

Submission
No 56

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Tamworth Regional Council

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Portfolio Committee No. 7 – Planning and Environment
Committees – Legislative Council – Parliament of NSW
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

Ref: Ir/GH/GV Document Set ID 871245

Introduction

The protection of biodiversity is paramount and Council supports the current Inquiry into the integrity of the Biodiversity Offsets Scheme (BOS). Whilst the BOS is an improvement on the former legislative framework (the 7 part test), it is becoming increasingly apparent that the BOS is not leading to net improvements in biodiversity which is very concerning.

Council would raise the following matters for consideration:

Competing legislation and inconsistencies between the competing legislation and the *Biodiversity Conservation Act*

It is difficult to comment on the success or otherwise of the BOS without relating this to the overall effectiveness of the *NSW Biodiversity Conservation Act*. Overall, the Act is considered to be ineffective because it operates *in competition* with or is *overridden by*, other legislation (*Local Land Services Act*, *Private Native Forestry*, *Rural Fires Act*, *Planning for Bush Fire Protection* etc.). This conflicting legislation has a direct negative impact on the outcomes that can be achieved by the BOS due to enabling pre-clearing, with the knowledge that the compliance/regulatory response will be minimal and if at all, substantially cheaper than the BOS alternative.

Details

One of the major flaws of the *Biodiversity Conservation Act* and therefore the BOS is that it does not take precedence over other land clearing legislation such as the *Local Land Services Act 2013* (LLSA). The LLSA facilitates clearing of native vegetation for agricultural purposes via a 'permit' process which largely involves self-assessment by the proponent. The Act clearly states the Local Land Services is not a determining authority for the purposes of Part 5 of the *EPA Act* when issuing an approval certificate for the clearing of vegetation.

There is very limited assessment by Local Land Services of the impact that the proposed land clearing will have on loss of biodiversity, particularly in relation to Endangered Ecological Communities. The application process via LLS certification is completely inadequate when compared to the stringent requirements for a Biodiversity Development Assessment Report (BDAR) as part of the Development Assessment process under Part 4 of the *Environmental Planning and*

Assessment Act (EPA Act). Under the latter, the proponent is required to engage a specialist consultant accredited under the *Biodiversity Conservation Act* to apply the Biodiversity Assessment Method (BAM).

Conversely, the LLS approval process does not involve any rigorous assessment of the impact of the proposed land clearing on biodiversity values. Anecdotal evidence suggests that many of the land clearing approvals issued by the LLS are not referred to any other Government Agencies in relation to the impact on biodiversity. Furthermore, in some instances, the proponent chooses to clear the land without obtaining any approval from the LLS and simply 'pays the fine' afterwards, which is significantly cheaper than entering the BOS when development is the intended outcome. According to various reports, land clearing in NSW has risen nearly 60% since the native vegetation laws were 'relaxed' in 2017.

Clearly the BOS will never achieve its intended objectives while its parent legislation has no teeth and is overridden by competing legislation with conflicting objectives and minimal compliance support.

Inequity of the BOS

Small landholders

From an equity perspective, the BOS clearly disadvantages small scale land owners and benefits owners of larger tracts of land such as large developers and corporate entities. Many smaller land owners (sometimes referred to as 'Mum and Dad' developers) face significant costs in implementing a BOS (including engagement of accredited consultants to prepare BDARs and payment of offsets etc.) despite containing minimal biodiversity on-site and therefore with limited prospects of achieving a satisfactory biodiversity outcome. Smaller land owners may decide to abandon their proposals because the BOS process is too onerous. Large scale land owners such as rural landholders and major developers on the other hand, are able to use legislation such as the LLSA to clear or reduce the biodiversity value of their properties, thereby minimising the cost of the scheme or avoiding the BOS assessment process altogether.

Local retirement of offsets

The other equity issue relates to the fact that the majority of offsets are not retired locally. Most Councils would prefer that biodiversity credits originating from their LGA are retired within the same locality but this is rarely the case due to the complexities involved in establishing 'suitable' stewardship sites. The end result is that the LGA experiences the loss of vegetation but does not receive the benefit of the offsets.

In order to encourage local retiring of credits, the BOS needs to facilitate and incentivise the creation of more stewardship sites in local areas. At present, it is easier to simply pay the Trust and use the credits outside the relevant LGA. It is noted that the Trust lacks a transparent offset tool that lists all of the offset locations and therefore the potential of 'double dipping' is also a significant risk.

Lack of upfront planning

Planning Proposals

Offset options are not required to be considered at the planning proposal stage of a development – however, *they should be*. Offsets are often viewed as an afterthought within the planning system. An example is where a proponent seeks to rezone a property which would result in clearing above the BOS threshold. As the proponent is only required to prepare a BDAR at the DA stage, the proponent doesn't know what the offset requirements may be nor the costs and offset implications until the DA is lodged. It is considered that information about the offsets should be available upfront to proponents, so that they understand how it may affect the viability of their proposal. This would ultimately encourage better design upfront as developers would have a greater focus on avoiding and/or minimising vegetation clearing.

Lack of assistance and current information

From an administrative perspective, there are also problems in relation to incomplete mapping and Guidelines. The BOS is very complex and since the Government funding for LG support officers was withdrawn in 2020, it has been difficult to obtain consistent advice on planning issues from the Department.

There are also on-going difficulties for LGAs that have more detailed, accurate and current mapping which is delayed by the Department in being able to be uploaded. This is extremely frustrating for those Councils and can lead to an increased loss of biodiversity when decisions are made based on data that is inaccurate or out of date.

Lack of Accountability

There is a lack of transparency and therefore accountability regarding how and where funds from the Scheme are spent. Funding and expenditure of funds should be reported publicly to enable public scrutiny and ensure transparency.

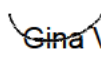
Principles and priorities

- It should be clearly established that offsetting should be the last, not the first option, with the first option of avoidance being reinforced;
- The cost of offsetting should act as a clear disincentive to develop land or those parts of land with significant biodiversity values;
- Connectivity to enable species movement should be a priority appropriately favoured by the Scheme. Isolated pockets should receive less support;
- Compliance and regulatory support by way of appropriate resources must be funded by government departments to discourage unlawful and unregulated clearing in rural zones;
- Offsets should be retired within the relevant LGA;
- The financial benefit to private landowners (as well as Councils) in creating stewardship sites should be significant enough that this is encouraged and is a greater incentive than selling the land to a developer;
- Biodiversity considerations and the cost of biodiversity offsetting through the BOS should form an integral part of the Planning Proposal process so that developers are fully aware of the implications and can make informed decisions before the land is rezoned.

Conclusion

In conclusion, the purpose and objectives of the BOS are appropriate and the existence of such a scheme is vital for the protection of biodiversity, in particular, EECs across the state. However, the current BOS has significant limitations in its operation and effectiveness. In this respect, particular concern is raised in relation to widespread biodiversity loss in western/rural areas of NSW where the effectiveness of the BOS and its parent legislation is compromised by other legislation such as the LLSA.

Yours faithfully


Gina Vereker
Director – Planning and Compliance

Contact:

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