Submission No 94

INQUIRY INTO INTEGRITY OF THE NSW BIODIVERSITY OFFSETS SCHEME

Organisation: NSW Farmers' Association

Date Received: 14 September 2021

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

September 2021

NSW Farmers' Association
Level 4 154 Pacific H'way
St Leonards NSW 2065

Ph: (02) 9478 1000
Fax: (02) 8282 4500
Email:

About NSW Farmers

The NSW Farmers' Association is Australia's largest state farming organisation (SFO) representing the interests of its farmer members. Our purpose is to build a profitable and sustainable New South Wales farming sector through promoting productivity, risk management and business continuity in individual farm enterprises.

Agriculture is a significant contributor to the NSW economy. Despite facing prolonged drought, bushfires and COVID-19 over late 2019 and early 2020, the industry reached an estimated $12.2 billion in output over the year. Agricultural exports also accounted for 10 percent of the state's total exports during this time.

NSW is the most productive state, adding around a fifth on average to national agricultural output. The state industry has set the goal of reaching $30 billion in output by 2030, which would make NSW a key contributor to the national target of $100 billion by 2030.

Our state's diverse geography and climatic conditions mean a wide variety of crops and livestock can be cultivated here. Unlike most other SFOs, we represent the interests of farmers from a broad range of commodities – from avocados and tomatoes, apples, bananas and berries, through grains, pulses and lentils to oysters, cattle, dairy, goats, sheep, pigs and chickens.

Our advocacy extends to the environment, biosecurity, water, economics, trade and rural and regional affairs. We also have an eye on the future; we are advocates for innovation in agriculture, striving to give our members access to the latest and best innovation in research, development and extension. Our industrial relations section provides highly specialised advice on labour and workplace matters.

Our grassroots structure means members are the final arbiters of the policy we advocate on. Our regional network connects members to Macquarie Street, while Annual Conference and elected forums such as Executive Council enable members to lobby for the issues that matter to them and their community. Our issue- and commodity-specific Advisory Committees are elected by members to provide specialist, practical advice to decision makers on issues affecting the sector. We are proudly apolitical – we put our members' needs first.

In addition, NSW Farmers has partnerships and alliances with like-minded organisations, universities, government agencies and commercial businesses across Australia. We are a proud founding member of the National Farmers' Federation.

Executive summary

It is an often ignored and puzzling circumstance that offsetting policy in NSW is discussed, planned and implemented without reference to the most obvious fact: That biodiversity offsetting occurs on private land, and those who own that land are missing from the conversation. From this omission, the equation of outcomes for the environment and the beneficial rights of private land owners struggle to reach an optimal position.

Environmental regulation and legislation that fails to constructively engage with rural land owners will not succeed. This can be due to the misalignment of goals, a lack of knowledge or understanding, trust deficit and structure of the available products.

Offsetting and set aside options in New South Wales does encompass all these issues and in this submission NSW Farmers is putting forward to you the view of rural land owners who own the biodiversity on their land that is the platform for these schemes.

Clearly the aim of offsetting vegetation loss at another location is to achieve a no net loss equation following a strategy of avoiding or mitigating a site scale removal of biodiversity. This is not a simplistic achievement. Biodiversity 'shifting' as a proxy for ecosystem growth and health, is not a single transaction leading to a desired and satisfactory environmental outcome. It is a series of regulatory decisions, physical inputs, adaptation to variables and changing management practices that are all designed to build an environment where biodiversity can build and survive in a long term. All these actions also require a long term funded and functional monitoring and evaluation program to assist in adapting management of offsets to variables and to measure the effectiveness of proposed management techniques.

Equally all these variables and decision points require a constructive and ongoing communication and relationship with the host site, where local knowledge of biodiversity and management practices can be utilized, and monitoring and evaluation be informed by local conditions and timing and effectiveness of actions.

Finally, there is challenge to the premise of offsetting by regulatory obligation, where there is nationalisation of part of a private land owners property. While this is seemingly acknowledged as a normal practice by those not owning the land, this infringement of property rights by some sort of communal assumption that it is acceptable, is a serious impediment to land owners ability to have

productive businesses. Equally, and perhaps more importantly in this present issue of offsetting effectiveness, an assumption of property rights without adequate compensation is, and will continue to be, the most important obstacle in the public ownership of biodiversity.

