

Submission
No 52

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Planning Institute of Australia

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The Committee Chair
Portfolio Committee No 7 – Planning and Environment
Legislative Council, Parliament of NSW
Macquarie Street
Sydney NSW 2000

The Chair,

PIA SUBMISSION – INTEGRITY OF NSW BIODIVERSITY OFFSETS SCHEME

The Planning Institute of Australia (PIA NSW) welcomes the opportunity to prepare a submission to the Portfolio Committee on the on the integrity of the NSW Biodiversity Offsets Scheme noting the terms of reference in **Attachment A**.

PIA is the professional body representing urban and regional planners and have several thousand members practicing in the NSW planning system in government and consulting.

INTRODUCTION

PIA has prepared a climate change and biodiversity position paper as a basis for our input to the inquiry: <https://www.planning.org.au/policy/climate-change-and-biodiversity-loss-nsw>

Other relevant PIA NSW submissions on the biodiversity offsetting regime and assessment methodology are: <https://www.planning.org.au/documents/item/10270> and <https://www.planning.org.au/documents/item/8514>.

PIA is concerned that the biodiversity offsets and credit system is a ‘black box’ – whose rules allow too many not ‘like-for-like’ offsets and do not send a consistent or predictable market signal reflecting the conservation value of land.

Ultimately the offsetting regime should be a decision support tool for informed land use decisions based on biodiversity considerations, however it can appear to operate in the abstract.

PIA members consulted find that:

- “The system is too hard to apply and fully understand, and there are too few trained practitioners available for it to be broadly accessible and utilised as intended.”

PIA is not able to comment on the fundamental performance indicator of the regime – whether NSW biodiversity values are better protected – however members commented that:

- “it is easier to clear land than resolve the offsetting”
- “the ‘Avoid, Minimise, Offset’ hierarchy appears to be ignored too often, with proponents to go straight to offsetting”
- “like for like offsetting is too rarely achieved”

OUTCOMES OF PIA MEMBER CONSULTATION

1. *Whether assessment methodology and computations are too complex / not transparent – or yield unhelpful output*

Amongst practitioners, the assessment methodology is referred to as ‘the calculator’. There is not widespread understanding how the values are generated, and the scheme is very difficult to apply.

The scheme would be easier to apply if the information was more accessible. Trained practitioners need to download large datasets in GIS and manually identify relevant categories that way. Not every practitioner, let alone landowner, would be able to do the same thing. It appears that the scheme was set up in a way that favours specialists who can interpret, understand and use the regime. This view is also supported by the findings of this paper on equity of access:

<https://www.tandfonline.com/doi/full/10.1080/26395916.2020.1862914>

2. *Whether council biodiversity policies are sidelined*

Many councils have adopted biodiversity strategies and tree protection measures / DCPs based on available scientific evidence, and which have been developed with local landowners and community stakeholders. These strategies typically have a broader emphasis on habitat, rather than the specific conservation of threatened species and communities. As a result, councils when assessing development will be obliged to reconcile the outputs of Biodiversity Assessment Reports with the considerations of their adopted strategies.

Council officers will be expected to judge the extent to which proposed offsets also meet their policy objectives and include conditions on consent or reject development accordingly. On appeal, this will place councils in the position of disputing the relative merits of their adopted policy versus the output of the BAM. This is an unnecessary and costly proposition. This also means that there are some duplications, possibly in field work or even assessment models. This is ineffective as a process.

PIA regards the duplication of offsets processes under the Regulation versus separate biodiversity considerations in Council planning strategies to be a serious flaw in the design of the scheme. It will also make it time consuming and cost intensive for all parties.

It is also observed that offsets are not apparent at the planning proposal stage. The proponent does not have to choose their offset option at the planning proposal stage. Councils have no say where the offsets will occur, and the current scheme may result in the LGA not getting any local offset benefit (where they may be available).

3. *Whether the market for credits is distorted / being gamed*

PIA's 2017 [submission](#) highlighted the volatility and high cost of offsets on the Cumberland Plan, Macarthur and in the Hunter. It is not clear whether the value of credits reflects a proportionate conservation incentive.

