



Environmental
Defenders Office

Defending the Unburnt:

Offsetting our way to extinction

November 2022

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This report is produced as part of our Defending the Unburnt collaboration with WWF-Australia.

Read more:

<https://www.edo.org.au/unburntsix-mainpage/>

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Executive Summary

Biodiversity offsetting (also known as environmental offsetting) aims to ameliorate the negative environmental impacts from clearing vegetation for development, agriculture, and industrial and infrastructure projects, by conserving and managing habitat elsewhere.

Biodiversity offsetting has become a prevalent feature of planning and development frameworks across Australia. It is often viewed, by governments and proponents, as a way of protecting the environment without restricting development. It essentially allows projects that might otherwise be restricted due to environmental impacts to move ahead. However, concerns have been raised about the effectiveness of biodiversity offsetting and its ability to deliver the anticipated environmental outcomes. Additionally, over time the environmental protections and ecological considerations in offsetting frameworks have been reduced to further facilitate development, moving away from best practice, with little regard to whether genuine environmental outcomes are being delivered.

In the aftermath of the 2019-2020 bushfires, development proposals that rely heavily on flawed biodiversity offsetting schemes are putting already impacted wildlife and ecosystems at risk. Biodiversity offsetting schemes have become so lax that few safeguards remain. Proponents can rely on biodiversity offsetting rules to push ahead with development that may otherwise be considered inappropriate, particularly when taking into

account the devastating impacts of the bushfires on certain wildlife and landscapes. This is now being compounded by multiple flood events that have occurred across New South Wales (NSW) and Queensland in the first half of 2022, in many instances in areas that are still recovering from the impacts of the 2019-2020 bushfires.

This Discussion Paper takes a closer look at how flawed biodiversity offsetting schemes are putting bushfire and flood-impacted species and their habitats at risk. It sets out best practice biodiversity offsetting principles (Part 2), examines how biodiversity offsetting rules at the Commonwealth level and in NSW, Queensland and Victoria, are failing to meet best practice (Part 3), and explains what implications this will have for priority unburnt areas (Part 4).

Best practice biodiversity offsetting should align with fundamental principles aimed at delivering genuine environmental outcomes. However, our overarching finding is that no jurisdiction meets the fundamental requirements for best practice offsetting, and significant reform is needed. In many instances, genuine like-for-like offsetting is not required, indirect offsets are allowed, and discounting and exemptions are available. Ultimately, under these flawed schemes we may very well be offsetting certain species to extinction.

Offsets rules must be tightened, bringing them into line with best practice, and ensuring overall outcomes deliver genuine improvements to biodiversity.

Overarching recommendation for biodiversity offsetting

A national environmental standard for biodiversity offsetting must be implemented as part of broader national environmental law reform, based on robust and objective science and consistent with the following best practice standards. Specifically:

- 1

Offsets must be designed to improve biodiversity outcomes
- 2

Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts
- 3

Offsets must be based on genuine ‘like for like’ principles
- 4

Legislation and policy must set clear limits on the use of offsets
- 5

Time lags in securing offsets and gains should be minimised
- 6

Indirect offsets must be strictly limited
- 7

Discounting and exemptions should not be permitted
- 8

Offsetting must achieve benefits in perpetuity
- 9

Offsets must be additional
- 10

Offset arrangements must be transparent and legally enforceable
- 11

Offset frameworks must include monitoring and reporting requirements to track whether gains and improvements are being delivered
- 12

Offset frameworks should build in mechanisms to respond to climate change and stochastic events

State and territory biodiversity offsetting frameworks must be consistent with the national environmental standard.

However, law makers should not delay strengthening the rules for biodiversity offsetting in the absence of a national environmental standard. Governments must use immediate opportunities to ensure their respective frameworks are consistent with best practice.



One:

Biodiversity offsetting and Defending the Unburnt

Biodiversity offsetting

Biodiversity offsetting (also known as environmental offsetting) aims to ameliorate the negative environmental impacts from clearing vegetation for urban development, agriculture, and industrial and infrastructure projects. The premise behind biodiversity offsetting is to protect and improve biodiversity values in one area to compensate for impacting on biodiversity values in another area. Improvement (i.e. gain) in the biodiversity values of the offset area is needed to ensure there is no net loss in biodiversity values.

