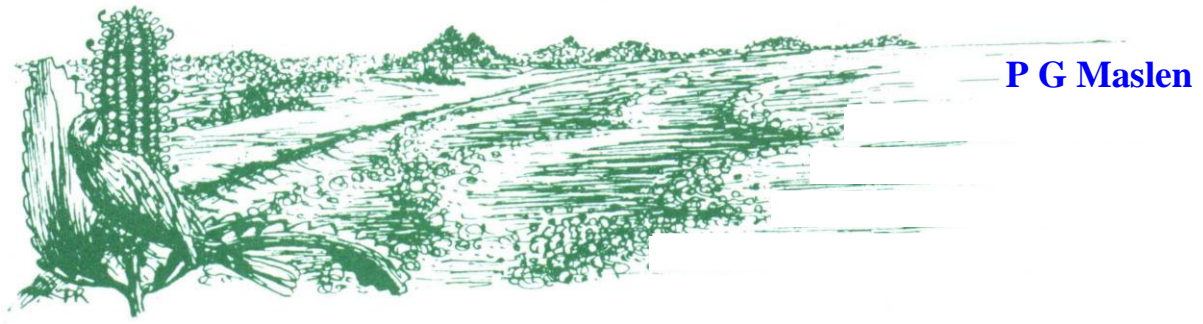


**Submission
No 88**

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

Name: Mr Peter Maslen
Date Received: 8 September 2021



8th September 2021

Portfolio Committee No. 7 - Environment and Planning

Attention: Chair Ms Cate Faehrmann MLC

SUBJECT: Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme Submission

While I appreciate that submissions closed on 31st August, I ask that this submission be considered as I only learned of the inquiry on Monday 6th September. There is an issue that the community with the lack of regional newspapers for government to advertise its desire to receive public comment, that many in the community are not aware of the opportunity. Government must address this issue and ensure the community is made aware of these opportunities. Word of mouth and social media appears to be the only way that one is made aware that these opportunities exist.

I have had concerns for a long time and have expressed my dissatisfaction of the inadequacies of this scheme in protecting and offsetting biodiversity lost to various projects in our state, generally continuing the net loss of habitat and hence biodiversity. In June 2016, I submitted my opposition as attached, to the New South Wales (NSW) Draft Biodiversity Conservation Bill and Local Land Services Amendment Bill. These bills have resulted in significant loss of biodiversity due to an escalation of inappropriate land clearing with very little concern for the state's natural ecosystems and the fauna that lived in those habitats.

The International Union for Conservation of Nature defines biodiversity offsets as:

- diversity offsets are **measurable conservation outcomes designed to compensate for adverse and unavoidable impacts of projects**, in addition to prevention and mitigation measures already implemented.
- Biodiversity offsets are **only appropriate for projects which have rigorously applied the mitigation hierarchy framework**, a widely accepted approach for biodiversity conservation.
- The aim of offsets is to **achieve No Net Loss (NNL) and preferably a Net Gain (NG) of biodiversity** when projects take place. Measures that are not designed to result in NNL and preferably NG are not biodiversity offsets.
- The achievement of **NNL/NG is dependent on measurable, appropriately implemented, monitored, evaluated and enforced offset schemes**.
- **Biodiversity offsets must be a measure of last resort**; and **in certain cases offsets are not appropriate** and should not be used.

These principals are not embodied in NSW legislation or the existing NSW Biodiversity Offsets Scheme and hence, are not demonstrated in the results of the removal of native habitat since the current legislation was enacted. A classic example at Lawrence in the lower Clarence valley, is the recent removal of koala habitat which had koalas in trees at the time of the clearing, with the approval of the local Land Services while the government claims to be protecting and enhancing koala habitat with no offset of the destroyed habitat. While a very small loss it demonstrates the flaws in existing legislation and schemes which a supposed to protect biodiversity.

The following are comments relative to the terms of reference:

Item 1(a) of the Terms of Reference of your inquiry states *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 scheme has been a failure by continuing to support the continued loss of habitat and reverse the loss of biodiversity due to the resultant nett loss of native vegetation.

Item 1(b) of the Terms of Reference of your inquiry states the use of offsets by the NSW Government for major projects and strategic approvals, with clarification stating - the use of offsets by the NSW Government for major projects and strategic approvals. 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.

An example of where the offset scheme fails to result in the acceptable offsets detailed at the start of this submission, is the Pacific Highway Upgrade from Woolgoolga to Ballina. Despite repeated requests of the Environment Branch, Safety, Environment and Regulation section, Transport NSW, I have never had an answer to the questions: what the net loss of vegetation is; how much area was planted; and how much was existing vegetation on private land protected in the following classifications:

- privately owned properties that have or are being placed under Biodiversity Stewardship Agreements;
- properties purchased by Transport for NSW that have or are being placed under Biodiversity Stewardship Agreements and then on-sold; and
- properties that have been purchased for transfer to the National Parks estate.

