and a landowner
 - the frequent use of the same consultants to calculating offsets as well as supplying them

Major Project exemptions are not providing the ‘Strategic’ benefit they claim – they are nothing more than exemptions to lower the planning benchmark. The single most effective measure for reducing corruption risk and improving biodiversity outcomes from the NSW BOS would be to remove the exemptions provided by Major Project processes.

This should be replaced with an open market system, negotiated by each participating developer, to ensure full participation by landowners and maximise conservation outcomes

Similarly, government programs responsible for reporting against Offset obligations are woefully non-compliant. The NSW Growth Centres Biodiversity Offset Program has not lodged a Final Report since July 2019 (2 years overdue) and the Federal Western Sydney Airport Biodiversity Offset Delivery Plan has not released an Implementation Report since July 2018 (also 2 years overdue). These ‘delays’ are not conducive to public accountability and of concern given the volume of public funds being expended.

In short, Major Projects in NSW warrant **more** checks and balances than are afforded to standard development, not a free cheque to avoid standard legislative requirements (including the BOS/BAM) and certainly not more ‘flexibility’.

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

“Additionality” is central to both the environmental outcomes and operational performance of a biodiversity offset market.

“Additionality” needs to consider both restoration (management gain) and conservation (background loss) components of any offset scheme. Although the overwhelming majority of NSW BOS funds are provided to Part B payments – i.e. to conservation not restoration – the NSW BAM makes no calculation for the additionality of conservation outcomes! Instead, it only considers reductions in offset allocation for sites which are under active management. This flaw is central to the issues behind Additionality.

In NSW the primary issue is the use of existing government land to supply private developers’ biodiversity offset requirements.

The most obvious impact of this practice is a reduction in biodiversity outcomes, especially for the conservation component. When existing public reserves are used as offsets, this comes at the cost of securing other land elsewhere.

A related issue with the BOS 2020 “Additionality” criteria is that it only considers land officially gazetted for conservation, rather than assessing the actual conservation risk or gain. Much government land is at no risk of loss due to *non-conservation* protections, for example bushland protected under heritage provisions. The classic example is the recent use of the Defence Establishment Orchard Hills as the primary biodiversity offset for the Western Sydney Airport. While there were no biodiversity statutes protecting the land, the bushland itself was heritage listed, and under no threat of loss. This ‘offset’ generated zero conservation gain (as correctly identified by staff) but was approved with an alleged substantial conservation gain outcome.

However, it is equally important to consider the indirect impact of this practice on market price, and the ability of private landowners to secure land truly at risk.

It is critical to note that the use of government land for offsetting undermines market price regardless of the land's conservation status. Government invokes little to no financial cost in dedicating existing public land for offsets, regardless of its zoning, classification (operational or non-operational Council land) or any other protections. As a result, government can offset land at a fraction of the cost relative to private landowners. For this reason, **all** government-owned land needs to be equally discounted when allocating offset credits, regardless of its conservation status, to ensure that market prices are not compromised and maintain a fair offset trading market.

A classic example is the current Cumberland Plain Conservation Plan (pending approval). This consolidates numerous private developments into a ‘Strategic’ program, and proposes to supply most or all of the Koala offsets required through the use of existing NSW Government Land in the so-called Georges River Koala Reserve. Over 80% of this proposed reserve is already government land. By providing this land to developers the program has massively undercut the market price of Koala credits, as well as generating no real conservation gain. Far from being ‘strategic’ the primary outcome of the CPCP is simply to reduce developers offset requirements and replace a free market with a public-subsidised offset package.

The NSW Government has actively sought to reduce the “Additionality” delivered by the BOS scheme, presumably in response to pressure from property developers concerned over cost. This has been achieved by a range of NSW government programs and practices. In particular, the *Linking Landscapes through Local Action* grant program was explicitly designed to encourage government land managers to engage with the Biodiversity Offset Scheme, and ultimately improve the supply of government land for offsetting.

These various programs and practices have been highly pursued, and the proportion of existing government conservation reserves in offset packages has been increasing steadily. It is only a matter of time until most if, not all, biodiversity is lost.

We encourage the Parliamentary Review to investigate the NSW government programs & practices which have

sought to increase adoption of Biodiversity Offset trading by existing public land managers, and the impact of these programs.