Offsetting emerged in the United States of America in the 1970s, originally as an approach to manage the impacts of development on wetlands. Since then, the use of offsets has expanded rapidly across jurisdictions world-wide.¹ Offsetting has become an attractive option for governments and policy makers seeking to ensure development can proceed despite environmental impacts.

However, significant questions remain about the effectiveness of biodiversity offsetting and its ability to deliver the anticipated environmental outcomes. Critics caution against the overreliance on biodiversity offsetting, for reasons including:

- difficulties in quantifying biodiversity values for market purposes, and in establishing offset markets (i.e. supply and demand requirements);

- challenges in re-creating nature;
- time lags in restoring areas;
- failure to require improvements in biodiversity outcomes and instead maintaining the status-quo (which includes an ongoing decline in biodiversity);
- failures to effectively manage offsets sites and protect offset sites in perpetuity;
- and perverse outcomes (e.g. shifts away from conservation volunteerism or reduction in non-offset conservation action).²

Despite these concerns, biodiversity offsetting has become a prevalent feature of planning and development frameworks across Australia. It is often viewed, by governments and proponents, as a way of protecting the environment, without restricting development. It essentially allows projects that might otherwise be restricted due to environmental impacts to move ahead.³ However, there is a clear trend that over time offsetting frameworks have evolved to focus on facilitating development, moving away from best practice, with little regard to whether genuine environmental outcomes are being delivered.⁴ In general, in Australia offsetting schemes apply to clearing of vegetation on private land, and some public land, but in general do not apply to forestry operations (i.e. timber logging and harvesting).



Defending the Unburnt

In the wake of Australia’s 2019-2020 bushfires, the protection of unburnt habitat has become an urgent priority.

Much of the land that survived the bushfires is now a vital refuge for biodiversity, particularly threatened species. Six priority landscapes have been identified by WWF-Australia in Queensland, NSW and Victoria as requiring immediate protection.⁵ Unburnt and lightly burnt⁶ areas will be key to securing the future of many threatened species and ensuring important ecosystem services are sustained while impacted landscapes recover. In considering the impacts of the 2019-2020 bushfires on wildlife, it has been suggested that the time required for recovery of threatened and fire sensitive species ranges from around 10 – 120 years, depending on the severity of the fire and extent of impacts on individual populations.⁷ Recovery will require long term or permanent protection of unburnt fire refuges in large patches linked by corridors.⁸

In collaboration with WWF-Australia, the Environmental Defenders Office (EDO) is working to ensure that our laws are used to adequately protect these priority areas from further impacts, including impacts from inappropriate development, land clearing, and logging.

Governments have allocated resources to assess impacts of bushfires on the environment and wildlife, and distributed funds for bushfire recovery programs and resilience programs – see **Appendix 1 - Examples of government-led initiatives to assess impacts of bushfires on the environment and wildlife, and distribute funds for bushfire recovery programs and resilience programs.**

However, when it comes to ensuring our planning and development assessment processes are adequately responding to the bushfires, governments have been reluctant to intervene.

Immediately following the 2019-2020 bushfires, EDO wrote to the Commonwealth Environment Minister, and Premiers of NSW and Queensland requesting that they use their respective powers under environment and planning laws to ensure the protection of threatened species and ecological communities that have been affected by the 2019-2020 bushfires.⁹ However, we have not seen any significant steps taken, such as temporarily suspending planning decisions, systemically reviewing development applications to ensure bushfire impacts are addressed in assessments, or varying or suspending approvals, where able, to take into account the impacts of the bushfires.