The scheme is an improvement at the local government level on the previous Threatened Species Conservation Act 1995 where development very rarely triggered a Significant Impact Statement. Applicants don't wish to enter the Biodiversity Offsets Scheme (both by preparing ecology reports, then by retiring credits) and they want the easiest path possible to a determination, hence will change their design. Similar with Part 3 amendments to LEPs (applicants will avoid entering the BOS by changing their design).

4. *Whether there is evidence of poor biodiversity outcomes arising – especially where offsetting is not 'like for like'*

PIA recognises in principle the value of the "Like-for-Like" approach attached to biodiversity impact offsetting where the offsets are sufficiently comparable to result in a positive biodiversity outcome. Like-for-Like credits are supported first in the same local area and then in the same subregion.

PIA members consulted observed that:

- "Once a biodiversity offset site is established, there is too little follow through to ensure that landowners are maintaining the integrity of the site. Conservation on land in private ownership is essential to achieving positive outcomes and it is felt that landowners are not being properly supported by the NSW Government in this process."
- "Difficulties in purchasing like-for-like offsets in developing areas mean money is paid to the trust – mature trees/remnant vegetation is not protected."
- "There is too much risk in actually setting up a biodiversity conservation site, and as such landholders or councils are often reluctant to do this." This can make it very difficult for councils, as consent authorities, to offset within their council boundaries. There is often no appropriate place for this to occur."
- "The Biodiversity Assessment Methodology (BAM) is highly complex and difficult to interpret and apply. The role of the BAM is recognised in assessing the impact of projects on biodiversity loss, but these tools should be used to support decision making, rather than be relied upon to achieve positive biodiversity outcomes alone."
- "The process relies on onerous surveys being undertaken and the methods are difficult to standardise. While the reports themselves can be complicated beyond a generalist planning officer's capacity to interpret – especially in councils without ready access to ecological advice."

Planners consulted suggested improvements to transparency and equity of access including:

- A transparent online register and spatial viewer which showed where offset payments were being spent, to provide guarantees to the public that offset payments were being used appropriately.
- Readily accessible maps for sub regions, offset trading groups, PCT/species types etc
- Revising the assessment methodology to adequately reflects the changes in biodiversity values being experienced as a result of climate change and also recent major fire history.

- Consideration of how any biodiversity offsetting regime might integrate with carbon credits. There is a recent pilot from the Federal Government which attempts to mesh these systems together. Article here: <https://www.smh.com.au/politics/federal/world-first-scheme-could-open-carbon-and-biodiversity-market-to-farmers-20210517-p57smd.html>

FINDINGS

The following observations have consistently emerged from member consultation:

- The BOS does result in applicants modifying their development proposals to avoid damage and avoid going through the scheme.
- The BOS is overly complex and difficult to navigate even for those who have had specific training.
- 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.
- There is inequity of access to the measures available under the BOS – especially where landowners are unfamiliar with the system and are poorly resourced.
- The BOS can be manipulated to avoid entry into the BOS by staging of development, or by clearing under the LLS Act prior to biodiversity assessment.
- The credit market is not robust, particularly outside metropolitan centres. Regionally, it is highly unlikely that the required credits are going to be retired in the same bioregion.
- There is a lack of willingness by the NSW government to accept data from councils to update the NSW Biodiversity Values Map. The NSW Government has so far advised it is not ready for any data to be submitted by local government.
- Vegetation removal in rural areas under the Local Land Services Act 2013 (LLS Act) is not subject to the same level of oversight or offsets as for the BOS and even when set aside areas are required, they are not enforced as compliance resources are severely limited.
- Removal of large amounts of vegetation is also occurring via Private Native Forestry agreements that are approved without even a basic flora and fauna report and are exempt from any offsets calculated by the BOS or from set aside areas under the LLS Act.
- There is a lack of meaningful information available regarding the administration of the BOS by the Biodiversity Conservation Trust (BCT). Similarly establishing stewardship sites is complex, costly and outside the capacity of most landholders; and it is difficult for landholders to approximate the financial incentives. Landholders should be assisted to understand the process for stewardship sites.

PIA appreciates the opportunity to share insights on the operation of the scheme. Please contact the undersigned for further information on our submission .

Yours sincerely

PIA National Policy Manager

ATTACHMENT A – INQUIRY TERMS OF REFERENCE

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.

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822#tab-termsofreference>