



# Hunter Bird Observers Club

Affiliated with BirdLife Australia

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The Committee Chair  
Inquiry into the Integrity of the NSW Biodiversity Conservation Scheme  
Parliament House  
Sydney

Sent to : <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/lodge-a-submission.aspx?pk=2822>

## **Submission to the Inquiry into the Integrity of the NSW Biodiversity Conservation Scheme**

### **Hunter Bird Observers Club Inc. (HBOC) Submission**

We thank the NSW Legislative Council Committee for the opportunity to provide our submission on the inquiry.

Hunter Bird Observers Club Inc. (HBOC) believes that the Biodiversity Conservation Act 2016 is not providing adequate protection for the biodiversity of this state and in fact may be creating adverse impacts.

In 2016 the Environmental Defenders Office advised - *“Our conclusion is that the proposed laws are a retrograde step for NSW biodiversity and land management. While the proposed investment private land conservation is welcome, once this money runs out, we will be left with weak laws that offer no real protection for our unique threatened species and ecological communities and will facilitate ongoing decline in biodiversity.”*

And further *“While on one hand the BC Bill carries over provisions of our current threatened species laws (like listing threatened species and ecological communities by a scientific committee), the draft Local Land Services Amendment Bill (LLS Bill) will increase known threats to those species. The Bills fail to tackle the conflict between the need to reduce the impact of listed key threatening processes on biodiversity, and permitting more land clearing via self-assessed Codes and discretionary development applications.”*

In relation to the offsets provisions of the Act the Nature Conservation Council of NSW foreshadowed back in 2016 – *“Many of the weaknesses and few of the strengths of earlier offsets schemes have been carried forward into the new Biodiversity Conservation Act and Draft Biodiversity Assessment Methodology, which the government intends to implement in 2017. The government is proceeding with this model despite warnings from leading scientists, conservationists and lawyers who have identified many concerns.”*

*“The proposed Draft Biodiversity Offsets Methodology (BAM) sets lower standards and drifts further from best practice than the underperforming schemes it is intended to replace and will consequently be less effective as a conservation measure.”*

The NSW State of the Environment Report in 2018 has confirmed the EDO and NCC predictions in the section titled “Ongoing Challenges”

- *The growing population of NSW continues to exert pressure on the environment. Innovative ways to use our natural resources more sustainably and to protect fragile ecosystems must continue to be found.*
- *The number of species listed as threatened in NSW continues to rise. These species are at the greatest risk from threats including vegetation clearing, the spread of invasive species and the mounting impacts of climate change.*
- *The condition of most native vegetation is deteriorating.*

Three years on in 2021 the situation has not improved and has probably deteriorated further after the combined effects of the Local Land Services Act 2013 and the NSW Biodiversity Offsets Policy for Major Projects.

There can only be a heightening of conjecture and concern that this was the intent of the 2016 Act.

These impacts combined with the 2017 downgrading of the National Parks and Wildlife Service funding and budget cuts of \$121m have pushed the management of the environment to a state where 1025 species were listed as threatened in NSW as of 2018.

Adding to that is the potential for further erosion of the natural estate by the sale of Crown or Paper Roads with impacts of the reviews of Travelling Stock Routes and Crown Lands still to be realised.

With government emphasis being transferred to development, streamlining of development and “a gas led recovery” the future of NSW biodiversity looks bleak.

## **Submission re Terms of Reference**

**Legislative Council Terms of Reference (a)** *“the effectiveness of the scheme to halt or reverse the loss of biodiversity values, including threatened species and threatened habitat in New South Wales*

The first purpose in **Section 1.3(a)** of the Biodiversity Conservation Act 2016 No 63 is to *conserve biodiversity at bioregional and State scales*

1) This club has to constantly object to proposal after proposal in Hunter local government areas for clearing of woodland for coal mines and housing estates. The conservation sub-committee has made thirteen submissions objecting to development projects significantly affecting biodiversity in the Hunter Region during 2020/21.

