

Environmental Markets – Can Economics Regulate the Environment?

The NSW Biodiversity Offsets Scheme

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Webinar

5 November 2020

Contents

- The NSW Biodiversity Offsets Scheme
- Development approval process and the Biodiversity Assessment Method (BAM)
- Offsetting Options of the BOS



Photo: Michelle Frolich

The NSW Biodiversity Offsets Scheme

- NSW Biodiversity Conservation Act 2016 (BC Act) repealed the Threatened Species Conservation Act 1995 – now 4 years in.
 - Part 6 – Biodiversity Offsets Scheme (BOS)
 - Part 7 – Biodiversity Assessment and approvals under the EP&A Act
 - BC Act Regulation 2017 – sets out specifics of the BC Act
- End of the BioBanking Offsets Scheme (BBAM) – replaced with the new BOS and establishment of the Biodiversity Assessment Method (BAM).
- BOS applies to:
 - Major Projects: SSD/SSI with SEARS issued
 - Part 4 developments under the EP&A Act – development likely to significantly affect threatened species, populations, ecological communities and their habitats
 - Part 5 activities under the EP&A Act – optional for proponents

The NSW Biodiversity Offsets Scheme

- For developments under Part 4 of the EP&A Act – three triggers for entry into the BOS:
 - mapped on the Biodiversity Values Map
 - native vegetation clearance is above the area clearing threshold
 - deemed a significant impact following application of the Test of Significance under Part 7 of the BC Act
- If the BOS is triggered, requires assessment using the Biodiversity Assessment Method (BAM) and the preparation of a Biodiversity Development Assessment Report (BDAR) by a BAM Accredited Assessor
- BAM Accredited Assessor can be engaged to assist with determining entry into the BOS

Biodiversity Values Map (BV Map)



- Developed by DPIE
- Identifies land with high biodiversity value sensitive to impacts from development and land clearing including:
 - Potential Serious and Irreversible Impact entities; TECs and threatened species
 - Coastal wetlands and littoral rainforests
 - Core koala habitat
 - Declared Areas of Outstanding Biodiversity Value
 - Declared Ramsar wetlands, etc.
- Biodiversity Values Map and Threshold Tool (BMAT):
<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>
- BV Map is updated regularly - can be challenged if landowner thinks no biodiversity value on land

Area Clearing Threshold

- Applies to clearing of native vegetation
- Minimum lot size to area of clearing – prescribed in Clause 7.2, Part 7 of the BC Act Regulation
- Minimum lot size can be found on NSW Planning Portal Spatial Viewer:
<https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

Test of Significance

- Section 7.3 under Part 7 of the BC Act
- 5-part test – determine “*whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats*”
 - (a) in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
 - (b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity —
 - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
 - (c) in relation to the habitat of a threatened species or ecological community—
 - (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,
 - (d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),
 - (e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

Biodiversity Assessment Method (BAM)

- BAM applied to assess impacts of a development if entry into BOS
- Assessment methodology quantifies residual impacts on native vegetation and threatened species habitat – biodiversity credits
- Generates biodiversity credits on land used for offsets through Biodiversity Stewardship Agreement (BSA)
- Ecosystem credits – native vegetation/Plant Community Types (PCTs)
- Species credits – all threatened flora and selected threatened fauna



Photo: Frank Lemckert

Biodiversity Assessment Method (BAM)



- Accredited BAM Assessor engaged to undertake:
 - site assessment, including PCT mapping, floristic vegetation integrity plots and targeted threatened species surveys
 - calculate biodiversity credits required to be offset (or generated on a BSA) using DPIE's online BAM Calculator (BAM-C)
 - preparation of Biodiversity Development Assessment Report (BDAR)
 - preparation of a Biodiversity Stewardship Site Assessment Report (BSSAR) and Management Plan (including management costings)

Biodiversity Development Assessment Report (BDAR)

