

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Dubbo Regional Council

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30 August 2021



The Chair
Portfolio Committee No. 7
Ms C Faehrmann MLC
Parliament of New South Wales
6 Macquarie Street
SYDNEY NSW 2000

Dear Ms Faehrmann

RE: DUBBO REGIONAL COUNCIL SUBMISSION, INQUIRY INTO THE INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Please find attached for the consideration of the Committee, Dubbo Regional Council's submission in respect of the Government Inquiry into the integrity of the NSW Biodiversity Offsets Scheme.

Council welcomes the opportunity to further discuss with the Committee the content, perspectives and initiatives included in Council's submission.

If you require any further information or clarification, please contact Council's Manager Growth Planning, Steven Jennings on .

Yours faithfully

Stephen Wallace
Director Development and Environment

Attachment: 1. Submission



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Dubbo Regional Council Submission to the Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

Council staff are well trained in application and administration of the Biodiversity Offsets Scheme, have been actively involved in administering the Scheme for specific Development projects, reviewing State Significant Developments in relation to application of the Scheme and have explored Stewardship opportunities available under the Scheme. Council staff have also been involved in reviewing the Scheme and developing additional training resources for Local Governments across the State in conjunction with Departmental staff.

As a result the following comments are provided for the consideration of the Enquiry. Comments specific to the questions raised in the Terms of Reference are as follows:

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,**

The Biodiversity Offsets Scheme (the Scheme) must be considered in context, including its relationship to the levels of clearing which are occurring in the areas of the state which were specifically excluded from its management, the Local Land Service (LLS) managed areas. Biodiversity loss or retention across the State should be considered in relation to the Biodiversity Conservation Act in its entirety, rather than just the Biodiversity Offsets Scheme. It is considered that Biodiversity loss in areas excluded from the Scheme has far exceeded any biodiversity saved in areas managed through the scheme.

While these areas and the associated clearing are not covered by the Biodiversity Offsets Scheme, the clearing is a direct result of the structure of the Biodiversity Conservation Act from which the Scheme arises, and from which certain exclusions are included.

The path to reducing or slowing broad scale biodiversity loss is through revisiting the previous Act with its reliance on professional, objective vegetation assessment (i.e. by Government) and reviewing the mechanisms and requirements associated with the current range of exemptions.

More specifically the Scheme itself in relation to developments has acted to effectively moderate certain larger scale developments where the cost of offsetting impacts has reduced any appetite for clearing. It is also considered that the Scheme has educated smaller scale Developers to seek impact minimisation rather than undertaking broad scale clearing.

It can legitimately be argued that the Scheme, as administered by the Department and Local Government has effectively slowed the loss of biodiversity in Urban and peri-Urban NSW,

however, Biodiversity loss has not been halted or reversed by the Scheme as a result of losses across the broader agricultural landscape.

The core underlying ethos of the Scheme where biodiversity can be destroyed in one place if it can be protected elsewhere continues to see a decline in the total vegetated area, by definition this means there is an ongoing decline in the area vegetated. That decline has been shown to be slowed in some areas while development pressures and land values are such that the Scheme is failing to have an impact in those areas of greatest land values/development pressure.

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

1(b) - This relates to the use of offsets for State Significant Development (SSD) and State Significant Infrastructure (SSI) major projects, including as part of strategic assessments (or biodiversity certifications) and the offsetting conditions that consent authorities apply to these types of projects.

Councils experience in respect of such issues revolve largely around a number of SSD renewable energy projects. In these circumstances the proponents have been large corporations, rather than the State Government. The sites in question have largely been grazing or cropping land and there have been no issues around the development of BDAR's or their acquittal.

In each case the proponents have elected to acquit their liabilities via the Biodiversity Conservation Trust.

(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

1(c) - Non-additional offsets are offsets that don't provide any additional conservation values or increase in biodiversity values, but still generate credits to enable the loss of existing biodiversity values. For example, converting existing nature reserves into offset credits.

It is considered that by definition this practice would likely see a decline in biodiversity values across the State.

Land which is already managed by public entities is protected from clearing and biodiversity loss. Considering this already protected land as being suitable to be able to offset development clearing, could be considered as 'double dipping' and is likely to lead to an overall increased loss of biodiversity by allowing an already protected site to account for a development site, rather than requiring "development" to add to the protected estate.

In many cases public bushland management is poorly resourced, as a result, the land manager may be tempted to seek private funding support through the Stewardship Site process. The public bushland should be adequately protected and resourced and developments should be required to add to the protected land estate (through private Stewardship).

The enhancement of degraded public lands could become a goal of the Biodiversity Conservation Trust, alongside the addition of private bushland to the protected estate.

This practice has not been adopted in the Western region to Council's knowledge. If this practice was to become widespread it would likely lead to a decrease in credit prices (through an overabundance of public credits and the potential willingness of public entities to accept lower credit prices from the market) with a subsequent reduction in the attractiveness of the Scheme for private landholders.

It should also be noted that the credit numbers generated from moderate to high quality protected bushland will be small, this is a direct result of the current Stewardship rules in the Scheme which penalise good quality bushland and promote the protection of degraded sites over intact or good quality sites.

