



Blue Mountains Conservation Society Inc

ABN 38 686 119 087

PO Box 29, Wentworth Falls, NSW 2782

Phone: (02) 4757 1872

E-Mail: bmcs@bluemountains.org.au Web Site: www.bluemountains.org.au

Nature Conservation Saves for Tomorrow

Office of Environment and Heritage
PO Box A290
Sydney South, NSW 1232

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**Submission: NSW Biodiversity Offsets Policy for Major Developments
and Framework for Biodiversity Assessment**

1. Introduction

1.1 Preface

The Blue Mountains Conservation Society is a community based volunteer organisation with nearly 900 members whose goal is to promote the conservation of the environment of the Greater Blue Mountains area.

The Society has links to the Nature Conservation Council, Colong Foundation, Protect Sydney's Water Alliance, RiversSOS, Lock the Gate, and Stop CSG Blue Mountains, amongst others.

The Society welcomes the opportunity to contribute to the proposed

- *Biodiversity Offsets Policy*, and associated
- *Draft Framework for Biodiversity Assessment for assessing and offsetting state significant development and state significant infrastructure.*

It is critical to note that this policy is not sufficient to avoid local or even global extinctions.

Biodiversity offset decisions over the last decade have varied considerably in the method of assessment and in the efficacy of offsets delivered. There has been widespread public and expert criticism of offset planning in NSW and it is clear a more robust and science-based policy is needed.

Unfortunately the draft policy presented does not provide these outcomes, and without broad amendments the policy is likely to deliver heavily compromised environmental outcomes.

1.2 The Disregard For Science

The policy has failed to incorporate the extensive and robust science available on effective offsetting. Rather, the policy has prioritised Objective 3 of increasing expediency in delivering development outcomes at the cost of maintaining and improving environmental assets in NSW.

The foundational premise of the draft Offsets strategy is not to avoid unacceptable impacts to what little native vegetation remains in NSW, but rather to facilitate such activities through offsetting arrangements on less threatened (i.e. less developable and therefore cheaper) land.

This does not contribute to recovering biodiversity in NSW, but rather envisages and requires further biodiversity loss. We refer the Office of Environment & Heritage to Maron & Gordon's excellent report in this regard (Maron, M. & Gordon, A., (2013) Biodiversity offsets could be locking in species decline. *The Conversation*, 6 June 2013). Their conclusion is very insightful:

“The crucial point about averted loss offsetting is that it can entrench the baseline rate of decline...this approach to offsetting simply ensures current declines continue, at the same rate. This outcome is not a policy failure - it is the way the policy is designed to work.”

They also raise the perverse outcome of offset arrangements discouraging voluntary conservation of land, and recent examples of this phenomenon:

“Policies structured this way could also provide a perverse incentive to ensure declines continue... For example part of the disquiet around... the Wild Rivers declarations on Cape York, is linked to the potential loss of opportunity to sell offset ‘credits’. The less of our vegetation we protect, the easier it is to find offsets...we should be aware that offsets are not a panacea. At best, our averted loss offsets will achieve a continuing decline of biodiversity. At worst, they may provide an incentive for the decline to continue.”

2. Disregarding scientific evidence and expert recommendations about conserving biological diversity

2.1 Key ecological principles ignored

Key ecological principles including the Precautionary Principle, the redundancy phenomenon, landscape genetics and irreplaceability have been openly ignored by this policy.

The excellent critique provided by the NSW Scientific Committee in their submission to the *Biodiversity Banking and Offsets Scheme Review* is one such example. The repeated rejection of advice from this expert panel by the OEH regarding offset policy is extremely concerning.

The draft policy is sufficiently flawed to permit the extinction of a native Australian plant and animal species. For example, where a development proposal is made covering the last remaining wild population of a threatened species or ecological community (*sensu stricto*), the draft policy could permit such an action through offsets within a similarly threatened ecological community or within a different community fitting within the same broad Plant Community Type. For a threatened species the policy could similarly permit the proposal through ex-situ conservation actions, research and/or a translocation attempt.

This is not considered an acceptable scenario. To rectify this requires a return to, recognition of irreplaceability through unconditional red-flags, and reinstating the precautionary principle.

The Blue Mountains Conservation Society strongly agrees with the NSW Scientific Committee in recognising that the most cost-effective method of addressing species & ecological community declines in NSW is to limit land clearing through regulation – the ‘Avoid’ principle.

We similarly note that this outcome if achieved nevertheless falls short of the objective of the *NSW Threatened Species Conservation Act 1995* being to *reverse* the declines of threatened species and communities.

The current draft Policy does not satisfactorily provide for the ‘Avoid’ principle and is incompatible with the objectives of the *Threatened Species Conservation Act*.

2.2 Failure to provide a robust and scientifically supported standard

The recent submission to the *Biodiversity Banking and Offsets Scheme Review* by the NSW Scientific Committee provides a sound basis for a more effective policy setting. Sadly the repeated entreaties of that elite committee on the subject of offsets have been completely ignored.

