

**Submission  
No 71**

## **INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME**

**Organisation:** National Parks Association of NSW

**Date Received:** 31 August 2021

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The Hon Cate Faehrmann MLC  
Chair  
Portfolio Committee No 7 Planning and Environment  
Legislative Council

By email: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/odge-a-submission.aspx?pk=2822>

31 August 2021

Dear Cate,

### **Submission to Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme**

The National Parks Association of NSW (NPA) was formed in 1957 and sixty-three years later we have 15 branches, 4,000 members and over 20,000 supporters. NPA's mission is to protect nature through community action. Our strengths include state-wide reach, deep local knowledge and evidence-based approach to conservation advocacy.

NPA appreciates the opportunity to provide the following comments to the Upper House Inquiry into Integrity of the NSW Biodiversity Offsets Scheme.

#### **Background**

An "offset" is compensation for the loss of biodiversity when development destroys habitat. Biodiversity offsetting is based on the assumption that biodiversity values gained at an offset site will compensate for biodiversity values lost to development at another location, thereby, resulting in "no net loss" of biodiversity. Some offsetting schemes, including in NSW, allow for monetary payments or other forms of compensation in addition to, or instead of, offsets of land.

BioBanking was introduced in NSW as a voluntary scheme under the *Threatened Species Conservation Act 1995* (TSC Act). Offsets, known as "biodiversity credits", were created by landowners and developers who committed to enhancing and protecting biodiversity values on their land through a BioBanking agreement. BioBanking credits could be sold and used to "offset" the impacts on biodiversity that occurred as a result of development.

The current Biodiversity Offsets Scheme (BOS) commenced in 2018 under the *Biodiversity Conservation Act (BC Act) 2016*. Transitional arrangements provide for the continuation of both credits and credit obligations created under the TSC Act. BioBanking registers still set out biodiversity credits created under the TSC Act. There are also provisions in the BC Act to determine how biodiversity credits under the TSC Act equate to biodiversity credit obligations under the BC Act.

Under the BOS scheme, developers and landholders generate a credit obligation when impact on biodiversity occurs from development or vegetation clearing. The obligation triggers the need to offset their activity. Landholders, who establish a biodiversity stewardship on their land, create

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Effectiveness of biodiversity offsets: An assessment of a controversial offset in Perth, Western Australia (2018) Thorn, S., Hobbs, R.J., Valentine, L.E. (2018) *Biological Conservation* 228: 291-300.

credits that can be sold to developers or landholders who have a credit obligation. Land under a biodiversity stewardship is to be protected in perpetuity.

Under the BOS proponents are required to:

1. first consider whether the development can avoid a negative impact on the environment;
2. next consider whether the development can minimise any negative impacts that cannot be avoided; and
3. once all reasonable steps to avoid or minimise environmental impacts have been exhausted, consider whether any remaining impacts can be offset<sup>2</sup>.

NPA notes that offsets have historically been used to make additions to the protected area network in NSW. In most instances this has been in the form of minor additions to existing reserves, however in a few cases major additions, and even an entire reserve (the proposed Colobee Nature Reserve) have been gazetted.

## Comments in Response to the Terms of Reference

**(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**

NPA considers that offsets under the BOS have not halted the loss of biodiversity values, including threatened species and their habitat in NSW. There is no indication that biodiversity values have been improved as a result of BioBanking or the BOS.

The first problem is that there is no restriction on when offsetting may be used. Although a proponent is supposed to give consideration first to whether a negative impact on the environment can be avoided and then to how any negative impact can be minimised, a consent authority is not required to consider whether the proponent has taken all reasonable steps to try to avoid or minimise environmental impacts. As a result, offsetting is used not just where impacts on biodiversity are truly “unavoidable” but instead routinely employed for developments that would impact threatened species habitat or endangered ecological communities. About 70% of projects approved under the *Environmental Protection and Biodiversity Conservation Act (EPBC Act) 1999*, which also has a scheme for offsetting, require offsetting<sup>3</sup>. It is likely that the proportion of projects approved in NSW that require offsetting under the BOS is even higher.

