

**Submission  
No 75**

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

**Organisation:** Shellharbour City Council

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## Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme- Shellharbour City Council Submission, July 2021

### Introduction

Shellharbour City is located in the Illawarra Region of New South Wales, about 100 kilometres south of Sydney.

Shellharbour City has a population of over 70,000 people and continues to home a high proportion of young families, particularly in our new release areas and is expected to continue to be one of the youngest populations in New South Wales. The Shellharbour City Council population forecast for 2021 is 75,953 and is forecast to grow to 94,877 by 2041. Residential development forecasts assume the number of dwellings in Shellharbour City Council will increase by an average of 425 dwellings per annum to 37,211 in 2041.

The increase in housing development adds pressure on the natural areas and ecosystems in private ownership for development through green field subdivisions and future proposed development through Planning Proposals. In the Illawarra area there are 19 Endangered Ecological Communities (EECs) listed as threatened under the NSW *Biodiversity Conservation Act 2016* (BC Act) or the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) in the Illawarra. There are 69 threatened fauna species, and 31 threatened flora species which have been recorded within the study area under the BC Act 2016, and the EPBC Act 1999.

Shellharbour City Council response to the NSW Biodiversity Offset Scheme.

#### 1. **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.**

A) Part 6 Division 1, 6.5 Serious and Irreversible Impacts (SAIL), the determination and lack of clarity around what is an SAIL should be refined. There is a 'Guidance to assist a decision maker to determine a serious and irreversible impact' published by DPIE, 2019 however there are a number of species that have thresholds and others that don't. This process of assessing SAIL on a Development Application by Development Application basis, allows a 'death by one thousand cuts' scenario. For example A BDAR that is submitted may require X amount of vegetation clearing which is only 1% of the vegetation remaining, however it might be a case that there has already been 85% of the EEC cleared so the remaining 1% should be considered more significant.

**Recommendation** - Define by area or number of individuals of threatened EEC's and/or species of what is considered SAIL.

Serious and Irreversible Impact assessment triggered by Part 4 Developments on listed SAIL species and EEC's and the requirement for a BDAR and subsequent assessment consistent with 'Guidance to assist a decision maker to determine a serious and irreversible impact'.

**Recommendation** - If a Threatened Species or EEC is considered an SAI and identified to be impacted by the activity, this should trigger entry into the offset scheme for either a Part 4 or Part 5 activity as impacts on SAI should be deemed a 'significant impact'.

B) The effectiveness of credit values and Stewardship Site Agreements (BSA's) in particular achieving the Total Funds Deposit (TFD) does not seem adequate to halt or reverse the loss of biodiversity values as it has limitations on sites deemed as viable under the scheme. In the Shellharbour LGA, a number of feasibility studies have been undertaken by accredited assessors under either Part 3 assessment under the *Environmental Planning and Assessment Act 1979* (EP&A Act), Planning Proposal or as part of a Part 4 assessment, Development Application under the EP&A Act, each occasion the sites are deemed not to be feasible due generally to the size of the site and not generating enough credits to fund the TFD. The vegetation/Endangered Ecological Community (EEC)/Plant Community Type (PCT) are in most of these examples are listed as Endangered in the BCA and Critically Endangered under the EPBCA.

**Recommendation** - Review credit generation of BSA's and the viability of smaller sites to become Stewardship Sites.

C) There is a requirement under Part 6 Biodiversity Offset Scheme, 6.1 General, 6.6A *Limitation of variation rules in relation to controlled actions under Environment Protection and Biodiversity Conservation Act 1999 (Cth) (sections 6.4, 6.6 and 6.31)* that Like for Like credits must be applied for 'Controlled Actions' under the EPBC Act and the variation rules do not apply. Like for like have strict rules but not many developers are using this method, paying into the fund seems to be the preferred method. Offsetting like for like credits is a requirement for activities that are a controlled action under the EPBC Act Matters of National Environmental Significance, but can still be paid into the Biodiversity Conservation Fund (BCF) and acknowledge to the BCF that that is the requirement.

**Recommendation** - That Like for Like credit obligations should be required for any threatened species or EEC's listed as Critically Endangered under the EPBC or BC Acts.

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

**Opportunity for private land holders to engage in the scheme-** Involvement in the feasibility of Biodiversity Stewardship Agreements for private landowners seems to be that they are only viable for larger areas (greater than 10 hectares) with more intact vegetation with lower requirements for undertaking activities that would increase the Vegetation Integrity Score (VIS). This is not consistent with 1.3 - Purpose of the Act, as the purpose is to permit clearing by the offsetting of improved biodiversity in currently lower quality vegetation. EEC's in urban areas are under considerable threat and highly fragmented, areas of between 1-10 hectares can be highly valuable for threatened species and communities in urban areas in these circumstances.

Developers that are interested in creating a BSA on private property as part of a development find that it is not viable and therefore an area of 1-10 hectares has no assurance of conservation of threatened EEC's and species. These areas have conditions of consent, a Vegetation Management Plan listed on the 88b or title of the land however there is no assurance that work is being undertaken to reduce threats to biodiversity in perpetuity. Ownership is also an issue with some of these large bushland lots allocated to an individual dwelling with the responsibility of maintenance at the cost of the owner. Alternatively, the lots are divided into multiple owners and further clearing required for fences etc that provides even less conservation of listed threatened species and EEC's.

**Recommendation** - Smaller areas to be viable BSA's based on the EEC or threatened species conservation listing and the extent of fragmentation of the EEC in the landscape.