

**Submission  
No 39**

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

**Organisation:** Gilgandra Shire Council

**Date Received:** 31 August 2021

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SHIRE COUNCIL

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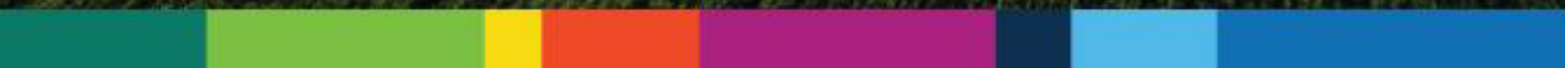


# Submission to the NSW Legislative Council Inquiry

Portfolio Committee No. 7 - Environment and Planning

Integrity of the NSW Biodiversity Offsets Scheme

August 2021



Gilgandra Shire Council (GSC) would like to thank you for the opportunity to make this submission to the Parliamentary Inquiry into the Integrity of the Biodiversity Offsets Scheme (BOS).

This submission is from Councils perspective as a developer of both Industrial and Residential land in Gilgandra. Like many small rural communities, unless Council undertakes the development of Industry and Residential land, it is unlikely to happen as the economics do not support commercial developers undertaking these activities

The Terms of Reference (TOR) appear to focus on the belief there is some form of profiteering or unethical behaviour surrounding the BOS. From our perspectives we are not in a position to pass comment or opinion on this aspect of the scheme. Our experience is far more relevant to the scheme being an absolute handbrake to critical developments in regional NSW. The scheme has practically no concession, consideration or understanding of land economics and is totally crippling the development of regional NSW.

Recommendations to the Committee:

- An urgent review of the entire scheme that looks at the economic impact on regional NSW projects.
- The reinstatement of dedicated Local Government Support officers to assist small councils who do not have the resources, capabilities or experience to provide advice and guidance when serving as the approval authority for a development, and likewise to review assessment reports prepared for Council and navigate the requirements of stewardship sites and/or offset credits as a land developer.
- A review of the BOS through a lens of regional NSW communities where the cost of offsetting exceeds the value of the land.
- As part of the work of this enquiry, examine the availability of Plant Community Type credits available to purchase or trade in regional NSW.
- We encourage the committee to seek information regarding the amount of successful stewardship sites that have been established in regional NSW. This should include a comparative analysis by region and also stewardship sites and the amount of projects seeking to offset credits in those regions.
- We encourage the Committee to explore options of a tiered threshold system for urban and regional noting the "one size fits all approach" is significantly disadvantaging regional NSW.
- The committee seek information from financial institutions how they view the BOS credit liabilities in their financial appraisal and lending decisions in a regional NSW context.

## Gilgandra Shire Council Experience

Gilgandra Shire Council makes this brief submission from the perspective of predominate land developer in our small community and the most impacted local stakeholder. Council undertakes land development as the market currently (is not currently economically viable for private developers.)

Whilst Council respects and supports the need to see the environment protected to maintain important flora and fauna species, we are of the firm belief the “economic methodology” that underpins the basis for the calculator and other aspects of the scheme are seriously flawed and grossly disadvantage regional NSW communities and developments where the BOS credit liability is often greater than the value of the land.

GSC are currently trying to develop an area of zoned industrial land on the outskirts of the urban area with a history of extensive agriculture. This development has \$3.9 million in grant support from the NSW State Government and will see a further \$700,000 invested by Council to make available 12ha of serviced industrial land. Council has seen an increased demand for industrial zoned land, most recently completing a sell-out of 12 lots in a previously developed industrial precinct and we are keen to capitalise on the continued interest in this space.

Development of the new industrial land is required to take advantage of the significant opportunities associated with construction of the Inland Rail, 91km of which is in the Gilgandra Shire. Further to that there is increasing demand for industrial land that has access to key transport routes such as the Newell Highway and onto Castlereagh and Oxley Highways, with Gilgandra ideally located at this juncture.

Council has undertaken the required BDAR assessments on the site of interest, with the following scenario clearly demonstrating how the BOS has serious impacts on the economic feasibility of projects where the market values of land does not allow the cost to simply be passed onto purchasers.

- Last sale of industrial Land in Gilgandra (March 2021) - \$11 per m<sup>2</sup> + GST
- Councils proposed industrial land development BAM assessment
  - Total Area 20.11Ha (200,000 m<sup>2</sup>)
  - Total credits cost \$1,263,179
  - Per m<sup>2</sup> credit cost \$6.31
  - The credits represent 57.36% of the total current sale price of developed industrial land in Gilgandra.
- In addition to the current estimate of the Credit liability
  - Council has spent \$40,000 in Ecologist consultancy costs and the methodology is to assume presences of species and then undertake targeted assessments to rule out the presence of the species.
  - To complete the work, it is estimated a further \$40,000 in consultancy fees

will be incurred.

- This brings the total to \$80,000 to understand the Biodiversity on the site to comply with the BOS.
- Undoubtedly the targeted assessment process will bring the credit liability down as many of the presumed present species will not be found on site. Nevertheless, the system requires assessments from accredited assessors, which comes at a significant cost of \$80,000 to Council just to establish the liability, negatively impacting on the development's viability from the outset and before it has even started.
- The targeted assessment process can take up to 18 months due to climatic conditions and breeding cycles. This has a significant impact on projects as essentially you are forced to accept the presumed presence, pay the Biodiversity Conservation Trust or purchase the credits if your project is time critical. Setting up a stewardship site could take even longer than the targeted assessment process, further adding to the development timeframe.

This real example of our project in Gilgandra shows how this scheme is heavily biased against regional areas with low land costs. In regional communities you simply can't put the price up by 57% and pass it onto the purchasers, as they are not in a position to pay this and makes development unviable.