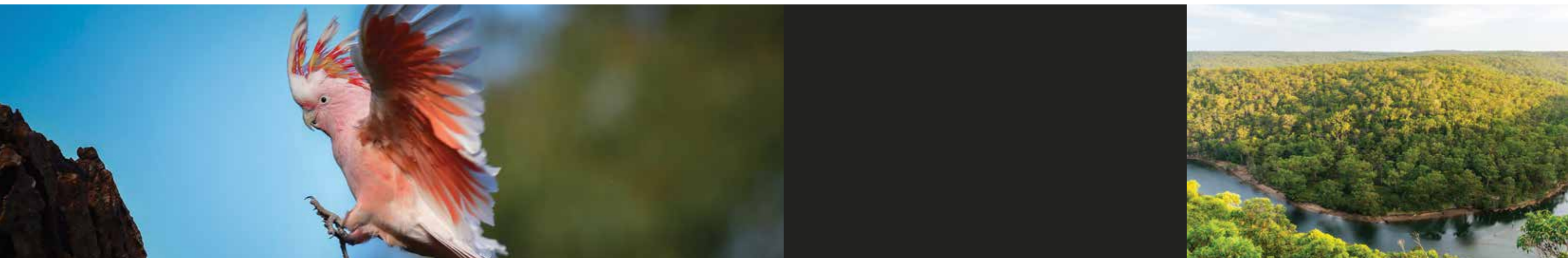
This means that planning and development is essentially continuing ‘business-as-usual’. While decision makers may be taking bushfire impacts into account when assessing new applications, significant discretion and flexibility in decision making processes, including in biodiversity offsetting rules, mean that there is no guaranteed protection for bushfire impacted species or areas.

Biodiversity offsetting must also be considered in the broader context of ongoing biodiversity decline across Australia. Australia’s biodiversity is under increased threat and has, overall, continued to decline. According to the 2021 State of the Environment Report:

- *“In June 2021, 533 animal and 1,385 plant species were listed under the EPBC Act.... The list includes 105 species that are Extinct or Extinct in the Wild”.*
- *“The number of threatened species listed under the EPBC Act has risen for almost all taxa over the past 5 years”.*
- *“We can expect further extinctions of Australian species over the next two decades unless current management effort and investment are substantially increased. Conservation actions are linked to reduced rates of decline for threatened Australian plants, mammals and birds, but they have not been sufficient to reverse declines overall”.*¹⁰

Ongoing threats to the environment (including habitat clearing and fragmentation from development, land clearing and forestry) have now been compounded by the damage caused by the bushfires. The bushfires followed years of drought in south-eastern Australia, with low rainfall records and high temperature records broken due to global heating. Many species, such as koalas, had already suffered range and population shrinkage prior to the 2019-2020 bushfires due to long running drought in NSW leading up to the 2019-2020 fires.¹¹ We are now also seeing further impacts from multiple flood events across NSW and Queensland in 2022, in some instances in areas that are still recovering from the impacts of the 2019-2020 bushfires.

This Discussion Paper takes a closer look at how flawed biodiversity offsetting schemes are putting Australian wildlife, including bushfire and flood-impacted species, and their habitat at risk. It sets out best practice biodiversity offsetting principles (**Part 2**), examines how biodiversity offsetting rules across NSW, Queensland and Victoria, and Federally, are failing to meet best practice (**Part 3**), and explains what implications this will have for priority unburnt areas (**Part 4**).





Two:

Best practice science-based offsetting



Best practice biodiversity offsetting should align with fundamental principles aimed at delivering genuine environmental outcomes. For example:

1 Offsets must be designed to improve biodiversity outcomes:

Simply requiring 'no net loss' does not acknowledge current downward trajectories of biodiversity loss, and that positive action is required to halt and reverse this trend. Offset schemes must be designed to *improve* biodiversity values (e.g. to achieve 'no net loss or better', 'net gain', or 'maintain and improve' biodiversity values).

2 Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts:

The hierarchy should be clearly set out in legislation as a mandatory pre-condition before any offsetting option is considered, and properly implemented and enforced. Appropriate guidance and emphasis should be provided to proponents on how they can demonstrate their endeavours to genuinely 'avoid' and 'mitigate' aspects of the proposed development.

3 Offsets must be based on genuine 'like for like' principles:

Any ecologically credible offset scheme must enshrine the requirement of genuine 'like for like' offsets, to ensure that the environmental values of the site being used as an offset are equivalent to the environmental values impacted by the proposed action. Otherwise, the resulting action is not an offset. A 'like for like' requirement is absolutely fundamental to the ecological integrity and credibility of any offset scheme. Variations to offset rules that allow impacts to be offset with alternative species, or in a far-removed geographical location should not be allowed.¹² Any concerted policy action and long-term strategic planning to contextualise offsetting within a broader strategy of environmental conservation, must be based on sound landscape conservation principles, without eroding the like for like principle.