We similarly encourage a review of the “Additionality” criteria, in particular:

- The arbitrary nature of the criteria
- The placement of the criteria in departmental-controlled policy, rather than enshrined in the legislative Act, providing considerable opportunity for manipulation
- The “Additionality” ‘floor’ which ensures that all land receives a minimum 30% credit allocation, even if it is already conserved and already undertaking every conceivable restoration activity
- The complete failure of the criteria to discount on the basis of land conservation (averted loss), such that land conserved (but under no active management) receives 100% credit allocation
- The narrow classification of existing conservation land, not including Council Reserves, Western Sydney Parklands, Department of Planning holdings, land under Federal and other non-BAM conservation covenants, and bushland conserved under heritage or other non-conservation protections
- The necessity of covering all government land (irrespective of conservation status) if fair market trading is to occur

(D) any other related matters

Is Conflict of Interest policy enough to fix the NSW BOS?

The internal government response to recent revelations of malpractice within Biodiversity Offset trading has been to improve Conflict of Interest reporting and other areas of internal policy.

Conflict of Interest reporting and internal policy will not clean the NSW BOS scheme, because it fails to address the structural drivers which are responsible for creating this misconduct in the first place.

It is important to remember that many of the examples of concerning practice result directly from government programs which are *explicitly intended* to encourage the practice. For example, the increasing use of existing government land to supply private developers offsets has been actively stimulated (by grants) and administratively facilitated (by “Additionality” criteria). The Conflicts of Interest which saw consultants acting as both offset advisor and offset owner for government developments did not arise out of chance; the practice was actively encouraged through the Major Project framework which consolidated the free market of individual developers into a single, vast government offset contract, awarded to a single offset supplier.

These issues cannot be solved by addressing the effect – corruption will only be effectively managed by removing Growth Area exemptions and restoring a free market offset trading system.

The need to address the structural issues which make government access advantageous and remove the *incentive* and *conditions* which favour conflicts of interest has been more than adequately covered in a related instrument – the *Financial Services Royal Commission*. We highly recommend that the Inquiry consider some of the submissions made to that Commission, particularly regarding the need for structural change to remove the incentive for misconduct (e.g.

<https://financialservices.royalcommission.gov.au/Submissions/Documents/interim-report-submissions/POL.9100.0001.1034.pdf>)

Biodiversity Offsetting is a financial market trading in hundreds of millions of dollars capital. It should surely be afforded the same checks and balances which are provided to other financial trading in NSW.

We highly recommend the Inquiry to consider the opportunity to extend the scope of existing financial oversight bodies, including ASIC, to include the biodiversity offset sector in NSW.

Penalties and retribution for failure

It is clear that the BCT and DPIE presently oversee biodiversity offsetting in NSW with a sense of complete impunity.

What we are most concerned about is that the gross misconduct which has occurred will not be rectified. Various departments have allowed development to proceed while misdirecting, miscalculating or misappropriating the necessary offsets. ***If this attitude is to change it is critical that recent abuses are identified and responsible agencies required to pay for the necessary offsets to rectify it.***

Since 2018 the departments have collectively removed virtually all public reporting on the BOS Public Register; there is not even a spatial data portal accessible for government staff to confirm land subject to offset commitments, far less a scheme suitable for public to track offset trades and ensure accountability. Reporting for government-run multi-million dollar offset programs are either non-existent or multiple years out of date. Offsets required to be delivered by government for their own projects are often delayed over a decade – frequently due to concerns the offset might get in the way of further land clearing (e.g. Colebee Nature Reserve).

No comparably sized financial trading instrument is permitted to operate with so little public disclosure and such considerable evidence of misconduct and maladministration. Hundreds of millions of dollars which were set aside to conserve our most endangered species has been at best wasted and in many cases simply reappropriated.

If this dire situation is to be cleaned up it is abundantly clear that the BCT and DPIE are the last persons who should be given control of the task. A truly independent body is needed to identify the structural and cultural problems which have led to this situation, and recommend changes to rectify it.

An integral part of any solution must be penalties for failure and provision of the outstanding offset obligations.

A classic example is the Western Sydney Airport. This is a case of maladministration at its worst. The Commonwealth DIRD and NSW DPIE approved the use of an existing government property for 70% of its offset obligation, and provided only a 20 year outcome, both decisions in open breach of the legislative offsetting guidelines.

An apology (which has never been provided) is not enough. It is critical that the responsible agencies are required to rectify this misconduct by purchasing the necessary shortfall in offsets created by this misconduct.

