

**Submission
No 91**

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: Tweed Shire Council

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Upper House Committees
Legislative Council
Parliament of New South Wales

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Tweed Shire Council submission - NSW Parliamentary Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

Tweed Shire Council welcomes the opportunity to contribute to the NSW Parliamentary Inquiry into the Integrity of the Biodiversity Offsets Scheme. Council is actively engaged with the offsets scheme through the provision of a wide range of essential services to the community. This includes engagement in relation to the delivery and maintenance of essential public infrastructure, land use planning and biodiversity conservation and management.

Background

The NSW Parliament's Portfolio Committee on Planning & Environment self-referred this ***Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme*** on 24 June 2021.

The Terms of Reference provide that the Committee 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,
- b) the use of offsets by the NSW Government for major projects and strategic approvals,
- 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
- d) any other related matters.

The Committee is to report by 1 March 2022.

Response

a) Effectiveness of the scheme

Council acknowledges that the Biodiversity Offset Scheme (BOS) offers a positive benefit through providing a systematic method for use in land use planning and decision making. A range of areas for improvement and further consideration have

been identified and are presented below in relation to the three main areas of application, being infrastructure, land use planning and biodiversity conservation.

Infrastructure

Council have identified through application of the scheme that the BOS is overly complex, difficult to administer, not well matched to the often linear nature of infrastructure projects, nor to the essential nature of many public infrastructure projects.

The overly complex nature of the system and lengthy assessment timeframes prevents its application to proactive analysis of the future offsetting needs of council to address infrastructure development and maintenance. The capacity to assess council's future offset requirements and to most efficiently secure land for these purposes would be the most beneficial application of the scheme and may contribute to an increase the establishment of stewardship sites. This would also allow council to ensure offsets are achieved locally and consistent with other key priorities including cost effectiveness and conservation outcomes.

Land use planning

Council have identified through application of the scheme that the BOS is overly complex, difficult to administer and overall not delivering outcomes that facilitate sustainable development. From a land use planning and development perspective, the complexity of the system has reduced certainty for all users, resulting in a system that is too difficult to navigate and implement.

It is also evident that there is significant uncertainty with regard to the retirement of credits that are generated. This is of concern to council both as a consent authority and in situations where council operates as a development proponent for projects of public benefit. A recent search of the Biodiversity Conservation Trust webpage (<https://www.bct.nsw.gov.au/info/biodiversity-offsets-program-outcomes>) identifies that there are no stewardship sites in Tweed Shire. This information also identifies significant discrepancies between impact and offset credits including:

- \$48M of developer payments into the fund, with only \$8.9M stewardship payments
- 516 offset obligations held, with only 82 offset obligations met.

Biodiversity conservation

Council has a significant concern that the BOS is not leading to a net improvement in biodiversity in NSW and that the system currently does not operate well for any user. Council bases this position on issues identified with the scheme including:

- The uneven distribution of biodiversity loss across the landscape. Those areas most subject to high development pressure along the coastal strip being rapidly depleted of biodiversity values
- That the offsets scheme is inconsistent with the growing body of published scientific literature documenting the failure of biodiversity offset policies to achieve a no net loss position, let alone net gain (an article published in 2015 by Georgia Garrard, Sarah Bekessy and Brendan Wintle - <http://decision-point.com.au/article/offset-policies-dont-work/> - provides an excellent summary and reference point of the available evidence documenting the fundamental inability of offsets schemes to achieve their stated intent).
- The high level of flexibility available to meet offset obligations including allowing off site and non 'like for like' offsets, and the making of payments instead of

actually delivering offsets results in a net loss of values. This is because the impacted values are not replaced, nor gains made to address the delay and risk associated with a modelled replacement of the values.

- The ability to compensate for the complete loss of habitat (clearing) by providing marginal improvements in the management of existing habitat leads to a net loss of habitat and should not be permitted. Offsets for habitat removal should require replanting of like for like habitat on cleared land with multipliers to account for time, risk and distance factors.
- That based on a study commissioned by the Northern Rivers Joint Organisation, a highly significant shortfall with regard to offsets being able to be retired on public land within the region has been confirmed (*NGH Environmental, Final Report NRJO Biodiversity Legislation Reforms Project (Phase 1 & 2), June 2021*). This analysis identified a potential minimum net biodiversity loss of more than 40,000 ecosystem credits.

b) Use of offsets for major projects and strategic approvals

Flexibility in offsetting approaches for the delivery of essential public infrastructure is warranted in certain circumstances to address offset obligations in a timely and streamlined approach. For example, Council is currently considering offsetting requirements for augmentation of the shire's water supply at Clarrie Hall Dam. The construction footprint for the project has been designed to a minimum footprint to achieve the engineering requirements of the raised dam. The operational footprint of the dam is fixed, and there is no capacity to reduce the footprint without impacting project viability.