- BDAR required to:
 - identify PCTs, site condition and threatened species and their habitat on development site
 - assess direct, indirect and prescribed impacts of the development on biodiversity values
 - identify any candidate Serious and Irreversible Impacts (SII) entities
 - demonstrate avoidance and mitigation measures
 - identify biodiversity values requiring offset and those which don't
- BDAR submitted to Consent Authority (Council) with Development Application
 - must be within 14 days of finalisation of BDAR

Development Consent

- Consent authority may require additional information
- Consent granted with conditions to retire biodiversity credits prior to commencement of development
- Impacts to Commonwealth listed Threatened Ecological Communities or threatened species are considered offset under the BOS under the new Bilateral Agreement
- Consent authority may request additional offsets or refuse DA where impacts on biodiversity considered a Serious and Irreversible Impact (SII)



Offsetting Options

1. Establish BSA on own land with matching biodiversity values
2. Source 'like-for-like' credits from credit sellers on the open credit market
 - 'Like-for-like' offsets
 - Impacts to a Threatened Ecological Community (TEC), offsets must comprise the same TEC:
 - located in the same Interim Biogeographic Regionalisation of Australia (IBRA) subregion (or any subregion within 100km of the development), and
 - if impacted vegetation contained hollow-bearing trees, offset must contain hollow-bearing trees
 - Ecosystem credits that are not a TEC:
 - Offsets must be the same vegetation class located in the same or adjoining IBRA subregion (or any subregion within 100km of the development), and
 - Same of higher offset trading group, and
 - if impacted vegetation contained hollow-bearing trees, offset must contain hollow-bearing trees
 - Species credit species – must be offset with same threatened species
 - variation to like-for-like may be sought

Offsetting Options: Variation rules

- Variation rules may be applied where like-for-like offsets not sourced:
 - need to demonstrate taken reasonable steps to source like-for-like
 - not available for impacts on Commonwealth listed entities
 - TECs or ecosystem credits:
 - Same vegetation formation, and
 - Same or higher offset trading group, and
 - Located in same IBRA region as development or subregion within 100km of development site, and
 - If development site impacts on hollow-bearing trees, offset must have hollow-bearing trees or artificial hollows.
 - Species Credits:
 - Species that are a plant – offset must be a plant, and
 - Species that is an animal – offset must be an animal, and
 - Has same or higher listing category under Part 4 of the BC Act, and
 - Located in the same or adjoining IBRA subregion or subregion within 100km of the development site.

Offsetting Options: Sourcing Credits

- Like-for-like credits sourced from DPIE's Offsets Scheme Public Registers:
 - utilise BAM Public Registers: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/public-registers>
 - BioBanking Public Register: <https://www.environment.nsw.gov.au/bimsprapp/biobankingpr.aspx>
 - Conversion of BioBanking credits to BAM credits through an application for an “assessment of reasonable equivalence” to DPIE
 - BBAM – average 10 ecosystem credits/ha
 - BAM – average 3 credits/ha

Offsetting Options: Payment into BCF

3. Pay into the Biodiversity Conservation Fund (BCF)

- Administered by the Biodiversity Conservation Trust (BCT)
- BCT sources offsets for obligations paid into BCF
- Biodiversity Offsets Payment Calculator (BOPC), a public tool providing indicative credit prices <https://www.lmbc.nsw.gov.au/offsetpaycalc>
 - BOPC prices updated every quarter
 - Premium price for offsetting however, currently sets a ceiling price for credits on credit market

Summary

- Determine if proposed development triggers entry into the BOS
- Engage BAM Accredited Assessor to undertake site assessment, credit calculations and prepare BDAR in accordance with the BAM
- Submission to Council
- Determination by Council
- Provide offsets for residual impacts on biodiversity by either:
 - purchasing matching credits on credit market
 - establishment of own BSA with matching credits
 - payment into the BCF
- Uncertainty in credit market and pricing as a result of the BOPC