The NSW Scientific Committee should be central to the development of an amended offset policy – a policy with capacity to maintain or improve the condition of our states biodiversity assets.

The nation-wide collaborative paper by Maron et. al (2012) is another excellent starting point for consideration (Maron, Hobbs, Moilanen, Matthews, Christie, Gardner, Keith, Lindenmayer, & McAlpine (2012) *Faustian bargains? Restoration realities in the context of biodiversity offset policies*, *Biological Conservation* 155: 141–148). This paper examines in detail the effectiveness of restoration as an approach for offsetting biodiversity loss. It notes that ‘*many of the expectations set by current offset policy for ecological restoration remain unsupported by evidence*’ and concludes that ‘*the domain within which restoration can deliver ‘no net loss’ offsets remains small*’. This is in stark contrast to the foundations of the draft Offset strategy which has been presented.

Other key studies are referenced in relation to the relevant themes discussed below.

2.3 Draft Framework – offset ratios not based on science and not precautionary

The NSW Scientific Committee criticise the rejection of the precautionary principle in the data used to support NSW Offset policy, noting:

“the data that underpins the BioBanking Assessment Methodology is flawed and is counter precautionary”

This criticism is equally valid for the Draft Framework, which relies heavily on the same data that underpins the BioBanking Assessment Methodology. The ratios and standards provided do not reflect robust scientific assessment of what is required to truly maintain or improve environmental outcomes. As a consequence the offsets resulting from the draft policy are highly unlikely to be satisfactory.

2.4 The Avoid principle and red-flags

The Scientific Committee raise the fundamental problem of redundancy and its relation to the implementation of offsets in NSW. This is a key failing of the present draft Offset policy.

“Threatened species are often rare, which presents difficulties both for their survey and for predicting their distribution. Species that are rare are prone to local extinction due to stochastic processes, often resulting in a loose relationship between vegetation type and the precise location of threatened species.

“Our knowledge of the distributions of threatened species is therefore generally poor, which means there must be sufficient redundancy in any reserve system to capture the as yet unknown locations of threatened species within a probability envelope as well as the stochastic process of local extinction and recolonisation that drives their distributions...(However)...there is little option for including redundancy, in the heavily cleared landscapes in which the option of a Biobanking approach is most attractive to developers.”

For Endangered and Critically Endangered ecosystems the premise of offsetting is void, as such systems cannot accommodate further habitat loss without local extinctions. There is little or no option for effective offsetting in these heavily cleared landscapes. Once a species or ecosystem is on the *Threatened Species Conservation Act* it is unlikely to be suitable for offsetting and as such TSC Act scheduled entities should be exempted from offsetting as red-flags unless strong evidence is available to the contrary.

Any offset policy should have a clear objective to protect endangered biodiversity. This requires a system of red flags or no go zones where impacts must be avoided – especially when local extinctions are an identified impact.

In a recent presentation by the OEH the ‘Avoid, Minimise, Offset’ priorities were noted.

In regard to the ‘Avoid’ principle OEH representatives outlined impacts that require further consideration to include likely extinction in -

- IBRA subregion, [Interim Biogeographic Regionalisation for Australia]
- critical habitat,
- riparian areas, and
- important corridors.

This is grossly insufficient, and we further note that despite these verbal assurances the draft Policy and Framework do not list these ‘considerations’.

The Society considers that at an absolute minimum the Framework should provide the following Red-Flag areas:

- World Heritage Areas,
- Wilderness Areas,
- Critically Endangered species and ecological communities,
- Private Conservation reserves,

- National Parks tenure, and
- existing offsets.

Contrary to the proposed framework, Red-Flag Areas should be afforded absolute protection and not be subject to ministerial discretion.

These should not be ‘matters for consideration’ but rather matters afforded real and binding protection.

2.5 Credits for Mine Rehabilitation

The Society does not support the proposed provision of biodiversity credits for mine rehabilitation, as this has been repeatedly proven to be ineffective in restoring diverse and functional ecosystems.

The incorporation of this in the draft policy is a rejection of ecological science and is inexcusable.

2.6 Like-for-Like

The Society does not support the *Draft Framework for Biodiversity Assessment* in relation to the liberal variations of ‘like for like’ offset requirements.

The potential pitfalls regarding like-for-like offsetting are excellently considered in Quétier & Lavorel (2011) (*Quétier F., & Lavorel S. Assessing ecological equivalence in biodiversity offset schemes: Key issues and solutions. Biological Conservation 144: 2991–2999*).

The draft Policy and Framework require only that offsets must be targeted to the biodiversity being lost or to higher conservation priorities.

It is critical to note that such a policy is not sufficient to avoid local or even global extinctions.

To truly function as offset actions must be solely linked to the same environmental assets which are being compromised, not lumped into broadly similar categories.