4 Legislation and policy must set clear limits on the use of offsets:

Offset schemes must have clear parameters. The use of 'red flag' or 'no go' areas (with criteria set out in legislation) is essential to make it clear that there are certain matters in relation to which offsetting is not an appropriate strategy. This is particularly relevant to critical habitat and threatened species or communities that cannot withstand further loss. (This principle must not be undermined by relaxing the 'like for like' rule).

5 Time lags in securing offsets and gains should be minimised:

If offsets are not secured before biodiversity is destroyed, a net loss of biodiversity occurs. Offsets should be secured and improvements achieved before any loss occurs. To minimise any time lags, there should be stricter parameters around the payment of money in lieu of offsets, particularly where offsets are difficult or unlikely to be secured (e.g. in NSW the Biodiversity Conservation Fund should be able to refuse payments if it is of the view that offsets are unlikely to be able to be secured). Credit pricing should account for any lag in establishing offsets (e.g. credits associated with the creation of biodiversity in 50 years should be worth half of the otherwise identical credits associated with creating biodiversity in 25 years).

6 Indirect offsets must be strictly limited:

There should be extremely minimal use of indirect offsets under any offset scheme, including, for example, research and education activities. This is due to significant uncertainty regarding any link between an indirect offset and relevant environmental outcomes, and higher risk that biodiversity outcomes may not be achieved at all. Expanded use of indirect offsets results in net loss of impacted biodiversity.

7 Discounting and exemptions should not be permitted:

Rules that allow offsetting requirements to be discounted when taking into account non-ecological considerations, or exemptions for certain types of projects, should not be allowed.

8 Offsetting must achieve benefits in perpetuity:

An offset area must be legally protected in perpetuity, as the impact of the development is permanent. Offset areas should not be available to be offset again in the future. There should also be clear requirements for the ongoing management of the land (at least for a minimum time frame) to ensure that biodiversity gain is achieved.

9 Offsets must be additional:

Any offset action must be additional to what is already required by law. The requirement of 'additionality' must be based on clear criteria, including in relation to land tenure and existing protections on types of land, to ensure that offsets are not approved unless they provide a conservation benefit additional to what would otherwise occur. Certain areas of land should not be used as offset areas where conservation gains are unlikely to be additional. For example, in circumstances where land already has some level of protection (e.g. as existing conservation areas, heritage sites, or environmental zones with limited permitted uses) there is less capacity to obtain conservation benefits that are additional to what might otherwise occur on that land.¹³

10 Offset arrangements must be transparent and legally enforceable:

To ensure offset schemes are legally enforceable, they should be established in legislation (rather than policy), and be underpinned by strong legislative enforcement and compliance mechanisms, with adequate resourcing, established from the outset. Legislation should also include clear monitoring and reporting requirements, as noted above. There should be a publicly available register of all offsets that allows third parties to see what clearing has been permitted and where, when and how such clearing has been offset.

11 Offset frameworks must include monitoring and reporting requirements to track whether gains and improvements are being delivered:

Offset frameworks must include monitoring and reporting requirements to track whether gains and improvements are being delivered. Approval conditions could be strengthened so that failure to appropriately secure offsets or deliver gains would be a breach of approval.

12 Offset frameworks should build in mechanisms to respond to climate change and stochastic events:

Climate change and associated impacts (such as more frequent and intense weather events) have a significant impact on biodiversity. Any biodiversity offsets scheme must build in mechanisms for responding to climate change and stochastic events, for example: a mechanism to ensure credit charge estimates can be reviewed following significant events, such as bushfires; or settings that build climate change risks into offsets calculations (e.g. increased offsetting ratios to hedge against increased bushfire risk).