While the project was required to offset at a ratio of 4:1 like-for-like for all native vegetation communities impacted and Commonwealth listed species are required to be offset according to the *Environment Protection and Biodiversity Conservation Act* Offset Guide. All the offsets were to be protected in-perpetuity and funding provided for their on-going management.

The Biodiversity Offset Package for Woolgoolga to Ballina Pacific Highway Upgrade stated just over 3,500 ha of offsets were to be provided to meet the State and Commonwealth offset requirements. These offsets were reported to have been created off 31 offset sites that occur within 50 km of the project.

In order to meet the approval conditions, the project was required to provide offsets that were in equal or better condition than the native vegetation impacted, so generally the offset sites were reported to be of good to very high quality and contain minimal areas requiring rehabilitation. I was unable to verify any of this due to privacy issues of private lands.

Due to the lack of information, I can only assume that there was a nett loss of vegetation and no planting of habitat on private or public lands. Hence my view that the offset scheme is not an offset at all, but a transfer of the protection of habitat from the destroyed to some other unknown areas. Hence the basic offset standards were failed.

Item 1(c) of the Terms of Reference of your inquiry states the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme, with clarification stating - the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme.

Non-additional offsets are offsets that do not 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.

This concept is not an offset at all as it only protects formal land that may have been protected and the option of using existing nature reserves as an offset is farcical at best.

(d) any other related matters.

The following questions and points are raised:

- Ecological Reports completed for a developer mostly do not contain sufficient data to give a true analysis of the site's habitat value. Most are observations that are completed in a single day, lacking any night surveys, DNA sampling, trapping, call backs or consider any seasonal variations. Assessments commonly look at the site in isolation and do not look at connectivity. They rarely include observations or input from local community, neighbours or environment groups who generally have significant data collected over many years. They do not consider future climate change impacts. They mostly rely on desktop studies. Considering we are in extinction crises, this is not acceptable. The reporting requirements by ecological companies and the briefs they are given, need to be strengthened. This would result in a more accurate assessment of the biodiversity of a site and how best to select a suitable area near to the impacted area, to offset any losses and recreate a near as possible ecosystem to that which is to be lost.
- Mapping of off-set habitat is questionable and has not been ground truthed in many circumstances.
- Off-set payments, rather than looking to preserve habitat, is becoming the norm in ecology reports. It is up to the public to peruse the lack of information in the reports and bring to the attention of approving bodies such as local council. These concerns are usually dismissed without comment with the result of a nett loss of habitat and therefore biodiversity of an area.
- The Biodiversity Offset Scheme website has a note that needs clarification, namely: "Council may amend their Development Control Plan to regulate the clearing of all threatened species, threatened ecological communities or protected plants that do not require approval of the Native Vegetation Panel if they choose to." It is capabilities such as this that ensure the loss of biodiversity.
- Cumulative impacts of the progressive loss in an area are rarely assessed culminating in the last proposal impacting on an ecosystem being made to redress the errors of the past. This must be considered in any assessment of a project and the possible loss of biodiversity for a regional.
- There is no public mapping if it does in fact any exists. How can an individual ensure off-sets in a location of interest are protected and maintained? How are inspections undertaken to ensure the sites are actually achieving the specified outcome?
- The public are restricted from advice of where offsets are being implemented and have to 'trust' the system which regrettably has regularly failed the protection of ecosystems and the biodiversity contained therein. How can the public have access to maps to monitor off-sets areas and help plan future protection for connectivity? Commonly it is this type of public scrutiny and the associated citizen science that highlight downfalls in systems and the protection of the environment in general.
- As most developments mean that the natural environment cleared will be gone forever is the off-set in perpetuity? How is this guaranteed?
- Climate change needs to be considered with off-sets. The recent bushfires are fore warnings of what is to come. Habitat loss will continue. If an off-set area is negatively impacted, does the scheme ensure its rehabilitation?
- How do we ensure that tax-payer funds are not wasted with over-pricing of off-set properties as has been claimed by the Guardian's article regarding major projects in Western Sydney?

The opportunity to comment is appreciated. My concern remains that Biodiversity Offsets Scheme is weakening environmental protection and is a scheme full of loopholes that effectively is a permit system for environmental destruction for developers.

There are concerns that the political will to achieve internationally accepted standards for biodiversity offsets is seriously lacking in some sectors of the NSW government with comments such as calling diversity offsets the "greatest handbrake" to infrastructure investment in the state and saying it was wielded as a revenue-raising mechanism. One fears that with attitudes such as these that the NSW government is unlikely to rectify the flawed scheme. I trust the strength of the committee exists to ensure that the accepted standards can be incorporated into the scheme.

With an outcome from this inquiry recommending an improved offset scheme, there are opportunity for government to redress the negative results of recent legislation by amending the biodiversity offset scheme to ensure is no nett loss of native vegetation and hence preventing the ongoing reduction of biodiversity in our state.

Yours faithfully,

Peter G Maslen BE BSc FIE (retired)