2.7 No Net Loss and Additionality principles: a scenario of continuing biodiversity loss

Instead of locking in species decline through market mechanisms we need to improve the protection and management of our remaining biodiversity assets. The NSW Scientific Committee summarise the situation well:

“A fundamental assumption for biobanking is that land that does not have formal protection will eventually be lost. This is, in effect, an admission that existing State biodiversity policy and legislation are failing... The Scientific Committee considers that where development is continuing to destroy the habitat of threatened taxa, this is not due to a failing of the Act itself, but rather in its interpretation by determining authorities and in a lack of compliance and enforcement.... The Methodology does not eliminate existing difficulties with the Act, yet it makes compromises that will have negative effects on threatened taxa..”

It is clear that the OEH considers the current biobanking offset arrangements (or similarly managed schemes) can protect biodiversity which would otherwise be destroyed by development.

However, the proposed policy is not in the strict sense an offset policy, but rather founded on averted loss mitigation, ie: the impact on a development site is considered to be mitigated somewhat by affording protection (and in some cases restoration) of other land considered to be under similar threat of destruction.

This is a scenario of continuing biodiversity loss. Additionally, it is likely that the estimated gains of averted loss may be miscalculated.

An inspection of the Sydney Growth Centre offset scheme provides one such example.

Firstly, the biodiversity values being lost (largely Shale Plains Woodland and associated species) are not in general the same as the biodiversity values being 'saved' (largely Moist Shale Woodland) – a failing of like-for-like provisions.

Secondly, it is clear that the 'protected' offsets are, in most cases, not under genuine threat of destruction. The majority comprise E2 (Environmental protection) zoned land, bushland protected under the Native Vegetation Act, and/or are protected steep slopes and creek lines.

Thirdly, offset acquisition costs would render most development completely unviable with the majority of developers therefore prioritising profits over protection of biodiversity. As alarming as this situation is, it is sadly not surprising.

2.8 Slush Fund Proposal and the need to demonstrate availability of offsets

The proposal to establish a slush fund for offsets is not acceptable.

It is critical that any offset arrangement ensures that a suitable offset actually exists before permitting biodiversity assets to be destroyed. Even if suitable vegetation exists to potentially offset the proposed activity there is no guarantee that relevant landowners will be willing to cooperate. This will leave OEH in a situation where the Offset Policy and Framework become irrelevant; if a suitable offset is not available to meet the guidelines after the development has progressed there is no option but to breach the guidelines and use the funds for an alternative offset. Such developments without any comparable offsets would not be considered acceptable under existing legislation; however a slush fund methodology would allow such developments to proceed.

We currently have the more tenable situation where developments have been approved through BioBanking with up-front BioBanking offsets identified.

However even in this scenario the practicalities of offsetting result in unsuitable outcomes. In one instance the vegetation on the development site has been cleared but five years on, no action has been taken on the offset sites (and it is quite possibly never will) because the development only provided for retiring part of the credits generated by the offset site.

If such unsuitable outcomes occur even when offsets are determined up-front, what will the on-ground implications be when offset decisions are made after the event?

2.9 Supplementary Measures

The Society does not support supplementary measures such as research as a replacement for on-ground biodiversity offsets nor the proposal for these to be at the consent authority's discretion.

2.10 Discounting

The Society does not support offset 'discounts' nor the proposal for these to be at the consent authority's discretion. This would set a dangerous precedent for compromising environmental requirements for politically desirable developments. Rather an effective and fair offsets policy must meet the principles of ecologically sustainable development and not give greater weight to social and economic benefit over environmental impact.

We note that the draft Policy permits discounting where offsets would prevent proposal from proceeding, and where 'significant social and economic benefits accrue to NSW'.

However the Blue Mountains Conservation Society notes that the environment is of extremely significant social and economic benefit to NSW, and unlike the benefits of any development, environmental benefits are in perpetuity.

It is highly uneconomic to trade such assets and their ongoing benefits for short term expediency.

2.11 Engagement of accredited ecological consultants

The Framework provides for biodiversity assessments to be conducted by an accredited ecological consultant hired by the proponent. This is unlikely to assist competence and suppress corruption in the ecological consulting industry.

We note that OEH is prepared to manage an offset slush fund, demonstrating capacity in this arena. This capacity should instead be directed to direct appointment and payment of ecological consultants from a similar fund. Such a framework would at least provide the opportunity for this industry to operate transparently and without bias.

2.12 Exclusion of rigorous scientific and community participation

The *NSW Threatened Species Conservation Act 1995* presently provides 'quality control' by permitting organisations or individuals to challenge assessments in the court. By contrast the draft Policy and Framework exclude public and scientific participation in contributing to and challenging the draft offset Framework.

If the draft Offset policy is to achieve transparency, and protection biological diversity, avenues for real participation and challenge by the public and the scientific community must be provided.

3. Summary

As a summary, the comments of the NSW Scientific Committee in the NSW BioBanking review could not be more appropriate to the current offsetting proposals:

“The present system may result in development approval taking longer, but this should not be considered a weakness: rather, it is an indicator that the cost on biodiversity is being considered, and that the impact of any action is properly assessed, which is one of the objects of the Act. The Scientific Committee acknowledges that there are competing societal priorities for land use and the conservation of biodiversity is only one, but biodiversity loss – especially extinction – is irreversible.”



**Alan Page,
President,
Blue Mountains Conservation Society Inc.**