Submission No 40

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Youth for Conservation

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Youth for Conservation Submission to the NSW Legislative Council's Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

30/08/2021

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Portfolio Committee No. 7 - Planning and Environment
New South Wales Legislative Council
Parliament of New South Wales
6 Macquarie Street
Sydney NSW 2000

Re: Portfolio Committee No. 7 - Planning and Environment's Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

Thank you for the opportunity to contribute to the inquiry into the integrity of the NSW Biodiversity Offsets Scheme. Youth for Conservation is supportive of the Biodiversity Conservation Scheme that aims to minimise the impact of land development on NSW's biodiversity.

Engaging the Biodiversity Offsets Scheme as a Last Resort

In accordance with the *Biodiversity Conservation Act 2016*, the purpose of the NSW Biodiversity Offsets Scheme is to avoid and minimise unavoidable impacts on biodiversity from development.[1] Youth for Conservation understands that the essence of the Scheme is aimed at being in the best interests of NSW's biodiversity and is supportive of such measures, so long as the Scheme is utilised as a last resort.[2]

One of the greatest causes of biodiversity loss is habitat loss due to development.[3] Offsets in theory are intended to mitigate and remedy any loss of biodiversity. Equally, offsets are intended to be utilised only as a means of last resort.[4] For example, developers are expected to avoid, minimise and rehabilitate any biodiversity impacts before considering offsetting any residual

[1] *Biodiversity Conservation Act 2016* (NSW) s 6.2.
[2] JW Bull et al, 'Biodiversity Offsets in Theory and Practice' (2013) 47(3) *Oryx* 369, 372.
[3] Fabien Quétier and Sandra Lavorel, 'Assessing Ecological Equivalence in Biodiversity Offset Schemes: Key Issues and Solutions' (2011) 144(12) *Biological Conservation* 2991, 2995.
[4] Ibid.

impacts.[5] This is due to the fact that, although unintended, in practice, offsets can result in net loss of habitat and failure to restore equivalent ecological value.[6]

Good governance and correct administration of biodiversity offsets schemes, such as the NSW Biodiversity Scheme, is imperative to ensuring that offsets are utilised effectively and only as a last resort. The theoretical sense of the Biodiversity Offsets Scheme can only be achieved if offsets are consulted genuinely as a last resort. Most importantly, biodiversity offsets should not be relied upon by developers as a means of avoiding complexities associated with protecting vital habitats and ecosystems. Ensuring that the correct administration of the NSW Biodiversity Offsets Scheme and that offsets are used only as a last resort is imperative to safeguarding its integrity.

Principle of No Net Habitat Loss

Biodiversity offsets are the key vehicle for achieving the outcome of no net loss of habitat. Implementation of this internationally-recognised principle has been the reason why many major infrastructure projects have been allowed to proceed. While we recognise the role biodiversity offsets play as part of a pragmatic approach to sustainable development, they are not ideal as vegetation and habitat are nevertheless destroyed or degraded.

The *Biodiversity Conservation Act 2016* does not reference this important principle in relation to the offset scheme. It is therefore unclear whether it is applied in relation to proposed developments and any associated offsets.

At a Commonwealth level, the recent review of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), conducted by Prof. Graeme Samuel AC, expressed concern that offsets had become the norm, rather than a last resort. The review recommended the creation of National Environmental Standards (NES) which would be based on outcomes, as opposed to the process-driven nature of the Act. The NES, drafted in consultation with stakeholders, included the requirement that project applicants “ensure no net reduction of habitat of a listed threatened species”.

[5] Bull et al (n 2) 370.
[6] Quétier and Lavorel (n 3) 2991.

It is evident that the test of no net habitat loss is too often treated as an afterthought or simply ignored. Furthermore, some proposed offsets are transparently inappropriate. A key example is the expansion of the Brandy Hill rock quarry, which was approved by the NSW Independent Planning Commission in July 2020. Construction company Hanson Australia's proposed offset was to plant trees as a replacement of the koala habitat destroyed by the expansion. Forest conditions have developed over decades, making them suitable habitat for koalas and other native species and they cannot be replicated by tree planting. It is simplistic and unreasonable to expect koalas to be able to live in this replacement habitat. Therefore, Hanson's claim that their offset "will ultimately provide koala habitat that is of greater quality than currently exists" is not credible.

Under Prof. Samuel's proposed National Environmental Standards, the Brandy Hills quarry expansion would have failed to meet the "no net reduction of habitat" test and would not have gained approval. In anticipation of changes to the EPBC Act to allow bilateral agreements with states and territories administering decisions according to the NES, we believe the NSW Government should amend its legislation to explicitly require biodiversity offsets to achieve this outcome for native flora and fauna.