In addition to the developers ability to pay it not yet fully understood how those developers using finance will be treated by financial institutions

In addition to this is lack of available credits, with numerous large footprint projects requiring large credit offsets (RMS, Inland Rail, Renewable energy projects) having recently emerged locally. This has left a supply and demand issue, there is simply no credits for sale and we suspect enormous demand at the moment for particular credits in our region.

The current structure of this scheme, in our region, is bordering on market failure:

- There are no available credits to trade
- There is limited expertise to assist set up sites to develop a credit market
- There is significant demand due to large scale projects
- Most small developers cannot afford or source finance to simply pay into the scheme.

It would appear, through reading the review document and media, the BOS has become a trading platform for those with environmental planning insight. Small communities like Gilgandra who are just trying to develop small projects to create jobs and an economic future for our community are simply collateral damage of what appears to be a financially focused scheme rather than an environmental protection / improvement focused scheme.

We urge the Committee to fully explore the issue that this scheme has one set of rules that are having vastly different impacts in regional NSW as compared to urban and growth areas of Western and South Western Sydney.

## **NSW Local Government Issues with the Biodiversity Offset Scheme supported by Gilgandra Shire Council Submissions.**

Council is aware that a submission is being lodged by LG NSW and broadly support their draft document, having had the opportunity to review the draft submission. The specific issues that Gilgandra Shire Council support are detailed below:

### **Overarching comments**

- The BOS is supported in principle, however the BOS is problematic in practice and requires some structural changes to improve its functioning and outcomes.
- NSW Government needs to engage closely with Local Government to improve the scheme.
- Structural problems with the system include equity concerns (around thresholds, rural vs urban, location of offsetting, support to Councils, need to recognise local biodiversity values which are not recognised in practice).
- From an administrative perspective, problems include incomplete mapping, guidelines. The BOS is very complex and Councils feel that support and assistance has been problematic. Since the NSW Government funding for Local Government support officers finished in 2020, Councils have experienced difficulties in accessing consistent advice on issues from the Department.
- Across NSW Councils are at different stages in their level of experience using the BOS, and therefore have different needs.

**While Councils appreciate the structure and methodology that the BOS provides, there are several significant improvements that are needed.**

- Asset protection zones – costly for landowners to clear a couple of trees and require a BDAR.
- BOS has disadvantaged ‘mum and dad’ landowners who bought a block of land years or decades ago with the intent to build the family home but are now finding this development triggers the BOS with very expensive implications of site assessment, preparing a BDAR and purchasing offsets.
- Some Councils have noted that individuals are choosing to clear vegetation first and risk going to court or paying a fine as it’s cheaper than going through the BOS/BDAR process. Whilst Gilgandra Shire Council has not seen these issues yet, given the complex nature and cost associated with BOS compliance, this is an increasing likely issue as frustrations intensify.
- It would be useful if Councils could work with developers where developments which only just exceed thresholds so that offset costs are reinvested in biodiversity onsite or in the LGA rather than paying the BCT.
- Additional guidance is needed on interpreting ‘avoid and minimise’. Whilst this is understood as a first principle, in Gilgandra LGA we are seeing grasslands included in the assessments. These attract significant cost in credit liability but there is no

practical opportunity to avoid and minimise. The only option is to decrease the actual development size and this is not always practical or desirable.

### **Accreditation / Authorised Assessors**

- Council agree with the wider Local Government industry view there is a broad lack of understanding of the system, including by accredited assessors, particularly regarding what surveys are needed. If the intention is for a robust and structured system, there should be no scope for varying application of the methodology which can impact the outcomes between assessors – essentially two different assessors can provide the developer with two different Assessment Reports and findings. Assessors tend to go straight to offset / BAM rather than seeking to avoid and minimise impacts first. Further to this there is generally a lack of understanding about how to reach a commercially viable outcome. It is in the interest of the advocates of the scheme that development can occur whilst striking a balance with the scheme aims and objectives. This failure is undermining of support and compliance with the scheme.
- Councils are concerned that there is a lack of recourse where the work of accredited consultants is not up to standard, however given local government are not experts in this field given the system complexities it can be difficult to identify issues of concern aside from significant credit liabilities and financial implications. Council sees both sides of this issue both as the regulator and the developer.

### **Non-additional offsetting practices**

- While Councils prefer to maximise offsetting and biodiversity outcomes, in some cases there are few areas that are suitable as stewardship sites or few that are being set up by the private sector. The choice for a Council is to either establish a BSA on reserved land and accept the obligatory 20% discount in credits, or see offset credits leave the LGA or region altogether.
- Setting up a stewardship site is often challenging for Councils because once the BSA is established the Council must ensure the sale of credits is transparent, equitable and fits with their policies. For example, how does Council assess potential sale of credits to third parties vs using credits to offset its own development? Is it appropriate for Council to sell credits to developments that they would otherwise not support?

### **Biodiversity Conservation Trust**

- The BCT does not advise Councils on when and where a credit is retired. Councils would like to see a publicly available spatial tool of offsets – this would help to avoid double-dipping.
- Council are concerned that the offsets calculator underestimates the true cost of retiring the credits (ie through the establishment of stewardship sites).

- Setting up stewardship sites is complicated, and landholders with properties which would make good stewardship sites have given up, advising the system is too complex. Even Councils find it challenging to establish sites. It is recommended that the BCT increase the resources available to assist individuals to set up stewardship sites.
- A fundamental issue is that the BOS has a heavy reliance on Council to assess BDARs, regardless of whether or not they have the expertise in house. Although this legislative requirement falls to Councils they have no input where the offsets are spent and/or limited measures to protect local biodiversity.