Three:

Biodiversity offsetting frameworks are failing to meet best practice principles

This section explains how current biodiversity offsetting frameworks at the Commonwealth level, and in NSW, Queensland and Victoria, are failing to meet the best practice standards outlined in Part 2. Our focus is on these jurisdictions as they contain priority unburnt landscapes (see Part 1).

3.1 Commonwealth

Overview

The Commonwealth's biodiversity offsetting framework is set out in the *Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy (EPBC Environmental Offsets Policy)*.¹⁴

It is a non-statutory policy document that outlines the Australian Government's approach to the use of offsets under the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*. It is accompanied by an *Offsets assessment guide*¹⁵ - a tool to assist proponents and departmental officers to plan offsets and assess the suitability of offset proposals.

The Commonwealth framework has been in place since October 2012.

Key concerns

- **Commonwealth biodiversity offsetting rules are not mandated in legislation**, rather the rules are set out in the non-statutory EPBC Environmental Offsets Policy. This means there are limitations on implementing and enforcing the policy.
- **There is little guidance on how to apply the avoid, mitigate, offset mitigation hierarchy.** There are concerns that its application is subjective, and not rigorously applied in practice.
- **In-perpetuity protection is not guaranteed.** While the EPBC Environmental Offsets Policy recognises that the best legal mechanisms for protecting land are intended to be permanent

and secure, it does not provide certainty that protection will be in perpetuity. Instead, it outlines suitable offset mechanisms, including state and territory-based mechanisms, and acknowledges that “(i)n some situations there may be difficulties in permanently securing a site for conservation purposes due to the existing tenure of the land. Such situations will be considered by the department on a case-by-case basis”. Additionally, even those state and territory-based mechanisms that are intended to provide permanent protection, can be overturned.¹⁶

In some instances, the EPBC Environmental Offsets Policy is more aligned with best practice principles than other jurisdictions. For example:

- The EPBC Environmental Offsets Policy requires that suitable offsets must deliver an overall conservation outcome that *improves or maintains* the viability of the protected matter; and
- 90% of offsets must be direct offsets (although deviation will be considered where it can be demonstrated that a greater benefit to the protected matter is likely to be achieved through increasing the proportion of other compensatory measures in an offsets package; or scientific uncertainty is so high that it isn't possible to determine a direct offset that is likely to benefit the protected matter).

Further analysis and recommendations

The EDO submission to the 2014 Federal inquiry into environmental offsets highlighted key concerns with biodiversity offsetting and supported establishing a single, national offsets framework.¹⁷

More recently, EDO's submission to the Independent Review of the EPBC Act recommended, generally, that any biodiversity offsetting must be based on clear scientific principles and limits. An extract from EDO's submission is provided at **Appendix 2**.

The Independent Review of the EPBC Act (Samuel Review)¹⁸ recommended comprehensive reform of the Act and recommended national standards be developed. The recommended overarching standard for matters of national environmental significance includes a reference to offsets¹⁹, and the review recommended offsets policy be part of ongoing reform.

In particular, the Samuel Review found:

“Immediate changes are required to the environmental offsets policy to ensure that offsets do not contribute to environmental decline. Offsets should only be acceptable:

- *when they are applied in accordance with the recommended National Environmental Standards for MNES*
- *where an offset plan demonstrates that they can be ecologically feasible*
- *where outcomes from offsets can be properly monitored and measured*

In the longer term, offsets should be enshrined in law. The EPBC Act should require:

- *offsets to be ecologically feasible and deliver genuine restoration in areas of highest priority*
- *a decision-maker accepts offsets that encourage restoration offsets to enable a net gain for the environment to be delivered before the impact occurs*
- *a public register of offsets for all Commonwealth, State or Territory offsets sites, designated as a national interest environmental dataset.”*

Case Study 1 shows how offsetting rules are failing to protect Federally-listed threatened species, like the koala.



Case Study 1

Biodiversity offsetting is failing koalas

Biodiversity offsetting rules are putting Australian wildlife at risk. For example, on the East Coast of Australia offsetting rules in NSW and Queensland are being used to facilitate ongoing clearing of important koala habitat.