Inquiry and the Cumberland Plain Conservation Plan

The Inquiry has highlighted serious concerns with the increasing use of Precinct Planning/Major Project exemptions to sideline Biodiversity Offset requirements.

We note that the NSW Government is presently formalising a new Major Project Strategic Assessment in the *Cumberland Plain Conservation Plan*.

This is a Hundreds-of-Million Dollar program which to date has incorporated (rather than avoided) most of the dubious practices which are cited here, including:

- Use of public land to supply private developer offsets
- Government cash subsidisation of developer offset requirements
- Use of Strategic Assessment to reduce BAM 2020 offset ratios
- Consolidation of hundreds of individual developments into single offset programs, with offsets to be sourced through a single consulting company, exacerbating monopoly within the industry

It would be advisable for the CPCP to be put on hold until the serious allegations in this inquiry can be addressed.

Potential for legislative protection of key BOS metrics/policies

The current arrangements allow the BCT and DPIE to effectively manipulate offset price and supply at will. Specific regulatory items, in particular the Additionality Rules, have extremely high influence on credit prices.

The ability for BCT and DPIE to readily alter scheme mechanics that influence price is deeply concerning. It is widely rumoured that the DPIE and BCT are each responsive to, and have both been subject to, political pressure to manipulate credit trading prices.

This risk cannot be effectively managed by COI or reporting processes. More effective measures must be considered. In particular, the Inquiry should consider the potential of narrowing the scope of metrics/policies which are departmentally controlled. Items such as Additionality rules which strongly influence price should preferably be managed within legislation to reduce the incentive & risk of their misuse.

Shifting BOS elements which are presently *policy* matters into *legislation* would substantially improve stability of the Offset Market and reduce the attractiveness of the scheme for manipulation and misuse

Market based, not staff regulated

The NSW BOS does not operate under free open market. Numerous interventions currently prevent free market operation.

The NSW BOS would deliver better outcomes for both the environment and for farmers if a free market were permitted to operate. All interventions presently preventing free market operation are those which reduce (rather than increase) credit prices. This favours development and land clearing relative to conservation and offsetting

Credits for Cumberland Plain Woodland are presently under 20% of the median land price in the Cumberland Plain sub-bioregion[2]. This is ideal for developers who desire cheap offsets. However, it ensures against good conservation outcomes. A perverse consequence is that the only land which can be protected is the land under the least threat - over 70% all offsets are located on undevelopable slopes of the southwest Cumberland Plain[3]. The artificially low credit price is locking out landowners with higher quality habitat from participating, and stops us protecting the best examples of the Cumberland Plain Woodlands.

An unimpeded free market would lift credit prices and in doing so would reduce land clearing and habitat loss through market pressure

Offset price is *de facto* regulated by two primary mechanisms:

- Regulatory and policy changes made internally by BCT and DPIE staff
- Land Use and zoning decisions made by DPIE

Policy mechanisms which presently inhibit free market processes include:

- Practice of BCT Conservation Tenders
- Practice of BCT holding over developer obligations under the Biodiversity Conservation Fund
- Limited/no public access to data on development and offset decisions, and lack of any legitimate Public Register

A free market cannot operate while these mechanisms are in place. Allowing a free market to operate would dramatically alter the scheme's operation. The more pronounced market impacts would likely include:

- higher costs to property developers
- a reduction in land clearing rates
- increased credit supply
- increase in market competition
- improved price stability

The BCT display little to no resistance against interfering with free market operation. If a free market were to be restored this would likely require legislative protections to limit the ability of the BCT (and DPIE) to impose market-limiting interventions or programs.

Costs for accessing the offset system

The cost to currently access (or even consider) the NSW BOS is currently circa \$40,000. Many landowners do not have this type of free capital.

This is particularly relevant for landowners of small holdings (2-30 hectares) while market values are presently so low they do not even cover assessment costs. Many threatened species and ecosystems in NSW occur primarily or exclusively in land holdings of this scale.

The below-market cost of offsets which has been engineered by the management of the scheme to date has locked out the *majority* of landowners interested in participating in the scheme.

Were the government genuine in the intention to run an offset scheme (a true free market, not a mitigation scheme), the funding generated through a naturally higher offset price would be more than sufficient to cover assessment costs for landowners.