Currently a proposal is before Newcastle City Council to rezone for housing 423 hectares of dry open forest, being the last significant piece of bushland remaining in the Newcastle local government area. Lake Macquarie Council has already sought a gateway decision on rezoning of 169 hectares in its area for the same development. Within this proposal conservation areas seem to have been selected on their low value for development not on biodiversity or habitat values. This is exactly the reason that the vast majority of lowland open forest has been cleared in the Hunter.

Newcastle City Council's own policy (Newcastle Environmental Management Strategy, 2013) states: *With limited 'greenfield' development opportunities remaining, the development of an offsetting method is not justifiable so the preferred mechanism for large scale offsetting is the use of the State Government BioBanking method (although this approach is likely to see offsets provided outside of the LGA).*

2) Each year HBOC produces an Annual Bird Report which presents a summary of the status of bird species within the Hunter Region of NSW. Of the 298 woodland and wetland species recorded in the Hunter Region during 2019 the Annual Bird Report Number 27 (2019) shows 62 species with long term trends suggesting the population is in decline or potential decline. For almost 21% of species in the Hunter Region to be potentially declining shows the Biodiversity Conservation Scheme is flawed, our planning system is not effective and management of the environment is failing.

3) The system is failing to take into account the cumulative impacts of land clearing despite its being an integral part of the Act. While the government sees it as desirable to streamline the assessment process, case by case assessment of projects is necessary so that each environment is correctly assessed for its significance.

4) We note on the DPIE website a press release of 12 July 2021 advising that *assessment times for regionally significant development applications across Greater Sydney and beyond will be slashed by at least 25 per cent thanks to a \$4.5 million pilot program unveiled by the NSW Government.*

This hastening of the process whilst seen as positive by the government and developers may be contributing to a discounting in the thoroughness of the assessment process.

How is this conserving biodiversity at bioregional scales ?

**Section 1.3 (k)** of the Biodiversity Conservation Act 2016 No 63 identifies as a purpose of the Act *"to establish a framework to **avoid, minimise and offset** the impacts of proposed development and land use change on biodiversity,"*

HBOC believes that the requirement to *avoid, minimise and offset* has over time become weakened to *approve, offset or minimise.*

The framework application appears weak and there is a distinct lack of emphasis on “avoid” and “minimise”. “Offset” has become the preferred option to facilitate development approval.

Habitat for woodland species continues to be cleared in the Hunter Valley, often for coal mining with 10 new or extended coal mines being proposed, and/or for residential development. Land clearance continues despite the fact that “76% of woodland and forest from the Hunter Valley floor has been cleared leaving only 19% of fragmented remnant vegetation. A mere 0.8% of this remnant vegetation is in protected ownership i.e. national parks, which are situated on poorer soils and have lower bird abundance and diversity.” (T Peake 2006). There is no doubt that the 19% remnant vegetation has diminished significantly since the time of this statement.

With the continued clearing of woodland offsetting opportunities for “like for like” are becoming increasingly more difficult. Contributions to the biodiversity offsets fund will then become the only option.

### **Legislative Council Terms of Reference (b) “the use of offsets by the NSW Government for major projects and strategic approvals”**

#### **Offsets**

HBOC believes that the offsets provisions incorporated into the Act have over time been modified and downgraded to a point whereby an offset :-

- does not have be of similar habitat to that which is threatened,
- does not have to comply with the no net loss of biodiversity provision,
- can be nominated at some later stage,
- may be itself developed at a later stage
- is substituted by the payment of money.
- can be mine site rehabilitation
- can be environmental research which should have preceded project submission
- can be adjusted at the discretion of the Minister
- is not protected in perpetuity

In addition :-

- Their effectiveness is rarely subject to assessment after implementation
- Ongoing monitoring and maintenance is doubtful
- Clause 6.5(2)(e) Biodiversity Conservation Regulation 2017 states :- *The ancillary rules may include any other provisions that the Environment Agency Head considers necessary or convenient for the purposes of the interpretation or application of the offset rules or variation rules.*

The Offsets policy is seen as giving the government a method of approving projects regardless of the impacts on biodiversity.

