

FACT SHEET 2: BIODIVERSITY OFFSETTING

Key features of the *Draft Biodiversity Assessment Method*

INTRODUCTION

In May 2016, the NSW Government released a *Biodiversity Conservation Bill 2016* and *Draft Biodiversity Assessment Method* for public comment. It is intended that the *Draft Biodiversity Assessment Method* will replace existing biodiversity offsetting mechanisms (e.g. BioBanking, BioCertification) and provide a single assessment methodology for all biodiversity offsetting in NSW.

The *Draft Biodiversity Assessment Method* carries over many of the criticised elements of the *NSW Biodiversity Offsets Policy for Major Projects*. The table below compares the key features of existing biodiversity offsetting mechanisms in NSW and the *Draft Biodiversity Assessment Method*. Key concerns with the *Draft Biodiversity Assessment Method* are outlined in more detail below.

Comparison of Key Features of NSW Biodiversity Offsetting Schemes

✓ Yes X No ● Partial or pending

PRINCIPLE LEGISLATION:		<i>Native Vegetation Act 2003</i>	<i>Threatened Species Conservation Act 1995</i>	<i>Threatened Species Conservation Act 1995</i>	<i>Environmental Planning and Assessment Act 1979</i>	<i>Biodiversity Conservation Bill 2016</i>
METHODOLOGY:		Environmental Outcomes Assessment Methodology	BioBanking Assessment Methodology	Biodiversity Certification Assessment Methodology	NSW Offsets Policy for Major Projects	Draft Biodiversity Assessment Methodology
Best Practice Offsetting Rules	1. Clear objective	✓	✓	✓	X	X
	2. Impacts on water quality, salinity and soil	✓	X	X	X	X
	3. Red flags	✓	✓	✓	X	●
	4. Strict like for like offsetting (no variations)	✓	X	X	X	X
Poor offsetting practice	5. Supplementary measures	X	X	X	✓	✓
	6. Mine rehabilitation	X	X	X	✓	✓
	7. Offsets Fund	X	X	X	●	✓
	8. Discounting of Offsets Credits	X	X	X	X	✓

INDEPENDENT ASSESSMENT OF THE *DRAFT BIODIVERSITY ASSESSMENT METHOD*

As part of the public consultation process, the Government has also released an Independent Assessment of the *Draft Biodiversity Assessment Method* undertaken by Phil Gibbons, Associate Professor, Fenner School of Environment and Society, The Australian National University and Teresa Eyre Principal Ecologist, Queensland Herbarium, and the Government's response to the review. The [Independent Review](#) and [Government response](#) is available online at www.landmanagement.nsw.gov.au/ecologically-sustainable-development/

KEY CONCERNS WITH BIODIVERSITY OFFSETTING

Biodiversity offsetting is complex. There are substantial challenges in designing offsetting frameworks that are able to improve biodiversity outcomes and curb the substantial decline in biodiversity.

These challenges include:

- **Difficulties in recreating nature:** Biodiversity offsetting relies on the assumption that ecosystems and habitat can be suitably re-created. There is a significant level of uncertainty that restoration will deliver the biodiversity outcomes needed to compensate for biodiversity loss.
 - **Time lags:** The calculation of biodiversity offsetting credits is often criticised for not adequately taking into account the time lags associated with restoration.
 - **Market limitations and difficulty in securing like for like offsets:** Biodiversity offsetting often relies on economic drivers to establish a commercial market for offsetting. This in itself brings a number of challenges including whether there are enough suppliers for the credit market or whether there is sufficient demand for credits.
 - **Failure to adequately monitor and enforce biodiversity offsetting commitments:** Inadequate monitoring and long-term enforcement can mean that conservation gains are never ultimately realised, undermining biodiversity offsets schemes.
 - **Perverse outcomes:** Biodiversity offsetting may lead to perverse outcomes such as the winding back of non-offset conservation action and false public confidence in environmental outcomes.
- **Inadequate currencies:** Unlike other commodities (such as carbon pollution), biodiversity is difficult to quantify, which makes calculating offset credits inherently difficult.
 - **Failure to account for benchmark declines:** While many offset schemes aim to deliver 'no net loss' in biodiversity, the baseline against which no net loss is measured is not specified.

KEY CONCERNS WITH THE DRAFT BIODIVERSITY ASSESSMENT METHOD

1. There is no clear objective to protect biodiversity or achieve net positive outcomes

- The *Draft Biodiversity Assessment Method* does not include a clear objective to protect biodiversity or achieve net positive outcomes.
- Currently, both the *Environmental Outcomes Assessment Methodology* under the *Native Vegetation Act 2003*, and the Biodiversity Certification provisions under the *Threatened Species Conservation Act (1995)* are underpinned by an objective to 'maintain or improve biodiversity'. This objective is not carried over, nor is there an equivalent or replacement standard, in the *Biodiversity Conservation Bill 2016* or *Draft Biodiversity Assessment Methodology*.
- In reviewing the *Draft Biodiversity Assessment Method*, Gibbons and Eyre (2015) raised concerns that the standard against which an impact is judged remains unclear. They noted that 'improve or maintain' has been removed from the new policy, but there is no explicit standard to replace it. They recommend that a standard is necessary in order to (1) guide development of the methodology and (2) provide an explicit target against which the policy can be evaluated, and modified if necessary¹.

