

13 October 2021

Portfolio Committee No. 7 – Planning and Environment
Parliament House
Macquarie Street
SYDNEY NSW 2000

By email: portfoliocommittee7@parliament.nsw.gov.au

Dear Committee Chair,

National Trust submission relating to the Inquiry into the Integrity of the Biodiversity Offsets Scheme

The National Trust appreciates the opportunity to make a late Submission to the Inquiry into the Integrity of the NSW Biodiversity Offset Scheme (BOS).

National Trust's Involvement in Biodiversity

As evidenced by items and places of natural significance on the register of the National Trust of Australia (NSW), the Trust has a long history in promoting the fundamental importance and role of a healthy and vibrant natural environment to the social, cultural and economic wellness of our community. Such listings, though not having statutory force, have considerable persuasive standing in the Community, Government and the Courts.

Since its inception in 1945 the National Trust has had a constant and “hands-on” approach to biodiversity conservation. In its earlier years, prior to the creation of the National Parks and Wildlife Service, the Trust acquired several bushland properties commencing in 1953 with its first property - Montague Island off Narooma. This was followed by the Bantry Bay Reserve in 1961, and Hawkesbury Reserve at Brooklyn in 1963.

The National Trust, lobbying with other community groups and individuals, led to the establishment of the first faunal reserve – the John Gould Reserve on Cabbage Tree Island in 1954. In 1964 the Trust took a stand against sand mining at Myall Lakes and in 1968 accepted an invitation from the National Parks Association of NSW to join with seven other conservation organizations to campaign for the creation of Myall Lakes National Park. This National Park was gazetted in June, 1977 after a nine year campaign.

In 1978, the National Trust lodged a submission with a State Pollution Control Commission inquiry, opposing the logging of the Grady's Creek Flora Reserve. The Trust then joined with other conservation organizations to generally oppose rainforest logging in New South Wales. After five years lobbying, in October 1985 the NSW Government announced that it would protect the State's remaining rainforests from logging.

The Trust's major and continuing direct involvement with biodiversity conservation is through bushland management. Established in 1976 as the Bush Regeneration Program, it was the first of its type in the world whereby local councils contracted the National Trust to regenerate and restore native bush land in urban areas. In 2019/20 financial year the Trust's Bushland Management Services successfully completed over 200 projects for 18 councils across greater Sydney.



Lack of community confidence in the Scheme

In the Trust's view, the creation and management of the BOS has created a highly negative perception of what the BOS is intended to achieve across the whole community, including landowners, the development industry, local government and community members. This problem is the age old one of the implementation, administration and management of the legislation not matching or realising what the legislators thought it would when formulating the legislation.

There are also issues stemming from a failure to report back to an independent entity, with instead all reporting and accountability occurring in-house within DPIE. The BOS is a matter that Parliament needs to keep within its bailiwick. The environment is not, and should not, be the plaything of Ministers and Agencies, especially as we are coming to grips with the management of climate change, in which the environment in all its formulations has an unquestionable role. Our First Nations People call it "Caring for Country".

Concern on use of offsets as a first, rather than a last, resort

The Trust understands that, in fact, the three step test for a BOS is actually quite simple and well ordered:

1. AVOID
2. MITIGATE/MINIMISE
3. OFFSET

We emphasise that it must be in that exact order. The single most important step in the test is to **AVOID** and the third step has been described in various literature as the ***step of last resort***. The Trust strongly agrees with the order and the emphasis. However in practice, we have the situation where the system is operating in the reverse and in practice, the default seems set at offset. Offsets are a "planning fiction", a pretense to a "net loss", even more so than is the Transfer of Floor Space in the Built environment planning controls.

The BOS has, and is, being implemented with a lack of focus on the heart of the matter which must be the "protection and conservation" of our natural environment. Reference is made to the "*Significant Impact Guidelines 1.1*" for the Commonwealth Offsets which notes one of the exemptions is the need for an approval to establish if the activity is "Continued Native Regrowth Clearance." No elaboration of this guideline is necessary, other than to point out the lack of possibility of enabling, for example, the regrowth of a Cumberland Plain Woodland, lost through past poor agricultural land use practices.

Onerous process for Landowners

Despite an apparently simple three-step process, the Trust is concerned that subsequent assessments are onerous on the landowner, with an expectation to read and understand an overwhelming and confusing volume of supposed Guidelines (which do not emphasise Step 1 – *avoid*).

The technical and lengthy nature and language of these Guidelines do not assist the landowner to properly understand the process or their obligations, rendering the need for the landowner to engage an expert to help establish their rights and responsibilities. For this scheme to be effective, it must be able to be comprehended.

Lack of Transparency and Poor Governance

The Trust is deeply concerned that the current BOS is lacking in transparency and good governance. Both transparency and good governance are key to the success of any form of contribution scheme involving the flow/exchange of land (i.e. Local Council's Development Contribution Plans) and money. Any such scheme must be measurable and both the contributor/developer and community must have confidence in its administration. In respect of the BOS, there are many flaws that flow from the basis upon which they are created.

As a general natural environmental management tool, a BOS is unfortunately contrary to the conservation of the "Assets of Intergenerational Significance" (AIS) as recently announced by the NSW Minister for the Environment. BOSs in practice are based on a false pretense that destruction of natural environments can be offset. Their focus on achieving economic sustainability is favored over the protection of endangered



environments, their flora and fauna. True intergenerational equity must have the environment, not the economy, as its basis.

Need to integrate with EPBC Act Review Recommendations

The National Trust strongly suggests that the Committee also refer to the Final Report of the Review of the Commonwealth EPBC Act by Professor Graeme Samuel and in particular his recommendations on:

- a) the role of our First Nations People in environmental management decision-making ;
- b) the overarching Matter of National Environmental Significance (MNES) Standard;
- c) the Accreditation/delegation to the States of MNES; and
- d) the reference to the Principle of Non-regression.

Thank you for allowing this late submission for the Inquiry into the NSW Biodiversity Offsets Scheme. We look forward to continued consultation during the Inquiry to ensure that the outcome for natural environment is key driver in any reforms and schemes.

Yours sincerely,

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