

**Submission
No 80**

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Koala Koalition EcoNetwork Port Stephens (KKEPS)

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Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme, deadline 31 August

Introduction

Koala Koalition EcoNetwork Port Stephens, KKEPS¹, welcomes the opportunity to respond to the Enquiry Panel investigating the NSW Biodiversity Offsets Scheme. The Panel may find some value in hearing the impressions of a small koala habitat conservation group in regard to the Biodiversity Offset Scheme. Such schemes have been widely criticized for many years in Australia and overseas.

Background

While the establishment of the Biodiversity Offset Scheme (BOS) and resultant Biodiversity Conservation Fund may have been made with good intentions, it has long been criticized as being ineffective for the wildlife/habitat conservation and being rife for manipulation and corruption.

“The idea that ecological loss – especially loss of native vegetation – could be compensated by providing an ecological gain on another site has been widely criticised and challenged in the scientific literature (Maron et al. 2012, 2016) and environmental activists’ circles (Hrabanski 2015). Criticism of biodiversity offsetting often centres on its (lack of) ecological soundness, particularly whether offsets can indeed halt biodiversity losses.”²

Many environmentalists are scathing in their assessment of the scheme:

- “It's a crude mechanism for letting developers kill threatened species while claiming they are good environmental stewards," former CEO of the Nature Conservation Council, Kate Smolski.

¹ <https://www.econetworkps.org/koala-koalition/>

² <https://doi.org/10.1080/26395916.2020.1862914>

- Environmental offsets have been described by former MLC in the NSW Parliament, and now NSW Senator, Mehreen Faruqi as.... “one of the biggest scams in NSW. Even if we accept the flawed concept that serious ecological damage can be offset, the NSW government has massively lowered the bar for mining companies and big developers”.
- Dr Bruce Lindsay, a lawyer with Environmental Justice Australia, says “part of the issue we’ve got is the environment laws within the EPBC Act have really become **more about facilitating development than protecting threatened species.**” “It’s about development with conditions. The purpose of the laws is not really about arresting and reversing the decline of threatened species. More than 1,800 plant and animal species and ecological communities (woodlands, forests and wetlands are examples of ecological communities) are currently at risk of extinction, a number that is increasing but which is also likely to be an underestimate of how many are truly vulnerable.”³
- Peter Hannan writing in the SMH⁴ on a report titled *Paradise Lost*⁵ has found biodiversity offset schemes between 2005 and 2016 have failed to deliver outcomes promised by developers of mines and other major projects.
- Studies as recently as this year⁶ have cast doubt on the validity of offsets in NSW. The study noted the government had engaged Martine Maron, a University of Queensland offsets specialist, to review its program but her “scathing” assessment could only be obtained under freedom of information laws. “The reliance on protecting habitat that is already there in exchange for habitat loss is worrying and, of course, the net outcome in that case is just less habitat,” Professor Maron told Fairfax Media. “It risks normalising ongoing biodiversity decline.”

Corruption

The BOS has been widely attacked for corruption taking place by those reaping the rewards of the scheme:

“Anthony Whealy, the director of the Centre for Public Integrity and a former NSW supreme court judge, said: “The sheer magnitude of the profits realised by private individuals and

³ <https://www.theguardian.com/environment/2018/feb/13/a-national-disgraceaustralias-extinction-crisis-is-unfolding-in-plain-sight>

⁴ March 14, 2017 [NSW offsets program pushing more endangered species to brink, report says \(smh.com.au\)](https://www.smh.com.au/news/nsw-environment/nsw-offsets-program-pushing-more-endangered-species-to-brink-report-says-20170314-40111133.html)

⁵ https://www.nature.org.au/media/265228/bio-offsetting-report_v14.pdf

⁶ [Distributive and contextual equity in landholder participation in biodiversity offsets: a case study of biodiversity offsets in New South Wales, Australia](https://www.nature.org.au/media/265228/bio-offsetting-report_v14.pdf) Laure-Elise Ruoso and Roel Plant Institute for Sustainable Futures, University of Technology Sydney, Sydney, Australia 2021

companies from a scheme essentially designed to protect and restore the environment raises serious concerns.”⁷

“The problem with commodifying natural assets like water and biodiversity is they inevitably become prey to speculative investors rather than being managed and protected in the public interest,” Mr Gambian said. ⁸

Conflicting advice from the NSW Government

The Deputy Premier John Barilaro has recently said that- offsets are *the greatest handbrake on investments in NSW*. (Aug 2021)

And yet the former Office of Environment and Heritage of NSW (OEH) has often opposed development and the use of offsets, eg:

“Coal firms won the right to claim the planting of grass or trees on old mine sites as conservation offsets for future woodland destruction despite strong opposition from environment department staff, new documents reveal.”