2. The *Draft Biodiversity Assessment Method* does not assess impacts on water quality, salinity or soil quality

- The Environmental Outcomes Assessment Methodology under the *Native Vegetation*

Act 2003 recognises the complexity of biological diversity and its importance in maintaining healthy ecosystem services, and provides a mechanism for assessing a broad range of biodiversity values including water quality, salinity and soil.

- At this stage the *Draft Biodiversity Assessment Method* only covers a limited scope of biodiversity values, including vegetation integrity, landscape features and habitat suitability. While there is scope for the *Biodiversity Conservation Regulation* to prescribe other values, the *Draft Biodiversity Assessment Method* is currently limited in its application.
- Given that there are existing mechanisms for addressing water quality, salinity and soil values, it would be a backwards step for the *Draft Biodiversity Assessment Method* to not cover those values from the outset.

3. Limits on biodiversity offsetting ('red flag' areas) in the *Draft Biodiversity Assessment Method* are limited and uncertain

- Best practice offsetting recognises there are limits to what can be offset. In some circumstances impacts cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected. These may include areas of high conservation value, environmentally sensitive areas and endangered ecological communities.
- In these areas, where offsetting is not an appropriate solution, a 'red flag' should be triggered and development is refused on the grounds of unacceptable environmental impact.
- Red flags currently feature in a number of NSW biodiversity offsets policies including

the *BioBanking Assessment Methodology* 2014, the *Biodiversity Certification Assessment Methodology* 2011 and the *Environmental Outcomes Assessment Methodology* 2013.

- The new biodiversity conservation package proposes a 'red flag' where there are '*serious and irreversible impacts on biodiversity values*' however the criteria for defining serious and irreversible impacts and 'red flag areas' have not yet been developed (Appendix 4 - Draft Biodiversity Assessment Method), and in the case of major projects or biodiversity certification, 'red flags' can be ignored (cl 7.17 and cl.8.8 Biodiversity Conservation Bill).

4. The *Draft Biodiversity Assessment Method* allows variations to 'like for like' offsetting

- The *Draft Biodiversity Assessment Method* allows for variations to 'like for like' offsetting. This fundamentally departs from the principle that offsets should be targeted towards the conservation values being lost.
- Broadening offsets to include similar vegetation types in the locality that have been more highly cleared, or by species that are under the same or greater level of threat, will result in a net loss of the impacted vegetation type or species. Although such broad offsetting may yield some conservation outcomes for related vegetation and species, it will ultimately lock in the trajectory of decline for the actual vegetation types and species being impacted.
- Scientists and environment groups have raised concerns with the weakening of 'like for like' rulesⁱⁱ. Together with the introduction of supplementary measures (discussed below), these flexible offsetting

arrangements have been highly criticised for fundamentally departing from the key principles of offsetting.

5. The *Draft Biodiversity Assessment Method* allows for the use of Supplementary Measures (indirect offsets)

- The *Draft Biodiversity Assessment Method* allows the use of supplementary measures (now called 'biodiversity conservation actions') in place of genuine offsets. However the rules for the use of 'biodiversity conservation actions' are still under development, and not available for public comment as part of the *Draft Biodiversity Assessment Method*.
- Critics of 'supplementary measures' are concerned that supplementary measures are not genuine offsets, and that they fail to meet best practice offsetting principles, including that offsets be 'like for like'.
- The NSW Scientific Committee has raised particular concerns with the introduction of supplementary measures, advising that '*the proposal that a proponent can provide funds for supplementary measures that do not involve protecting and managing a site, or by paying into the Fund, is clearly a case of developers being able to buy themselves out of any obligation to protect biodiversity in any meaningful way. This proposal should be rejected*'.ⁱⁱⁱ
- Gibbons and Eyre (2015) have raised concerns with the inclusion of supplementary measures in the Draft Biodiversity Assessment Methodology. Specifically they advise that "*...the assessment methodology is predicated on a policy that, for proposals that are not deemed red light, a decision to approve/reject a development application will not be determined by the capacity of the impact to be offset. Instead, flexibility*

in the assessment methodology (e.g., relaxing the credit profile ... and supplementary offset measures where sufficient ecosystem credits cannot be found ... can be invoked when it is difficult for a developer to secure an offset, which is unfortunate. We believe these measures will undermine the intent of offsetting to create a price signal for biodiversity based on supply and demand (i.e., a price that reflects the rarity and capacity for restoration of biodiversity)^{iv}.