Redefining Loss

The NSW Offset Scheme is not halting the loss of biodiversity in NSW. It isn't even claiming to try.

The BC Act 2017 requires the NSW Offset Scheme BAM to 'result in no net loss of biodiversity in New South Wales'. The public understanding of the term no net loss is *no net decline*. This is clearly the same understanding being used in this Parliamentary Inquiry.

However, the BAM 2020 calculates No Net Loss *against a baseline of continuing decline*, in breach of the BC Act 2017. As BAM (10.2) states the '*improvement in the condition of native vegetation or threatened species habitat at a biodiversity stewardship site includes the 'gain' from the averted loss that would have occurred from the expected annual decline without undertaking the required management actions*'.

The failure of the BAM 2020 to meet the requirements of the BC Act 2017 highlights one of the central problems responsible for the poor outcomes of Biodiversity Offsetting in NSW – the powers afforded the bureaucracy (BCT and DPIE) to alter the scheme without effective legislative limits. The NSW BOS scheme is legislatively required to halt the loss of biodiversity values in NSW, but its operational policies have been developed to merely reduce the rate of loss of biodiversity values in NSW. This redefinition of no net loss is fundamental to the failures of the scheme.

Declining actual offset ratios

Since the initiation of formalised Biodiversity Offsets in the late 1990s under the TSC Act, the ratio of habitat destroyed to habitat conserved/restored has consistently declined. Under the TSC Act the median ratio was 1:(20), falling to 1:(2.3) under the BioBanking scheme[4] and now around 1:(2) under the BAM 2020[5].

NSW BOS as a Mitigation scheme, not an Offset scheme

The NSW BOS is not a Biodiversity Offset Scheme.

An offset scheme exists when biodiversity gains at offset sites equal or exceed biodiversity losses at development sites. If this threshold is not met the scheme is in reality only a biodiversity *mitigation* scheme.

A scheme can only legitimately claim to be an offset program if it accurately measures biodiversity gains at offset sites and uses these data to calculate the necessary offset ratios. Ecological research indicates that these ratios generally fall into the band between 1:20 to 1:200 depending on the species[6].

The NSW BOS provides no biodiversity monitoring at most offset sites, and employs offset ratios which are orders of magnitude lower than those needed to actually offset and deliver no net loss. It is at best a biodiversity *mitigation* scheme.

NSW BOS and funding of non-offset Biodiversity Recovery

The NSW BOS exists within a broader framework of diverse biodiversity recovery programs. It is therefore important to assess its impact (intended and actual) on other programs, and in particular on their funding.

The rollout of the NSW BOS has coincided with considerable relative decline in funding for other restoration and conservation programs in NSW. Although difficult to substantiate, it is important to question whether the NSW BOS has been responsible for cutbacks to other programs, in particular to the NPWS.

For example, it is widely reported (but not substantiated in writing) that the NSW Roads & Maritime program of compulsory land purchase which was responsible for numerous expansions to NPWS reserves in the Cumberland Plain^[7], was *explicitly* axed by OEH on the basis that it compromised the need to rationalise conservation programs into a biodiversity offsetting framework.

[1] Photo points are not sufficient to demonstrate loss or gain in threatened flora or ecosystem values.

[2] Biodiversity credit transactions & sales register

(<http://www.environment.nsw.gov.au/bimsprapp/SearchTransactionReports.aspx?Start=1>); UDIA (2017) Residential Development Review Sydney Metropolitan Area July-Dec 2016

[3] OEH BioBanking Public Register <http://www.environment.nsw.gov.au/bimsprapp/biobankingpr.aspx>

[4] GHD (2010) Comparison of Offset Policy's & Plans. In Landcom - Report on Menangle Park Offsetting Strategy. GHD, Sydney, p15

[5] In real terms. The BAM does not balance calculations (for example, including low-quality habitat in offset site calculations but excluding the same habitat in calculating development impacts); likewise most NSW BOS trading occurs through Biocertification and similar processes which discount the final offset package. The 1:2 figure has been calculated from actual losses of structurally intact vegetation.

[6] Curran, M., Hellweg, S., & Beck, J. (2014). Is there any empirical support for biodiversity offset policy?. Ecological Applications, 24(4), 617-632.

[7] RMS (2015) Biodiversity Offsets – Sydney Sydney

<http://www.rms.nsw.gov.au/about/environment/protecting-biodiversity/offsets-sydney.html>

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