With koala populations already in decline in recent decades, the 2019-2020 bushfire season resulted in 3.5 million ha of koala habitat burnt across NSW, Queensland and the Australian Capital Territory. It is estimated that there was a population decline of 7.2% one year after the 2019-20 bushfires, and further decline is expected.²⁰ In 2020, a NSW Parliamentary Committee found that “*without urgent government intervention to protect habitat and address all other threats, the koala will become extinct in New South Wales before 2050*”.²¹

In February 2022, former Federal Environment Minister, Sussan Ley, made the decision to upgrade the conservation status of koalas in NSW, Qld and the ACT from vulnerable to endangered under the EPBC Act,²² recognising that koalas are one step closer to extinction. Subsequently, in May 2022, the conservation status of koalas in NSW was upgraded from vulnerable to endangered in NSW.

Despite the dire predicament of koalas, there is no absolute protection for koalas or their habitat in relevant state or Federal laws. In general, policy settings require koala habitat to be identified and decision makers to take into account additional considerations when assessing projects that may impact on koalas and koala habitat. However, weak land clearing laws, discretionary planning rules and flexible offsetting frameworks, provide pathways for projects to clear koala habitat relying on ‘pseudo’ offsets that do not provide genuine protections for koalas and are driving the species closer to extinction.

In Queensland, new rules intended to improve protections of koalas in south east Queensland were introduced in 2020. However, there were no substantial changes to offsetting framework as part of those reforms, meaning that while inadequate offsetting rules remain in place efforts to improve koala protections will remain ineffective.²³ For example, many koala habitat clearing activities are not subject to requirements to offset, such as for state infrastructure, and proponents who destroy koala habitat may be able to:

- apply arbitrary offset ratio rules that are not ecologically sound; or
- undertake the destruction without any offset, if the activity is deemed not sufficiently ‘significant’ under the discretion of the decision-maker, which can lead to cumulatively significant impacts without any offset; or
- obtain credit for indirect offsets such as research or education; or
- make financial payments in lieu of genuine offsets.

In NSW, where impacts on koalas are identified, the BOS provides significant flexibility in terms of how those impacts may be ameliorated. For example, proponents who destroy koala habitat may be able to:

- generate offsets in an entirely different subregion; or
- retire biodiversity credits for an entirely different species of the same threat status or higher; or
- pay money to the Biodiversity Conservation Trust in lieu of finding offsets.²⁴

If laws are to truly protect koalas and their habitat, then the approval process must not allow important koala habitat to be cleared and offset in exchange for indirect offsets or money in the way that current offsetting frameworks allow. Rather, planning and assessment systems must put certain restrictions in place, such as requiring that development that has serious and irreversible impacts on koala habitat is refused.



3.2 New South Wales

Overview

The NSW Biodiversity Offsets Scheme (BOS) was introduced by the *Biodiversity Conservation Act 2016 (BC Act)*, replacing a number of earlier offsetting frameworks. The BOS commenced operation in August 2017. The BOS is underpinned by the Biodiversity Assessment Method (BAM).

An analysis, undertaken by NSW's peak environment organisation, the Nature Conservation Council of NSW, of the draft BAM released for public comment, found that it failed to meet desirable elements of a best practice offsetting scheme and was a significant weakening of biodiversity offsetting rules in NSW.²⁵ However, the draft BAM was ultimately introduced largely unchanged.

In August 2022, the Audit Office of New South Wales, published its report on whether the Department of Planning and Environment (DPE) and the Biodiversity Conservation Trust (BCT) have effectively designed and implemented the Biodiversity Offsets Scheme ('the Scheme') to compensate for the loss of biodiversity due to development.²⁶ The Audit Office found that:

"DPE has not effectively designed core elements of the Scheme. DPE did not establish a clear strategic plan to guide the implementation of the Scheme.

The BCT has various roles in the Scheme but lacked safeguards against potential conflicts, creating risks to credit supply.

The effectiveness of its implementation has also been limited. Key concerns around the Scheme's transparency, sustainability and integrity are yet to be fully resolved (emphasis added).

A market-based approach to biodiversity offsetting is central to the Scheme's operation but credit supply is lacking and poorly matched to growing demand. DPE has not established a clear, resourced plan to manage the shortage in credit supply. Data about the market, published by the DPE and the BCT, does not provide an adequate picture of credit supply, demand and price to readily support market participation.