6. The Draft Biodiversity Assessment Method allows mine site rehabilitation to be attributed as biodiversity offset credits

- The use of mine site rehabilitation towards the calculation of biodiversity offset credits is controversial and unproven. Numerous critics have raised concerns about the ability to effectively restore degraded land, and whether mine site rehabilitation was ‘additional’ to the obligations of mining companies^v.
- There are concerns that the mining industry has a very poor record of successfully restoring ecological values during mine site rehabilitation and the NSW Government has a poor track record of monitoring and regulating mine site rehabilitation^{vi}.
- The NSW Scientific Committee has raised concerns with the use of mine sites to generate biodiversity offsetting credits, concluding that ‘it seems highly unlikely that biodiversity credits could be generated through mine rehabilitation and this proposal should be rejected as impractical unlikely to result in biodiversity conservation or improvement^{vii}.

7. The Draft Biodiversity Assessment Method allows proponents to pay money into an

Offsets Fund prior to adequate offsets being identified

- The NSW Government proposes establishing a new Biodiversity Conservation Trust that will be responsible for managing private land conservation agreements and the expanded NSW biodiversity offsets scheme, including a New Offsets Fund.
- The *Draft Biodiversity Assessment Method* allows proponents to discharge offsets requirements simply by paying money into a fund rather than requiring offsets to be identified and secured before development proceeds. There is little information about how offsets will be monitored into the future to determine whether this system compensates for loss of biodiversity values or perpetuates ongoing biodiversity decline.
- The idea that land clearing or development applications could be approved without certainty as to offset measures is a clear contradiction of the recommendation of the Senate Standing Committees on Environment and Communications that environmental offsets related to any particular development or activity should be clearly identified prior to approval being given for that development or activity^{viii}.

8. The Biodiversity Conservation Bill 2016 and Local Land Services Amendment Bill 2016 allow for discounting of biodiversity credits

- Clause 60CC of the *Local Land Services Amendment Bill 2016* and clause 7.15 *Biodiversity Conservation Bill 2016* allow for the discounting of offset credits if the Minister determines that the reduction is justified having regard to the environmental, social and economic impacts of the proposal.

- When the draft *NSW Biodiversity Offsets Policy for Major Projects* was first released for public comment, significant concern was raised over proposals to allow ‘discounting’ of biodiversity credits when a major project would have significant social and economic benefits to NSW^{ix}. Subsequently discounting provisions were not included in the final *NSW Biodiversity Offsets Policy for Major Projects*.
- In light of significant concern with the concept of ‘discounting’, it is concerning that the concept of discounting has been reintroduced in the new biodiversity conservation framework.

9. Offset areas can be offset (and are therefore not actually protected in perpetuity)

- The Biodiversity Conservation Bill allows offset areas to be subsequently cleared (subject to further offsetting) [e.g. clause 5.11 and 5.16 of the Biodiversity Conservation Bill 2016]. This is contrary to best practice offsetting practice that offsets be protected in perpetuity.

10. The Draft Biodiversity Assessment Method does not meet Federal standards

- It is unlikely that the NSW policy as proposed will meet federal standards. For example, the NSW policy allows expanded use of indirect offsets and supplementary measures, while the Australian Government’s Offsets Policy under the *Environmental Protection and Biodiversity Conservation Act 1999* puts a 10% cap on the use of supplementary measures.

Prepared by the Nature Conservation Council of NSW.

For more information please visit our website at <http://www.StandUpForNature.org.au>

ⁱ Gibbons P and Eyre T (2015) Draft Independent review of the Biodiversity Assessment Methodology, October 2015, p4 <https://biodiversity-ss.s3.amazonaws.com/1461934376/peer-review-combined.pdf>

ⁱⁱ See, for example, NSW Scientific Committee *Submission on the draft NSW Biodiversity Offsets Policy for Major Projects* (www.environment.nsw.gov.au/resources/biodiversity/offsets/66NSWScientificCommittee.pdf); see also

EDO NSW *Submission on the draft NSW Biodiversity Offsets Policy for Major Projects* (www.environment.nsw.gov.au/resources/biodiversity/offsets/62EnvironmentalDefendersOffice.pdf)

ⁱⁱⁱ NSW Scientific Committee *Submission on the draft NSW Biodiversity Offsets Policy for Major Projects* (www.environment.nsw.gov.au/resources/biodiversity/offsets/66NSWScientificCommittee.pdf)

^{iv} Gibbons P and Eyre T (2015) Draft Independent review of the Biodiversity Assessment Methodology, October 2015 <https://biodiversity-ss.s3.amazonaws.com/1461934376/peer-review-combined.pdf>

^v See S Gould (2011); Brady, C. J. & Noske, R. A. (2010); Maron M. et. al. (2012)

^{vi} Gibbons and Lindemeyer (2007); van Teeffelen et. al (2014)

^{vii} NSW Scientific Committee *Submission on the draft NSW Biodiversity Offsets Policy for Major Projects* (www.environment.nsw.gov.au/resources/biodiversity/offsets/66NSWScientificCommittee.pdf)

^{viii} Senate Standing Committees on Environment and Communications – *Inquiry into Environmental Offset, Recommendation 7* www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets

^{ix} Office of Environment and Heritage, *Submissions report on the Draft NSW Biodiversity Offset Policy for Major Projects*, September 2014, www.environment.nsw.gov.au/resources/biodiversity/140671biosubmission.pdf