However, offsetting has a much more fundamental flaw. The premise on which offsets are based - that they can fully compensate for the loss of biodiversity when habitat is destroyed, is fundamentally flawed, a bureaucratic accounting trick. However much the biodiversity of one parcel of land is

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<sup>2</sup> Department of Planning Infrastructure and Environment (2021) How Does The Biodiversity Offsets Scheme Work? <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/how-the-biodiversity-offsets-scheme-works>

<sup>3</sup> 'It's an ecological wasteland': offsets for Sydney toll road were promised but never delivered <https://www.theguardian.com/environment/2021/feb/10/its-an-ecological-wasteland-offsets-for-sydney-tollway-were-promised-but-never-delivered>

“improved”, it cannot compensate for the loss of habitat elsewhere. Inevitably, there is a net loss of biodiversity. Mr Roger Lembit of Gingra Ecological Surveys has expressed the problem as follows: *“the problem is that no two areas of bushland are identical, ... So you’re losing. Regardless of whether you’re improving management of one area, you’re losing bush land and habitat in the areas you are affecting.”*<sup>4</sup>

Other factors that make the BOS ineffectual in halting the loss of biodiversity values are:

- failure to require “like for like” offsetting in all cases. Like to like offsetting requires that the offset contains the same ecological communities and threatened species habitat as the land impacted by development. Some ecological communities are so rare that there are no other examples of those communities that can be offset. Any loss of biodiversity in those endangered ecological communities is highly likely to lead to the local extinction of species, potentially threatened species extinction at a broader scale and even the loss of community itself.
- permitting offsets which do not involve the offsetting of habitat, e.g. monetary payments for conducting research or providing educational programs. These do not result in any conservation of habitat and do not halt biodiversity loss;
- double-dipping, that is, using land as an offset for two different developments despite the offset supposed to continue in perpetuity, discussed further below.
- using land that is already reserved for conservation purposes e.g. a nature reserve, as an offset. This is likely generate little biodiversity benefit because reserved land is likely to have higher ecological values than unreserved land and any “improvement” in its values is likely to be relatively insignificant, discussed further below.

The Biodiversity Conservation Trust (BCT) was established in 2017. NPA is, concerned about a lack of oversight of how biodiversity credits are managed by individual landowners and whether questions whether BOS is generating the improvement in biodiversity values that have been attributed to biodiversity credits.

The opaque and complex nature of the Biodiversity Assessment Methodology (the BAM), which is used to assess obligations and credits under the BOS, makes assessment of what biodiversity \ benefits accrue from an offset of land very difficult.

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

State Significant Infrastructure (SSI) and State Significant Development (SSD) encompass the largest developmental projects undertaken in NSW and their environmental impacts have the greatest potential to destroy the habitats of threatened species and entire populations of threatened species, and irreversibly harm endangered ecological communities. The largest projects are often undertaken by the Government.

The proposed raising of the Warragamba Dam wall (an SSI project) indicates the extent of environmental harm that an SSI project can cause. An ecologist assessed that if the project was

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<sup>4</sup> Cited in Offsets for Sydney toll road were promised but never delivered (2021)  
<https://www.theguardian.com/environment/2021/feb/10/its-an-ecological-wasteland-offsets-for-sydney-tollway-were-promised-but-never-delivered>

undertaken up to 50% of critically endangered regent honeyeaters, 28 species of threatened animals, and thousands of hectares of threatened ecological communities would be impacted.<sup>5</sup>

The issues identified under Term of Reference (a) above also apply to SSI And SSD developments, in particular:

- little or no attempt is made to avoid or minimise the impact of developments on threatened species and their habitats
- if offsetting occurs, a net loss of biodiversity occurs (see above).
- “like to like” offsetting is not required.
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The NSW Government’s involvement in offsetting for SSI And SSD projects has not been exemplary. Notable inappropriate uses of offsets in government project include:

- It has “double-dipped” by using land set aside as an offset for one development, supposedly protected in perpetuity, to be an offset for another development. Land, which is offset under the Cumberland Plain Conservation Plan (CPCP) for the extension of the M7, was already designated as an offset under the EPBC Act.<sup>6</sup> Land, which was acquired by the Sydney Regional Development Fund and earmarked to become the Upper Georges River National Park, is also an offset under the CPCP.
- Environmental consultants hired by the Government to advise on biodiversity offsetting have profited by buying up land required to be offset for the airport at Badgery’s Creek and then selling the associated biodiversity credits at a substantial profit<sup>7</sup>.
- The Government allegedly is trying to avoid paying the full price of offsets for major projects including the raising of Warragamba Dam.<sup>8</sup>

The NSW Deputy Premier has referred to offsets as “the greatest handbrake to new investment” in NSW. His objections focus on the cost of offsets rather than their efficacy or lack thereof. The large scale of the impacts of SSI and SSD projects means that the cost of biodiversity credits for a project can run into billions. The cost of biodiversity credits for the raising of Warragamba Dam, which is state

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<sup>5</sup> NSW Government Attempts to Dodge \$2.8b Compensation Bill for Warragamba Dam Environmental Damage, Documents Reveal <https://www.abc.net.au/news/2021-03-23/questions-over-nsw-government-handling-of-warragamba-dam-project/13230684>

<sup>6</sup> 'It's an ecological wasteland': offsets for Sydney toll road were promised but never delivered <https://www.theguardian.com/environment/2021/feb/10/its-an-ecological-wasteland-offsets-for-sydney-tollway-were-promised-but-never-delivered>

<sup>7</sup> 'Deeply concerning': government consultant made millions from NSW environmental offsets <https://www.theguardian.com/environment/2021/apr/28/deeply-concerning-government-consultant-made-millions-from-nsw-environmental-offsets>

<sup>8</sup> NSW Government Attempts to Dodge \$2.8b Compensation Bill for Warragamba Dam Environmental Damage, Documents Reveal <https://www.abc.net.au/news/2021-03-23/questions-over-nsw-government-handling-of-warragamba-dam-project/13230684>

significant infrastructure, has been estimated at 2.8 billion dollars and that for the raising of Wyangala dam, which is critical state infrastructure, has been estimated at 500 million dollars.<sup>9</sup>

**c) the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme,**

**1(c) - the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme**

NPA opposes non-additional offsetting practices because they neither provide any additional conservation values nor increase biodiversity values.

NPA strongly opposes converting existing protected areas into offsets. It is hard to envisage how management actions would significantly increase the biodiversity values of lands that met the criteria for gazettal as conservation reserves to the extent that they would in any way compensate for the loss of biodiversity at a development site.

**(d) any other related matters.**

The BOS is not halting the net loss of biodiversity when development impacts the habitat of threatened species or endangered ecological communities. Nevertheless, the BOS and its predecessor, BioBanking, have resulted in some significant areas of native vegetation being conserved in perpetuity and they have provided some compensation for loss of biodiversity values.

To stop the loss of habitat of threatened species and threatened ecological communities the required compensation must be substantial enough to act as a compelling disincentive to clearing any native vegetation and must provide sufficient funds to allow for substantial areas of land to be reserved and managed to protect biodiversity values. The compensation required for impacting rare threatened species or rare endangered ecological communities should be the highest as these species and communities are at the highest risk of becoming extinct.