1. Effectiveness of Offsetting in arresting the decline in biodiversity.

    a. Overview

There are clear market weaknesses in how offsetting is managed. Rural land is a source of offset credits, either by contract or agreement or purchase. It is the policy of NSW Farmers, that land is not purchased solely for the purpose of offsetting obligations, as this leads to unmanaged land, promoting pest and weed problems, and also reduces an already challenged total land mass of available agricultural land. Where there is agreement or contracts for offsetting, there are voluntary and required regulatory obligations on private land. As detailed earlier there are underlying assumptions in the agreements that work against the effectiveness of offsetting where it occurs, and an adequate return for a land owner.

    b. Role of offsetting in biodiversity conservation

NSW Farmers, in representing rural land owner interests, is not evaluating the scientific argument of offsetting being a process that achieves optimum environmental outcomes; and who measures and decides what those outcomes may be. Rather it is the policy and rule settings that directly matter in agreements with rural land owners. To assist, a brief outline follows of the barriers to entry and active participation in offsetting from rural land owners. Addressing these fundamentals would increase the effectiveness of offsetting as one option in mitigating development costs to environmental assets and build ecosystems that increase biodiversity.

        1. Right to vary environmental offsetting

A fundamental flaw in offsetting is the legislated obligation to undertake the process, through credit calculation and retirement when ability to minimize or avoid environmental loss is a part of a land management undertaking. This has created a distorted market, and inequality where the return on investment for the project being mitigated dictates the ability to proceed with environmental calculated costs. Excluding market participants due to the credit value volatility, and a one size fits all Biodiversity Assessment Method (BAM), that incorporates policy settings that do not reflect on ground values, is dramatically reducing the reach of offsetting to rural land owners. In particular in regional NSW, a loss of biodiversity due to land management, can be beneficially offset through a combination of social and economic regional benefits as well as strategic environmental protection.

A resolution to compulsory offsetting along with the commensurate rules that restrict vegetation type solutions and credit values, is to derive a benefit from the biodiversity loss in areas that meet governments' commitment to a triple bottom line assessment evaluation of development that benefits the state. This could be in the form of targeted biodiversity offsets of local or regionally valuable or scarce environmental assets, augmented by socially and or economically valuable projects that build and solidify regional communities.

There is a significant benefit in seeking a regional protection to biodiversity variety and quality by ensuring that the region is part of a universal approach to the environment in which people live and work.

2. The failure to date of the important Division 6 , Part 5A LLS Act.

The Division 6, Part 5A LLS Act section of the 2016 reforms to native vegetation in NSW have been a complete failure of Government policy, with one successful application in the more than four years the legislation has been in place. This is a key part of the reform process to achieve a reduction in the ongoing decline in biodiversity in NSW, where agricultural development was to be given the same opportunity for development as was afforded other industry developments. The calculations under the Biodiversity Assessment Method (BAM), offsetting ratios based on those credits requiring retirement, and inflated values of credits for payment, render any application unviable as a business decision. This failure places increasing pressure on other land management practices and disturbs the balance of area based approvals and ecologically quantified assessments that was envisaged in the reforms. The outcome is that these offsetting rules do not contribute to arresting the biodiversity decline and if not addressed, will continue to erode outcomes envisaged from ecosystem recovery in the reforms.

Addressing the failure of this reform piece requires there to be a revision of how biodiversity credits are calculated in rural landscapes, and an adjustment to the ability of the Native Vegetation Panel to adequately adjust required retirement levels to ensure that the biodiversity losses at site can be better retired for regional benefit. Without the active use of this part of the reform, developed as a step from area based biodiversity equations to quantitative assessment of changes, there needs to be significant revision of codes available to develop suitable land, with adequate set aside rules in place.

The Division 6 options in offsetting within region while building economic resilience would obviate the need for other solutions such as bio certification of areas, where Government funding is inevitably needed to balance the environmental and productivity

balance, and private investment creates solutions where offsetting is valued and invested in by the land owners.

3. Biodiversity Conservation Trust (BCT)

The BCT has achieved around 285 agreements since its inception from 2017. In comparison, Local Land Services has processed around 170 enquiries each month, completing around 850 notifications of Land Management Code (LMC) use, and 1050 certifications. As an integral part of offering an alternative to use of the LMC these numbers demonstrate a dramatic under-utilization of the offers from the BCT. Clearly the conservation and offsetting rules that are governing involvement of rural land owners are not meeting expectations, and without recognition of highest and best land use, changes to available length of agreements, and better incentives to work as regional groups, the BCT will continue to undermine opportunity to gain areas for conservation and offset on rural land.

While there is renewed interest in Government further funding the BCT to reach adequate outcomes of quantity of agreements and quality of environmental outcomes, there is a perplexing overlap between the role of the BCT in seeking opportunity for environmental assessments, and the LLS skill base and role as a partner and advisor to a land owner in them making their land management decisions. There is a clear opportunity to facilitate biodiversity set asides and other offsets on rural land by delegating this role to the expertise of LLS where they are intimately involved in the property based solutions that farmers make about the overall use of their land.