These factors create a risk that biodiversity gains made through the Scheme will not be sufficient to offset losses resulting from development, and that the DPE will not be able to assess the Scheme's overall effectiveness (emphasis added)."

In November 2022, a NSW parliamentary inquiry into the integrity of the BOS recommended substantial reform to ensure the BOS meets best practice principles for biodiversity offsetting (NSW Parliamentary Inquiry).²⁷ A number of the specific recommendations of the inquiry are noted below.

Key concerns

The BOS does not meet best practice offsetting principles. In particular:

- **The BOS does not aim to improve environmental outcomes.** The BOS adopts a 'no net loss' standard. This will not achieve improved environmental outcomes as it does not acknowledge current trajectories of biodiversity loss, nor specify that positive action is required to halt and reverse this trend. Offset schemes should be designed to *improve* biodiversity values (e.g. 'no net less or better', 'net gain', 'maintain and improve'). The NSW Parliamentary Inquiry

recognised that International Union for the Conservation of Nature (IUCN) principles state that biodiversity offsets must aim to achieve no net loss and preferably a net gain of biodiversity (at 2.12).

- **The avoid, minimise, offset hierarchy is poorly implemented.** While the BOS does adopt the 'avoid, minimise, offset' hierarchy, attempts to avoid or mitigate impacts are often seen as simply a 'tick-the-box' exercise. There is no clear guidance on how the hierarchy should be implemented, including necessary steps and evidence required to demonstrate genuine attempts to avoid and minimise before resorting to offsets. (We note that NSW uses the terminology 'avoid, minimise, offset', whereas other jurisdictions adopt the terminology 'avoid, mitigate, offset'). The NSW Parliamentary Inquiry recommended that the 'avoid, minimise, offset hierarchy' in the BOS must be strengthened to ensure offsetting is genuinely used as a last resort only for unavoidable impacts of development (Recommendation 1).
- **Offsets are not strictly like-for-like:** Under the BOS, like-for-like offset rules provide too much flexibility and deviation from genuine like-for-like settings, including in relation to:
 - offsetting species with different species of the same or higher threat status – that is, in some cases offsets *need not even be the same species*, so long as the offset species has the same or a higher threat status under the BC Act, and is in the same or adjoining subregion, or any other subregion within 100km of the impacted site (BC Regulation, cl 6.4(1)).

- the spatial location of offsets (for example, proponents could destroy koala populations and habitat around Gunnedah and offset them with koala populations on the south coast of NSW) (*Biodiversity Conservation Regulation 2017 (BC Regulation)*, cl 6.3); and
- allowing offsetting of vegetation within the same vegetation class²⁸ rather than the same plant community (BC Regulation, cl 6.3).

The NSW Parliamentary Inquiry recommended that the ecological equivalence of offsets is significantly strengthened by tightening the geographic and species equivalence requirements of the like-for-like rules and curtailing the use of variation and ancillary rules (Recommendation 1).

- **Offsetting is only restricted in limited circumstances (i.e. inadequate red flags/no-areas):** The BOS does apply restrictions in some circumstances where proposed development is likely to have serious and irreversible impacts on biodiversity values. For example, in the case of local development under Part 4 of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)* a consent authority must refuse an application if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values (BC Act, s7.16(2)). However, in the case of state significant development or state significant infrastructure, the Minister or determining authority is only required to take those impacts into consideration and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or approval is to be granted (BC Act, s7.16(3) and s7.16(4)).

This discretion, combined with the flexibility of the BOS (e.g. no strict like for like, non-direct offsets allowed) means there are essentially no ‘red flags’ for major projects; any impact can essentially be ‘paid away’ through indirect offsetting obligations. The NSW Parliamentary Inquiry recommended that clear thresholds for where offsets should not be used must be established, in order to protect threatened species and ecosystems that cannot be offset elsewhere (Recommendation 1).