Offsets Must be of Equal Ecological Value

The NSW Biodiversity Offsets Scheme must include an assessment of the ecological value of the area with respect to long term impacts to the species, habitats, and processes.[7] At present, this is a short-term, band-aid resolution that is not in practice protecting biodiversity. Over 100 countries have laws or policies that consider and apply parameters to biodiversity offsets,[8] yet four decades of research have revealed a range of limitations offered by offsets in mitigating or restoring following the degradation and destruction of vital ecosystems.[9]

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[7] LJ Abdo et al, 'Biodiversity Offsets Can be a Valuable Tool in Achieving Sustainable Development: Developing a Holistic Model for Biodiversity Offsets that Incorporates Environmental, Social and Economic Aspects of Sustainable Development' (2019) 12(5) *Journal of Sustainable Development* 65.
[8] OECD Biodiversity Offsets, Effective design and implementation, 2016, https://www.oecd.org/environment/resources/Policy-Highlights-Biodiversity-Offsets-web.pdf.
[9] British Ecological Society, BIODIVERSITY OFFSETTING – WHAT DOES THE SCIENCE SAY?, https://www.britishecologicalsociety.org/wp-content/uploads/Biodiversity-offsetting-BES-report-FINAL.pdf.

The concept of sustainable development increasingly relies on interpretation of decision makers to define economic necessity versus environmental preservation.[10] Research conducted by the British Ecological Society, stresses the importance of a broad evidence-based approach to understand often slow and uncertain outcomes of development regarding ecological restoration.[11] In the context of offset schemes, one cannot proceed without truly considering long term ecological impacts and the ramifications in removing vital ecological systems.[12] It is important therefore, to consider the inherent uncertainty and long-term effects of such systems even after offsets have been applied after land clearing and development activities.

The integrity of the NSW Biodiversity Offsets Scheme as such must involve careful planning to ensure offsets of equal or greater ecological value are implemented prior to altering habitats at the hands of infrastructure projects. Connelly asserts sustainable development and ecological consideration fundamentally relies on the reconciliation of development and the environmental resources on which society depends.[13] It is evident some nations are yet to implement policies where biodiversity impacts are fully or partially compensated in relation to environmental resources according to the OECD.[14]

Furthermore, commentators have suggested that biodiversity offset schemes fail to evaluate biodiversity losses due to a simplified approach to offsets not comparable to biodiversity gains or a 'no net loss' approach.[15] Simply put, many projects proceed without due consideration to the biodiversity, ecosystem function and/or ecosystem services of the land. Failure to align offsets to ecological equivalence significantly underestimates aspects of the ecosystem (or each aspect to be offset) that relates a corresponding indicator essential to ecosystem success.[16] Indicators that must be considered include, key species specific to habitats, species particularly sensitive to human influence, genetic diversity of plants and seeds, soil condition and other less obvious components (e.g., microbes and microorganisms). It is for this reason the proposed offset scheme be based on equivalence to biodiversity losses comparable to biodiversity gains.

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[10] Jennifer Elliott, *An Introduction to Sustainable Development* (Routledge, 4th ed, 2013).
[11] Ibid.
[12] Georgia Garrard et al, 'Here's How to Design Cities Where People and Nature Can Both Flourish', *The Conversation* (24 October 2018).
[13] Steven Connelly, 'Mapping Sustainable Development as a Contested Concept' (2007) 12(3) *The International Journal of Justice and Sustainability* 259.
[14] OECD (n 8).
[15] Abdo (n 7).
[16] Ibid.

Concluding Remarks and Recommendations

To conclude, Youth for Conservation is supportive of the Biodiversity Offsets Scheme operating in NSW. That being said, the weight of authority suggests that offset policies are best utilised as a measure of last resort. It is far more effective, both environmentally and economically, for developers to avoid, minimise and rehabilitate any biodiversity impacts that flow from their activities. In this way, the net loss of habitat and biodiversity that can arise from offsetting is avoided.

Therefore, Youth for Conservation makes the following recommendations to the Committee:

1) That the Biodiversity Conservation Act 2016 (NSW), and any relevant Regulations made under the Act, be amended to expressly state that the Biodiversity Offsets Scheme is a measure of a last resort;

2) That the Biodiversity Conservation Act 2016 (NSW), and any relevant Regulations made under the Act, be amended to reflect offsetting as a mechanism to achieving no net loss of biodiversity;

3) That the Biodiversity Conservation Act 2016 (NSW), and any relevant Regulations made under the Act, be amended to limit the Scheme's operation to the clearing of flora which is simplified enough that its functions can be restored elsewhere with confidence;

4) That the Biodiversity Conservation Act 2016 (NSW), and any relevant Regulations made under the Act, be amended to stipulate that the time between the clearing of a habitat and the maturation of any offset must not create circumstances that represent a significant risk to a species, population or ecosystem process;

5) That the Biodiversity Conservation Act 2016 (NSW), and any relevant Regulations made under the Act, be amended to stipulate that the differences between the habitat cleared and the offset produced must not create circumstances that represent a significant risk to a species, population or ecosystem process;

6) That the Biodiversity Conservation Act 2016 (NSW) be amended to include a formal measurement system of ecological equivalence which reflects the biodiversity values enshrined in the Act; and

7) That the Biodiversity Conservation Act 2016 (NSW), and any Regulations made under the Act, be amended to stipulate that any offsets be maintained by the clearing party for as long as the impacts from the clearing persist.

These recommendations are in line with the expert opinions in this area, and align with the purpose of the Biodiversity Conservation Act 2016 (NSW) to:

> ...maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development…

Youth for Conservation recognises the economic necessity of development. However, it cannot be in a way that plays havoc upon our environmental heritage. The Biodiversity Offsets Scheme is a valuable tool to ensuring that development proceeds on more sustainable footing. However, it must be refined as a Scheme to ensure that it may reach its full potential.

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