The final ecosystem credit and species credit liability must generally be retired prior to any impacts occurring. Demand for water is expected to exceed supply in the next few years leaving very little time to establish complex conservation agreements such as biodiversity stewardship agreements (BSAs) if these were available. Similarly, there are limited opportunities to purchase appropriate credits from a vendor with this option ultimately resulting in offsets in other LGAs. Although payment to the Biodiversity Conservation Fund (BCF) may be an option, the high price of credits for project with large offsets is similarly problematic for local authorities. The use of conservation measures similar to those available for projects declared strategic biodiversity certification could give Council added certainty in the delivery of a secure water supply for the community.

c) Impact of non-additional offsetting impacts

Infrastructure

Council is investigating the acquisition of Council owned land by the NSW National Parks and Wildlife Service to offset the impacts of constructing public infrastructure. This is an alternate approach which could provide broader conservation benefits but is difficult to achieve within the present scheme. The benefits of this approach would:

- contribute to the consistent management of parcels where these occur adjacent to National Parks and Reserves including the management of biodiversity, cultural heritage, visitors, and tourism;
- give Council added certainty in the delivery of a public infrastructure through meeting the offset obligations through a single process;

- address Council's strong desire to offset impacts of development within the shire – rather than through purchasing credits on the market or through a payment to the BCF where these final offsets are likely to occur outside the shire and the region and
- facilitate NPWS meeting the NSW Environment Minister's targets to expand the National Park Estate in NSW.

As a result, the use of this approach to facilitate the provision of essential infrastructure should be considered and retained as an option.

Biodiversity conservation

In addition to the specific issues identified above in relation to the effectiveness of the scheme in relation to halt or reverse the loss of biodiversity values, the following issues are also identified in relation to the impact of non-additional offsetting practices:

- That the variation rules require amendment to include the requirement for a comprehensive 'reasonable efforts' test prior to allowing variation, that substantial additional credit penalties are applied for the use of this option to act as an effective deterrent to using this process as a first option and that the credits must be shown to be available before habitat is removed
- Implementation of the current scheme also indicates a significantly high likelihood that these credits may not ever actually be retired. There is extremely limited transparency or accountability evident to guarantee that credits are being retired at all.
- The inclusion of the capacity to make financial payments in lieu of on ground actions also transfers risk from proponents to the government and creates a perception that development proponents can buy environmental approvals
- That 'averted loss' offsetting (protecting biodiversity that is otherwise assumed to be lost even without the development), results in a net loss of biodiversity as it does not suitably account for ecosystem resilience and natural regeneration.

d) Other related matters

There are a wide range of issues for council arising from the additional assessment and administrative burden associated with our role as a consent authority. Council effectively has become a 'case manager' on behalf of the state government for developments that trigger the scheme with impacts to council including:

- Requirement to assess Biodiversity Development Assessment Reports for validity and technical accuracy within 14 days of lodgement
- Relying on systems and processes that are unreliable and difficult to implement
- Ongoing submission of BDARs that do not meet the minimum standards despite the stated accreditation and quality assurance processes of the scheme
- No certainty that our statutory decision making role as consent authority in relation to environmental impact is being met, where there is a reliance on offsets being made by others and where they are non-traceable or accountable.

Tweed Shire Council delivers a wide range of highly effective, long term biodiversity programs including private land conservation, threatened species recovery, ecological policy and planning, bushland reserve management, citizen science and community

engagement. Through the ongoing delivery of these programs, the following general observations are offered:

- The position of offsetting as a last resort, only considered when all options to avoid or mitigate loss are fully explored and proven unachievable, is far removed from the general opinion of most development planners and proponents.
- Nearly all landholders, when offered the opportunity to participate in habitat restoration programs funded by offsetting, choose not to participate due to having a personal, ethical objection to supporting biodiversity loss through development.
- There is a general lack of understanding in the community about the risks associated with the use of offsets with regard to achieving a measurable net gain.
- Application of small scale offsets are highly problematic, either as a series of individual offset actions, or compiled into a larger body of work. Offsetting small scale impacts under the scheme are difficult to quantify net benefit, track and report and administer.

Recommendations

Based on the range of issues identified through application of the scheme in Tweed Shire, the following recommendations are offered:

1. That opportunities to simplify the scheme should be further considered and implemented in order to make the use of the scheme more practical, achievable and effective for all users.
2. That the focus on 'avoid and minimise', and better guidance on application of these terms, is significantly increased.
3. That there is a much stronger emphasis on 'like for like' offsets that are required to be retired locally.
4. That non-additional offsetting practices are discouraged through the application of significantly higher offset ratios and direct, like for like, local, on-ground offset options are encouraged through offset credit discounts.
5. That transparency and accountability of the scheme is improved through providing publically available information, including mapping, on offset credits generated and retired.
6. That consent authorities are provided the basis on which to prohibit clearing in situations in which offsets cannot be genuinely achieved and demonstrated as delivering a net biodiversity benefit.
7. That assistance is provided to councils in their role administering the BOS through providing accredited training for BDAR reviewers and assessors, dedicated support through the NSW DPIE Biodiversity Conservation Division and by improving education and support materials for all users of the scheme.

If you require any further information in relation to this submission, please contact Mr Scott Benitez Hetherington via email

Yours Sincerely

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Jane Lofthouse
A/Director
Sustainable Communities and Environment