We suggest that the Biodiversity Offsets Fund be renamed the “**Biodiversity Funeral Fund**”. Perhaps then politicians, the Department of Planning, local government councillors and developers may become aware of the true ramifications of the process, that is that most of the wildlife displaced

actually dies either under the wheels of the earthmoving equipment, by predation during or immediately after clearing or by starvation over a longer period.

## **NSW Biodiversity Offsets Policy for Major Projects**

### *Policy Principle 1.*

*Biodiversity offsets sit within a hierarchy of ‘avoid, minimise, offset’. This means that the first priority is to avoid any unnecessary impacts of a proposed development on biodiversity. Where impacts cannot be avoided, a reasonable attempt must be made to minimise any impact. When all feasible measures have been taken to avoid and minimise the impacts, offsets should be used to compensate for any remaining impacts.*

The wording of this hierarchy gives a means to the “approval” of most proposed major projects not avoidance.

As an afterthought the policy then considers “refusal”

*The FBA also identifies impacts that may be considered severe enough to prevent a project going ahead, known as ‘impacts that require further consideration’. These impacts include those likely to cause extinction of a species from a local area or reductions in vegetation bordering streams and rivers.*

*If a project proposes to have an impact requiring further consideration, the prima facie position is that a project should not proceed, given the severity of the impact.*

But then the policy opens the door to approval with:

*The consent authority may, however, consider if there are other factors that might allow the project to proceed with these impacts. This could include consideration of **social and/or economic benefits** of a project and if the impact can be appropriately ameliorated through additional conservation measures.*

Any project that is “likely to cause extinction of a species from a local area” should not proceed regardless of the **social and/or economic benefits**.

## **Examples of Offsets of Concern.**

### **Narrabri Gas Project SSD 6367**

It appears that the offsets proposed in the Biodiversity Assessment Report for this project are calculated using the 988.8 hectare development footprint plus some allowances for indirect and cumulative impacts of 852 hectares. Yet the total area of the proposed project is 95,000 hectares.

It is also noted that the exact area of disturbance and development has not been determined at this stage. Who is responsible for measuring, checking and adjustment of the offsets for the “true” area on determination of the final project site ?

Noise disturbance will increase the perimeter size of the footprint. Calculations based on the noise plume from venting flares and estimated number of flares shows an area of around 6000 hectares may be impacted. This is not assessable under the offsets policy.

The noise generated at the well pads by venting flares, a power station and construction and maintenance has been modelled around a conservative level of 45Db. Many Australian nocturnal species have extremely sensitive hearing necessary to locate prey and to navigate in the dark. It is likely that all species of insects, reptiles, birds and mammals which communicate by sound will be impacted.

The noise generated by this project will expand the project footprint significantly and negatively impact on adjacent Nature Reserves and SCA's. Noise will impact on the Brigalow Nature Reserve, Brigalow SCA and the Pilliga East SCA as the planned buffer zone of 50 metres is totally inadequate. The Ecological Impact Statement advises that "*The pilot flares at the pilot wells have been modelled to have 45Db(A) radius of 322m in calm conditions and 437m in adverse conditions*". This is 6 to 8 times the proposed buffer zone.

And this impact is on areas not included in the project footprint !

Furthermore the assessment does not include the gas pipeline which is more destruction, fragmentation and disturbance.

Why are the offsets then limited to the alleged development footprint ?

There are no "like-for-like" offset opportunities as the Pilliga is the largest remaining woodland West of the divide. It is isolated with no similar areas not already dedicated within hundreds of kilometres. If "like-for-like" offset opportunities were found they will be fragmented across the state. Fragmentation brings its own issues such as "edge effect", biodiversity loss and limiting gene flow.

Santos proposed feral animal control, koala research and payment to Biodiversity Offsets Fund to satisfy the offsets requirements.

