

**Submission
No 50**

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Penrith City Council

Date Received: 31 August 2021



Our reference: ECM 9681695
Contact: Greg McCarthy
Telephone:

31 August 2021

The Director, Portfolio Committee No. 7 – Biodiversity inquiry
Parliament House, Macquarie Street
Sydney NSW 2000
email: PortfolioCommittee7@parliament.nsw.gov.au

Dear Sir/Madam,

Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

I refer to a recent invitation to make a submission to the Parliamentary Inquiry into the integrity of the NSW Biodiversity Offsets Scheme (BOS).

As an introduction, the protection and enhancement of biodiversity within the Penrith local government area is a component of my department's responsibilities. We also work closely with our development assessment and strategic planning teams to achieve Council's strategic biodiversity objectives.

Officers in my team are responsible for the assessment of biodiversity impacts from development, facilitating biodiversity improvement and protection initiatives and more broadly advocating to protect and enhance areas of biodiversity significance within the Cumberland Plain Subregion.

Please find below comments relative to the inquiry's terms of reference:

Effectiveness of the Scheme

1. *How effective has the Biodiversity Offsets Scheme been in halting or reversing the loss of biodiversity values in your LGA?*
 - a) *In what situations has it worked / not worked?*
 - b) *What could be improved?*

Comments:

Positives -

- i. The Biodiversity Offset Scheme has been successful in deterring and/or minimising development impacts on biodiversity, to avoid triggering the offset scheme, to avoid paying offsets and commissioning expensive reporting and surveys. This can result in re-design or and in some cases review of project feasibility to minimise biodiversity impacts.
- ii. The Biodiversity Assessment Method (BAM) has created a standardised process for surveys, documenting site biodiversity values and assessing impacts in a way that can/should be replicated by anyone else who follows the BAM. This reduces ambiguity and differences of opinions between ecological consultants.
- iii. Additional threatened species have been recorded that would not have been recorded previously from following outdated survey guidelines and previous reliance on 'habitat assessments' and 'likelihood assessments'.



- iv. An example of this includes a range extension for critically endangered *Hibbertia spanantha* recorded in The Hills Local Government Area.
- v. The BAM removes the reliance on 'habitat assessments' and 'likelihood of occurrence' to justify excluding species from further survey. The previous methods resulted in less surveys being undertaken, preventing detection of species not otherwise recorded within a locality due to lack of historical survey effort.

Concerns -

- i. In some cases, it is alleged the BOS may have encouraged unlawful site clearing or works to reduce vegetation integrity. This could include placing livestock on properties or undertaking activities to remove or degrade vegetation in the attempt to prevent the BOS being triggered or resulting in a lower offset requirement.
- ii. In some circumstances the BOS has sterilized land from development where it becomes financially unviable for a property owner to undertake the necessary assessments to build a home.
- iii. The BOS does not give local government the discretion to enforce the BOS or not. There may be scenarios where better biodiversity gains could be made through local restoration activities or vegetation management works. This may also include opportunities within the same property to improve or offset impacts through revegetation works or weed management.
- iv. The BOS does not provide a mechanism for councils to ensure offset obligations are sourced from within the same Local Government Area.
- v. The accreditation scheme does not have a robust way to check accredited assessors continue to prepare BAM compliant reports. There is no apparent consequence for non-compliant reports. There have been occasions when assessors dispute requests for further information from Council resulting in unnecessary development application delays and costs to landowners.
- vi. Targeted surveys for only species that are at risk of Serious and Irreversible Impacts (SAII) using the streamlined module (Small Area) of the BAM is likely to result in some species not being detected due to insufficient survey that under previous legislative requirements would have required survey and assessment. Some cases may have resulted in Species Impact Statements. This approach encourages development being undertaken by a Stage-by-Stage approach to get away with undertaking assessments requiring only survey effort and offsets imposed by the Small Area module.

Improvements -

- i. The BOS could be improved to direct some funds from offsets back to local government biodiversity improvement works.
Biodiversity Assessment Method (BAM 2020) / Accreditation comments and suggestions for improvements -
- ii. The - Streamlined module Planted Native Vegetation contained in the Biodiversity Assessment Method (BAM 2020) should be revised to reduce ambiguity of some wording as it is interpreted differently by consultants and the guidance received from the BAM support team. In particular, the

definition of mosaic of remnant and planted. It is understood a guidance document may be in development to assist assessors in applying the decision-making key.

- iii. The Streamlined module – Small Area module contained in the BAM 2020 should include a threshold or other requirement for further consideration that requires survey of all candidate species if the site meets certain condition thresholds or separate assessment that recognises the development will require the removal of significant habitat features such as waterbodies that are significant in Western Sydney. As another example species that are strongly affiliated with a particular Plant Community Type (PCT) and are not highly mobile species should be surveyed. For example, the Cumberland Plain Land Snail and Cumberland Plain Woodland. These further considerations could be built into the calculator.
- iv. An extra step could be implemented following assessor accreditation where an assessor is required to submit their first Biodiversity Development Assessment Report (BDAR) to DPIE for review (where they are responsible for certifying the report). If the BDAR report is satisfactory, the assessor could be provided with an extra credential attached to their accreditation that can be viewed on the BAM Accredited Assessors public register. The determining authority can then cross reference that the assessor certifying the BDAR has had previous BDARs reviewed and approved. It is also unknown if the register of accredited assessors will include the different level of conditions assessors hold following renewal training and when new consultants are accredited.
- v. In addition to point iv. the development and implementation of a framework modelled on the NSW EPA's Contaminated Land Site Auditor Scheme may be useful. In this respect "BAM Auditors" could be used by local government to review the work of assessors preparing biodiversity assessments (at the developer's cost) where there is disagreement, where the matter is complex, or where the Council does not have adequate in-house expertise.

Scheme administration

3. The Biodiversity Conservation Trust administers the Scheme:

- a) *Do you have any concerns with how the Trust has discharged this role to date?*
- b) *Do you think the Trust is subject to adequate transparency and oversight?*

Comments:

- i. 3 (a) and (b) - There is no available published data documenting the number of credits generated by development and what monetary value has been received.
- ii. There is currently not enough transparency documenting what monetary value has been received by the Biodiversity Conservation Trust (BCT) to meet offset obligations for Species Credits and Ecosystems Credits from development and how the offsets have been met/secured.
- iii. This lack of transparency identified in (i and ii) has resulted in concern whether the standard of 'no net loss' will be achieved when developers have the option of paying a monetary contribution to the Biodiversity Conservation Trust to satisfy their offset obligations.



Non-additional offsetting practices

4. *Has the ability to apply offsets to existing conservation areas had an impact on your councils' biodiversity objectives?*
5. *From your perspective have non-additional offsetting practices influenced offset prices or opportunities for council or private landowners to engage in the scheme?*

Comments:

- i. In relation to 4 – Penrith Council has not created Stewardship Site Agreements on council land. This is due to concerns regarding the upfront costs and no certainty on the guaranteed sale of credits to make the process financially viable.
- ii. In relation to 5 - Council has not explored this in detail to date as no Stewardship Site Agreements or feasibility studies have been undertaken for Council land.
- iii. Areas that contain high biodiversity values are sometimes not large enough or are subject to several indirect impacts which would make effective management difficult.

Council would like to thank you for the opportunity to contribute to this important issue. If you would like to discuss this matter further, please contact me on _____ at your convenience.

Yours faithfully,

Greg McCarthy
Manager Environmental Health & Compliance