

## INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

**Organisation:** Natural Resource Management and Planning staff - Port  
Macquarie Hastings Council

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## Legislative Council - Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

Port Macquarie Hastings Council (PMHC) staff welcome the opportunity to comment and provide information regarding the integrity of the NSW Biodiversity Offsets Scheme (BOS). As a consent authority administering the BOS, PMHC staff have commented on the terms of reference 1 (a), (b) and (d) as they relate to development applications under part 4 of the *Environmental Planning and Assessment Act 1979*. Please note that the following information and recommendations are presented by the Natural Resource Management team and Planning staff and are not representative of Council.

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.

**(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,**

### **Comment:**

*While the principles of ‘avoid, minimise and then offset’ are sound and resoundingly supported, in practice there is little evidence of avoidance in the first instance due to a lack of definition within the legislation. The definition of ‘avoid’ and ‘minimise’ is left to interpretation by proponents, the various departments within Council and or guidance from the relative development control plan (DCP). Such uncertainty creates friction, not only across Council divisions, but with proponents seeking clarification, resulting in the impacts of development being simply offset.*

*In addition, proponents rarely (if ever) seek ‘like for like’ credits for offsetting as;*

- a) no such credits exist or*
- b) the time taken to find such credits is seen to hold up the project / development.*

*Subsequently, a proponent will add the amount of the offset obligation into the cost of the development and requirements to avoid and minimise are never considered. This is largely because once a Biodiversity Development Assessment report (BDAR) is made and credits calculated, they must be submitted within 14 days and as such, are considered done. As a result, it becomes problematic to amend a proposal once the calculated offset (impact) is known, unless the consent authority can find a legislative requirement to do so. In addition, under the flexibility of the variation rules, proponents are able to offset impacts using credits from completely different Plant Community Types and or threatened species than those impacted by development.*

**Solution:**

1. Define the terms 'avoid and minimise' within the Biodiversity Conservation Act 2016 to provide clarity to proponents and consent authorities regarding the impacts of development and what obligation is required in a legislative context.
2. Clarify the determination of Serious and Irreversible Impacts such that all entities (including TECs) have quantifiable impact thresholds beyond which development cannot be approved. These thresholds should be based on current knowledge and be regularly updated to respond to changes in the entity's conservation status.

**Comment:**

Given that most (if not all) developments within the PMHC Local Government Area (LGA) have entered into the Biodiversity Offset Scheme (BOS) via the payment of credits, its effectiveness to halt or reverse the loss of biodiversity values remains unquantified and further, unquantifiable. Retiring credits to the Biodiversity Conservation Trust (BCT) results in biodiversity values being lost within the PMHC LGA unless

- a) provisions within Council's DCP or Local Environmental Plan (LEP) are triggered and enforced or
- b) State Environmental Planning Policy (SEPP) Koala Habitat Protection 2020/2021 and 44 requirements must be met.

Currently in PMHC LGA, the only biodiversity values that trigger DCP provisions are Koala Food and Hollow-bearing Trees which generally require a Vegetation Management Plan to manage their respective on ground offsets. This has given rise to the loss of other biodiversity values such as threatened species habitat for wetland species (e.g Swift Parrot, Wallum Froglet, Glossy Black-Cockatoo, Grey-headed Flying Fox etc) and the potential loss of critically endangered species through offsetting (retirement of credits) their habitat (e.g Native Guava and Scrub Turpentine).

**Solution:**

Initiate an audit of all Ecosystem and Species credits to date that have been retired per LGA and whether such credits have been retired 'like for like'. Provide such information to Council so that DCP and LEP provisions may be updated to better reflect the biodiversity values that have been lost and now require further protection. This information may also be used to assess the cumulative impacts of the BOS itself and should be made publically available to ensure that the efficacy of the BOS is able to be determined.

**Interaction with other legislation:****Comment:**

In rural areas, the removal of large tracks of vegetation regulated by the Local Land Services Act 2013 (LLS Act) remains contentious. Along the coastal strip of NSW, escalating land costs and increasing pressure from development has facilitated such clearing with minimal oversight. Once cleared, the land becomes subject to re-zoning which then allows for development. In this way, the loss and or fragmentation of Threatened Ecological Communities is never measured and the cumulative impacts of this remains unknown. Noting that clearing in all three years following the biodiversity reform has far exceeded the long-term average from 2009-17. For example, in 2019 the DPIE landcover change report found that 74% of clearing on regulated rural land was "unexplained".