(d) Any other related matters.

- i. An unexpected and perverse outcome of the Scheme is that the definition of clearing as "the cutting of native vegetation" captures the slashing of native grasses. While slashing of native grasses may be necessary for fuel control and other site management it is not permanent removal of the vegetation, yet is calculated as such by the Scheme. In this instance the required Asset Protection Zone for bushfire protection, which often involves slashing of native grasses, may well tip a small scale (house) development over into the Scheme, which requires small scale developers to undertake expensive site surveying, report development and (at times unnecessary) offsetting. Where vegetation is not being permanently destroyed it should not be accounted for under the Scheme.
- ii. The continuation of the Native Vegetation Act 1990 regeneration date as the date from which regenerated native vegetation is excluded from consideration is increasingly difficult to justify. In 2003 when the Native Vegetation Act was approved the 1990 regeneration requirement was 13 years old, and generally offered limited biodiversity values. Under the Biodiversity Conservation Act, with a continuation of that state, we now have 31 year old vegetation classified as value-less regeneration. In many cases 31 year old regeneration has significant potential biodiversity value.
- iii. Biodiversity Values (BV) Mapping should incorporate areas of Endangered Ecological Communities (EEC). These are known and mapped currently but are not incorporated into the BV Mapping which is a necessary point of consideration under the Scheme. For the bulk of NSW this mapping shows streams and rivers and the associated assumed riparian strip, and very little else is deemed of sufficient value to be mapped.
- iv. The Scheme assumes an adoption of the Vegetation SEPP, which is voluntary. Where Council's choose not to adopt the Vegetation SEPP there are limited compliance avenues for Councils. In Council's experience, the Department has not shown a willingness to undertake consistent compliance actions in support of Councils.

It is noted that both Councils and the community would require financial and other assistance to adequately administer these requirements.

v. Stewardship Sites

- The system in place under the scheme does not reward the protection of good quality remnant bushland. Very few credits can be generated through the protection of good quality bushland. By contrast the protection of degraded sites can generate credits through the effectiveness of rehabilitation/regeneration actions undertaken under the Stewardship Sites Management Plan. This is counter-intuitive.
- The system in place also does not allow for generation of credits through broad scale revegetation of current grazing/cropping lands. The calculator fails when attempting to generate credits from an initial Vegetation Integrity Score of 0.

vi. Land use post development is not addressed through the Scheme and is not static. Land use post development can significantly impact residual biodiversity and is not addressed through either the BC Act or the EP&A Act. Currently when a subdivision is being considered under the scheme the building footprints, fencing, roads and other infrastructure are considered, assessed and offset. If subsequent home builders utilise the residual bushland as a firewood resource, motorcycle track, horse paddock, to graze goats or similar non-assessable land uses the residual biodiversity is rapidly lost. This “future loss” cannot be considered under the Scheme.

vii. Council has experienced reports prepared to support development, which are technically in ‘compliance’ with the Scheme. However, after Council review, there appears to have been a level of interpretation which has resulted in a more favourable consideration of the impacts of a development proposal. This has included the following:

- Inadequate initial site assessments, failing to map roads, infrastructure etc. in an attempt to reduce the scale of impact. Assessment of provided GIS files can resolve this, if Council staff are sufficiently skilled, and if the GIS files are provided, which is not always the case.
- Poor or poorly timed site assessments which minimise biodiversity on site (i.e. winter assessments will minimise groundcover and grass diversity, may enhance the abundance of exotics and will likely minimise the presence of fauna species). This could be resolved by formalising the advice that multi-seasonal surveys are optimal into a requirement under the Scheme. Assessments carried out during or immediately post the recent “drought of record” consistently under value Biodiversity.

- Legislation is being misinterpreted to determine whether an individual proposal can fit the entry requirements of the scheme. In one recent instance a proponents consultant argued that if a project was occurring in land managed by the LLS it would be excluded from the BOS. This is despite the project occurring on land which was not managed by the LLS and to which the Scheme clearly applied. Less experienced Council staff would likely have accepted this advice according to BCS staff.
- BDARs prepared in full compliance with the BAM are, at times, guilty of these issues. An example in the Dubbo LGA is a BDAR completed at the break of drought, the native grassland site was largely covered by colonising exotic annual weeds at the time of the vegetation surveys. When the site was visited by Council staff some months later (after the DA was lodged) the annual weeds had largely disappeared and a healthy, intact and vibrant native grassland was observed. Despite this the “drought” BDAR had to be accepted as it was compliant with the BAM.

viii. A significant challenge for proponents of projects in the regions is the volatility of the market and the lack of transparency. Projects rely on certain credit values during project feasibility, however, when moving through to project delivery, the volatility in the credit market can render projects unfeasible with significant increases in credit prices.

It is considered that Government could examine initiatives to ‘regionalise’ certain credit prices. Or an alternative system should be developed that also ‘builds in’ a ‘regional’ credit weighting and a requirement for an agreed or settled project feasibility tool and equation being adopted for certain projects in the Regions.

Council welcomes further assistance and involvement in the development of any Government initiatives around regionalising the credit market and overall development feasibility.