To improve the effectiveness of the BOS, NPA would recommend that:

- like to like offsetting must be mandatory. Where like to like offsetting cannot occur the proposed development should not occur.
- the certificate of title for any land which is offset must have a notation that it is an offset site.
- lands that are offset under the BOS or BioBanking should be transferred within one month to the BCT or the Environmental Trust (ET) to manage the land. This would ensure greater consistency, transparency and accountability in how offsets are managed.
- Payments to farmers for improving biodiversity values on their land should be paid through a separate scheme to the BOS.
- monetary offsets would be paid to the BCT or ET would be used only to acquire appropriate land for offsets.
- The BCT or ET should manage all offset lands except lands transferred to the NPWS.

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<sup>9</sup> 'Greatest handbrake to investment': NSW to review biodiversity offset scheme  
<https://www.smh.com.au/national/nsw/greatest-handbrake-to-investment-deputy-premier-says-biodiversity-offset-scheme-is-broken-20210806-p58ggc.html>

The BOS creates a market for a biodiversity credits. It has been argued that “Markets for biodiversity offsets are one tool which could secure biodiversity protection at lower costs to society whilst allowing some economic development to still take place”.<sup>0</sup> NPA rejects this assertion. The BOS does not “secure biodiversity protection” because it results in a net loss of biodiversity values, as discussed above. Proponents do pay for offsets. However, it is often effectively taxpayers rather than companies who pay for them because the Government carries out many of the largest projects that have the most impact on biodiversity values and therefore require the highest offset payments.

## Conclusion

The BOS is failing to halt or reverse the loss of biodiversity values, including threatened species and their habitat in NSW. The primary reason for this is that the BOS scheme results in a net loss of biodiversity every time an offset obligation is retired.

NPA considers that the aims that DPIE claims for the BOS:

“ to facilitate development in an environmentally sustainable manner, and to ensure development does not have unacceptable impacts on native ecosystems and species”,  
are not being achieved.

Any benefit from BOS has been further undermined by a number of factors including:

- there being no restriction on when offsets can be used and no checking by consent authorities that the proponent has genuinely attempted to avoid or minimise impacts to biodiversity.
- failure to require “like to like” offsetting in all cases
- offsets not being protected in perpetuity allowing double dipping to occur
- lack of transparency and accountability in the calculation of credits under the BAM.

If the NSW Government is to halt or reverse the loss of biodiversity values, including threatened species and their habitat NPA considers that it should:

- abandon the BOS and any other form of offsetting which result in a net loss of biodiversity when development negatively impacts biodiversity,
- increase protection of endangered ecological communities and the habitat of threatened species by making “critical habitats” a no-go area for development
- require proponents to show that biodiversity loss is unavoidable and has been minimised to the maximum extent possible,
- require substantial monetary payment to compensate for the loss of biodiversity that can be used to acquire land with significant biodiversity values. The rarer the biodiversity values that are impacted the higher the compensation should be,
- increase acquisition of land for the NPWS’ reserve system
- restrict land clearing, and
- Increase feral animals and weed control.

If the BOS is retained, the Government must:

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<sup>0</sup> Designing markets for biodiversity offsets: Lessons from tradable pollution permits Needham, K., de Vries, F.P., Armsworth, P.R., Hanley, N. (2019) Journal of Applied Ecology 56(6): pp 129-1435

- stop falsely asserting that there is no net loss of biodiversity as a result of offsetting
- simplify and improve the BAM so it is possible to easily determine what the biodiversity values of an offset are
- always require “like to like” offsetting
- require substantial monetary payment to compensate for the loss of biodiversity that can be used to acquire land with significant biodiversity values.
- increase acquisition of land for the NPWS’ reserve system
- restrict land clearing, and
- Increase feral animals and weed control.

Most importantly, Government must acknowledge the flaws in the BOS and take steps to reduce land clearing from all forms of development including agriculture. Otherwise, the number of threatened species and threatened ecological communities will continue to rise and the outright extinction of species and communities will become inevitable.

I can be contacted at \_\_\_\_\_ or on \_\_\_\_\_ .

Yours sincerely,

Gary Dunnett  
Executive Officer  
**National Parks Association of NSW**  
*protecting nature through community action*