Peer to Peer markets

There is no argument that those who know the most about the biodiversity, its viability and condition, history and changes, are those who own the land. There are however significant barriers to peer to peer offsetting, where restrictive rules for ‘like for like’, without variation options, undermine opportunity for land owners to fashion agreements where there would be significant biodiversity gains, located in the hands of those who know how to, and are adequately funded, to manage offsets. It appears the driving force in this restriction is the attempt to centralise control of offsetting, and a misguided ideal or objective that like for like and Government endorsed metrics are the only valid outcomes.

Working with land owners to encourage availability of offset areas would see a dramatic increase in regional biodiversity, with the goal of like being one that is reserved for unique only vegetation. There needs here to be a realisation there are artificial limitations on the market that are permeating all facets of availability and price, and compromise would achieve other gains.

The creation of a process with adequate governance to facilitate the peer to peer transactions of retirement of credits, with a regional focus, aligns constructively with the desire of the Commonwealth to foster regional protections under the Environmental Protection and Biodiversity Conservation Act (EPBC). It would also encourage on farm assessment of options to participate, and without high entry costs, create a market of in perpetuity and other time based agreements that can contribute significantly to carbon goals.

4. Biodiversity Mapping

Energy Environment and Science have heavily invested in mapping technology, capability and staff, however there is no connection with land owners on the type of vegetation, condition, viability and value and mapping outcomes. The concentration on seeking out changes in woody vegetation or variations on farm of coverage, would be better placed in creating an accessible and trusted source for land users to be able to utilize to create knowledge on the options they would have to participation in offsetting agreements. The barriers to this co-operation are ongoing and disappointing, and continue to undermine the opportunities for on farm agreements that benefit land owners and the environment.

It would be useful extension of the investment in mapping, to make this readily available and accessible and understandable to land owners. At present, while there is also a distrust in the accuracy of map produced on biodiversity values, there is an opportunity to engage those on the land that may have resources for offsetting, and to break down the barriers to accessing these additional environmental assets.

5. Outlaw lock it up and leave it land

There has been a preoccupation with gaining trophies of vegetation that are secured under the public control, and a lack of understanding that this land was, and always needs to be, managed. Simply achieving hectares of land and believing that is an environment benefit, is misguided, and as can be seen in many areas of land that are now set aside, without management there is an environmental detriment and eventual disintegration of ecosystem viability. There are limitations on Government's ability to finance management, monitoring and change management for lands. Solutions are to invest in what can be achieved, and to enhance agreement and the skills of private land managers to control pests and weeds, manage canopies and adapt to climate and rainfall variations.

To address these risks, offsetting must be undertaken, where appropriate, in the context of land owner commitment and benefit, and where the return on effort is equal to the reward offered, and the ability to enhance biodiversity. Trading productivity of land to trees, locked up and not managed, is not an investment in future biodiversity, however

managed land, with clear and agreed ecosystem targets is a way to reduce state-wide biodiversity decline and build lasting and viable sites.

6. Bio certification

There is opportunity to incorporate offsetting for environmental gains through area bio certifications, where planning ahead for both agricultural needs and selecting environmental outcomes can be combined. Across properties and regions, the quantification of both areas of productivity and protection is a government obligation, rather than implementing reactionary and mitigation solutions.

As noted earlier, this often involves significant Government financial investment. However, in certain areas of the state where there are large areas of undeveloped land, the scale and opportunity can make this a worthwhile solution.

It is an area Government should investigate as it is possible to create area of regional recovery and stability, while adding significant areas of biodiversity set aside with land owner engagement and management.

2. Way forward

The stated opportunities with offsetting are intrinsic to the structure created to implement environmental protection. The current structure perpetuates a division of options for land management between environment or productivity, rather that combining the potential for both areas to flourish. Faults with conservation funding, mapping, rules for offsetting, BAM and credit markets, allocation of funding and engagement with land owners could be addressed by creation of a body that combines the land management skills of LLS with the funding streams for biodiversity to better engage proactively with land owners. The aim of offsetting is to build ecosystems, not green wastelands, and this does not come without on the ground knowledge, effort, incentive and an understanding of the temporal and financial needs of land owners.

This structure would aim to achieve planning discussions around land management that included all options, productivity and environmental outcomes, and assist in the financial balance that is always a part of this planning. It would further erode the 'one or the other' decision making process, where environmental outcomes are seen as a penalty rather than part of a sound decisions on future land use planning.

NSW Farmers members can provide a number of case studies that will assist in demonstrating the opportunity for further development of choices around the best use of offsetting for biodiversity loss, and where decisions that relate to land management planning could be assisted by a overnment entity that can join in constructively in the rational evaluation of all options.