“OEH argued in one note, secured by the Nature Conservation Council (NCC) under freedom of information laws, that "there is no certainty that functioning ecosystems can be restored to their original value through rehabilitation" after a mine closed."[M]any animal species require resources that are found only in mature forest," it said.

It noted in another document that OEH "believes that the record of success in biodiversity restoration from the rehabilitation of degraded land (specifically mine sites) is very poor", with impacts lasting "multiple decades".

"OEH questions whether restoration of biodiversity on a degraded site is even possible," it said. Despite OEH's concerns, the new Baird cabinet sided with Trade & Industry, issuing its offsets policy in September 2014 that set new rules for how miners could compensate for the destruction of habitat.

The "practical and achievable" scheme allowed rehabilitation of mine sites in the calculation of conservation offsets "where they are good prospects of biodiversity being restored".⁹

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

⁸ [Biodiversity offsetting should only be used as a last resort and adhere to international best practice | Nature Conservation Council of New South Wales Australia](#) 25/6/21

⁹ <https://www.smh.com.au/environment/very-poor-environment-office-opposed-miners-using-rehabilitation-work-as-biodiversity-offset-20160315-gnifb3.html> SYDNEY MORNING HERALD By [Peter Hannam](#), March 16, 2016

Local Examples

KKEPS submitted to DPIE on 24/8/21 in regard to the M1 expansion through Raymond Terrace. Our major concern is that the Offsets selected are far away from the location although koala habitat is located nearby. Most of the M1's offsets were issued in the Upper Hunter and Manning Valley. This demonstrates that this system is not working at a local level. The closest offset was Karuah. We submitted for more fauna fences on Masonite Road to mitigate road kill, and an overpass to connect habitat as well as the purchase of a small lot to increase connectivity.

KKEPS also submitted to Port Stephens Council on 25/8/21 on the Kings Hill Urban Development Voluntary Planning Agreement for a Conservation Plan (although the JRPP has not approved the Concept Development yet). This is a variation on offsets where a Conservation Plan proposed and funded by the developer and supported by local council ensures the destruction of well documented Koala habitat for housing. The scheme relies on pushing koalas further uphill to a poorer habitat and restoration of that habitat to help threatened species to continue to exist. This is using unproven theory and will be groundbreaking if it succeeds. Once again, we submitted that a vegetated overpass should be built across the Pacific Highway to increase connectivity.

The Brandy Hill Quarry expansion at Seaham, north of Raymond Terrace was approved largely because a neighbour offered his property as an offset. It is still a net loss of habitat, including vital connectivity being destroyed.

When looking to improve habitat for koalas behind Salamander Way, we were told by Port Stephens Council staff that we couldn't plant there because it was already an identified Biobanking area.

Researched reports and publications

Gibbons et al found that [Habitat] "gains are not equivalent to losses." "We estimated that no net loss in the area of native vegetation under this policy will not occur for 146 years."¹⁰

¹⁰ https://www.researchgate.net/publication/320913197_Outcomes_from_10_years_of_biodiversity_offsetting

Ruoso and Plant found that the system is inequitable ¹¹ “particularly with regard to landholders’ individual ability to participate in biodiversity offsets.”

Conclusions

There seems to be absolutely no land that is protected in perpetuity to save koalas, although the real concern is for all wildlife.

Signed:

Convenor, Koala Koalition EcoNetwork Port Stephens (KKEPS)

¹¹ <https://doi.org/10.1080/26395916.2020.1862914> Distributive and contextual equity in landholder participation in biodiversity offsets: a case study of biodiversity offsets in New South Wales,

But what is the alternative when the value of Nature is immeasurable and most people agree that landholders must be held responsible for the destruction of habitat, especially when they will reap millions of dollars in doing so?