**Solution:**

*Further clarification on what assessments apply to the impacts associated with clearing under the LLS Act prior to planning proposals and resulting zone changes is required.*

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the role of the Biodiversity Conservation Trust in administering the scheme and

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**Comment:**

*There has been very little information provided to Council regarding the administration of the BOS by the Biodiversity Conservation Trust (BCT). A recent webinar to discuss the new developer charges (June 2021) is the first time any information regarding transactions for ecosystem credits and species credits have been relayed. Of concern was the trading transactions **that have not occurred**, where 952 species credits transactions and 310 ecosystem credits have had no trades.*

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whether the Trust is subject to adequate transparency and oversight,

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**Comment:**

*As stated above, the lack of information surrounding the trading scheme, whether 'like for like' is being achieved and where those offsets might be located is concerning. It appears that developers are paying for offsets, but the offsets are not taking place. This mean that the effectiveness of the BCT (and the BOS) is now in question. Is there now a large 'offset fund' to acquire land where offsets may be properly accounted for? If so, where is the accounting / report that provides information on which species and ecosystems are required as a results of such offsets and further, if / how this may be achieved?*

**Solution:**

*Initiate an audit of all ecosystem and species credits that have occurred and those that have not been traded to date. The audit should clearly demonstrate the availability to meet the required offsetting and where it has and where it would (possibly) occur. Upon completion, the audit should be made available to consent authorities to ensure that the biodiversity values currently lost, may acquire further protection within each LGA.*

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

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**Comment:**

*While the NSW Government has a role to demonstrate the 'avoid, minimise and then offset' principle, there has been no information regarding this practice made available. Such information would be invaluable as a guide and further, inform our community on the requirements for offsetting state significant developments.*

**Solution:**

*Provide information on the use of offsets by the NSW Government for major projects and strategic approvals to demonstrate efficacy and transparency.*

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(d) any other related matters.

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**Administrative concerns**

**Comment:**

*The BOS is overly complex and difficult to navigate even for those who have had specific training. It has been noted that proponents and Council staff are forced to rely on limited resources to provide information and undertake the required assessment. In addition, recent changes to the Biodiversity Assessment Method (BAM) have created further confusion, resulting in significant time delays to assess development*

applications. This has been driven by on-going inconsistencies within the submitted Biodiversity Development Assessment Report's (BDAR's) and application of the numerous legislative changes currently associated with development in NSW.

### **Technical concerns**

**Comment:**

*Trigger and entry into BOS may be easily avoided through the staging of development. In PMHC LGA, there are examples of where this has occurred or where illegal clearing has taken place prior to biodiversity assessment and lodgement. Such manipulation of the BOS results in a lack of understanding of the overall impacts, as they are incorrectly measured through a piecemeal approach rather than being avoided or minimised resulting in the loss of biodiversity values locally.*

### **Legislative concerns**

**Comment:**

*The relationship between the BOS and State Environmental Planning Policy (SEPP) Koala Habitat Protection 2020/2021 remains unclear, and is seen to be 'double dipping' if there is also a requirement under the BOS. Given the BOS offset obligation is generally a 'retired credit' into the BCT, offsets within the LGA where the biodiversity is lost, should to be more clearly articulated.*

*So too the relationship between Private Native Forestry (PNF) and the BOS, which still requires resolution. Currently in our LGA, a development application should be submitted to enact PNF under the Local Environment Plan (LEP). However, provisions on such clearing that should trigger entry into the BOS and further, fall within identified koala habitat requires greater clarification.*

### **Stewardship sites**

**Comment:**

*Given the current lack of trades accomplished within the credit market to date, it appears extremely difficult for proponents and land holders to achieve stewardship accreditation. Additionally, there is uncertainty as to whether such sites truly offset the same biodiversity values lost, if the offset occurs in a totally different region. This uncertainty is further compounded by overly onerous assessment requirements to achieve biodiversity stewardship, which falls outside the resource capacity of most Councils and landholders to undertake. As a result, the trading system in its current format appears to have failed.*