### **Eden Estates – Newcastle Link Road, Wallsend**

This is a 592 hectare proposed residential development either side of the Newcastle Link Road, Wallsend, stretching from the suburbs of Edgeworth in the south to Minmi in the north. Of the total footprint, 423 hectares are in the Newcastle LGA and 169 hectares are in the Lake Macquarie LGA. Eden Estates is seeking the rezoning of this land so that some four thousand residences can be built. These woodlands are the last remaining woodlands in Newcastle LGA and act as a corridor to the southern side of Hunter Wetlands National Park, as well as to Blackbutt Reserve and contiguous bushland to the west of Newcastle. This land is of high conservation value with listed threatened birds and other flora and fauna. Eden Estates has purchased a property in the Cessnock LGA comprising Ellalong Lagoon and adjacent forest as an offset.

Back in 2012 Ellalong Lagoon and its adjacent forest was bought by Port Waratah Coal Services (PWCS) from Hunter developer Duncan Hardie, who had originally sought to build a tourist resort on the site. When that was rejected, Hardie sold the land to PWCS to serve as one of the offsets to compensate for filling of wetland ponds for the construction of a proposed giant coal loader (Terminal 4). At the time PWCS CEO Hennie du Plooy stated that Ellalong Lagoon has been "locked away from developers forever", and that the land could ultimately be transferred to public ownership, by being turned into a National Park.

As the project did not proceed PWCS recently put the “offset” on the market. This was then purchased by Eden Estates as a proposed offset for their Newcastle Link Road project.

Now, instead of this vitally important woodland being part of the national park estate, Ellalong Lagoon and its adjacent forest are once again in the hands of developers who will likely have absolutely no interest in its land form or its biodiversity. In the very unlikely case that the Eden Estates primary development along the Link Road is not approved does the “offset” Ellalong Lagoon then become the secondary option for development? The Ellalong Lagoon block has essentially been used as an “offsets football” for the past decade.

### **Legislative Council Terms of Reference (d) any other related matters.**

According to the recent report by the UN Environment Programme (Unep) and the Food and Agriculture Organisation (FAO) *“The world must rewild and restore an area the size of China to meet commitments on nature and the climate, says the UN, and the revival of ecosystems must be met with all the ambition of the space race.*

*Existing conservation efforts are insufficient to prevent widespread biodiversity loss and ecosystem collapse, the global body has warned at the launch of the Decade on Ecosystem Restoration, an urgent call for the large-scale revival of nature in farmlands, forests and other ecosystems.”*

Statements in the current NSW State of the Environment 2018 resonate with the FAO view above: *“The main threats to listed species in NSW are habitat loss due to the clearing and degradation of native vegetation and the spread of invasive pests and weeds. The capacity of species to adapt to these pressures is further constrained by climate change”.*

In NSW 1025 species are listed as threatened – a 3% increase in threatened species over the past three years from 2015 (26 more species) and there are 46 key threatening processes. We are confident that a significant increase will be evident in the 2021 report.

How can the NSW Biodiversity Conservation Scheme be seen as effective in halting or reversing the loss of biodiversity when we have 1025 species listed as threatened ?

Submission prepared by T. Kendall on behalf of Hunter Bird Observers Club Inc. 24th August, 2021

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## **About the Hunter Bird Observers Club**

Hunter Bird Observers Club Inc. (HBOC) was established in 1976 and currently has a membership of 400 members. Although the Club is based in Newcastle NSW membership includes members from other areas in NSW and from interstate. Approximately one third of the membership resides in the Lake Macquarie LGA.

### **Aims of HBOC**

- *to encourage and further the study and conservation of Australian birds and their habitat;*  
*and*
- *to encourage bird observing as a leisure-time activity.*

**Activities** include monthly regular outings, evening meetings, camps and field studies. HBOC promotes systematic field studies which include regular surveys by volunteers from the membership.

**All data** gathered from field studies are entered into the national bird record database administered by BirdLife Australia; Birddata <https://birddata.birdlife.org.au/>. Data are used to underpin conservation issues and HBOC promotes systematic surveys and data collection.

**HBOC** has a long history of working in collaboration with local councils, national parks and other state agencies, industry and schools.

For more information go to [www.hboc.org.au](http://www.hboc.org.au)