- **Indirect offsets can be used under the BOS.** For example:
 - In some instances, the BOS allows alternative ‘biodiversity conservation measures’ (such as research and targeted surveys) to be credited in lieu of genuine direct offsets.²⁹
 - The BOS also allows payments to be made to the Biodiversity Conservation Fund managed by the BCT in lieu of securing direct offsets (BC Act, Part 6, Division 6). This puts the onus on the BCT to find a credit without stopping to check if a relevant credit can be found. It also allows the BCT to use funds for “other biodiversity conservation measures or actions” as an alternative to retirement of credits for genuine like-for-like offsets.
 - The Government is developing Ancillary Rules to allow mine rehabilitation to generate offset credits under the BOS,³⁰ without any clear evidence that these areas will be able to successfully re-create the target ecosystem and/or species habitat.

The NSW Parliamentary Inquiry recommended that the use of indirect offsets under the scheme is reduced, and the option to use mine rehabilitation as an offset under the scheme be removed (Recommendation 1).

- **The BOS allows for ‘discounts’ to be applied to reduce offsetting obligations.** For example, decision makers may be able to reduce or increase the number of biodiversity credits required to met (i.e., retired) by a proponent, having regards to social and economic impacts of the proposed development; and in some cases may not be required to give reasons for a decision.³¹ The NSW Parliamentary Inquiry recommended that the discretion to discount offset requirements for non-ecological reasons is reduced, and, where this does occur, the transparency around this mechanism be increased (Recommendation 1).
- **Code-based land clearing uses an alternative system of ‘set asides’ that are not ecologically sound:** Code-based land clearing undertaken in accordance with Parts 5 and 6 of the *Land Management (Native Vegetation) Code 2018* (made under the *Local Land Services Act 2013* (NSW) (**LLS Act**)) requires landholders to establish ‘set-aside’ areas of managed vegetation. The BOS does not apply. This mechanism side-steps genuine, evidence-based offsets. Instead, set-asides are based on simple area-based ratios and do not prevent a net loss of biodiversity.³² For example, there are no requirements that vegetation to be set-aside should be the same as (or of ecological equivalence to) the vegetation being cleared, and there are no requirements on what condition the vegetation should be in. Landholders are only required to “make reasonable efforts to manage the set-aside area in a manner expected to promote vegetation integrity in the set-aside area”.³³ Without a clear requirement for landholders that set-asides achieve no net loss or better, or detailed guidance about the location, type, extent, quality and diversity of vegetation provided, there is a high risk that set-asides will not actually deliver

outcomes to compensate for the biodiversity values that are lost. Concerns about the scope of clearing being undertaken under the LLS Act were raised as part of the NSW Parliamentary Inquiry, which recommended reviewing the appropriateness of land clearing pathways under the LLS Act, and working with landholders to increase and incentivise biodiversity protections on rural land (Recommendation 10).

- **Biocertification provisions provide excessive Ministerial discretion.** Part 8 of the BC Act contains provisions for the biodiversity certification of land (**biocertification**). These provisions allow for biodiversity values and impacts to be assessed and addressed upfront at the strategic planning stage, with subsequent individual development applications on biodiversity certified land no longer requiring biodiversity assessment, or consideration of impacts on biodiversity (on the premise that these issues have already been addressed). EDO has previously raised concerns that the provisions for biocertification in the BC Act, and in particular the provisions for strategic biodiversity certification,³⁴ involve broad Ministerial discretion and compromised environmental standards.³⁵ **Case Study 2** outlines plans to develop areas of Western Sydney, including areas identified as priority unburnt areas, relying on biodiversity certification. The NSW Parliamentary Inquiry recommended that the biodiversity certification process is reviewed to ensure it meets best practice principles for offsetting, achieves positive environmental outcomes, and there is transparency in its use (Recommendation 4).
- **Lack of transparency:** There is no overall offsets register that allows third parties to see and understand how much clearing has been permitted under either the BOS or via set asides under the LLS Act; and where, when and how such clearing has been offset, including information on species and ecosystem type. The NSW Parliamentary Inquiry recommended a centralised, publicly accessible database to improve transparency (Recommendation 18).

- **Implementation has been inconsistent with the principle of additionality:** For example, concerns about ‘additionality’ have been raised with respect to proposed offsets for the Western Sydney Airport (**WSA**). A key component of the Biodiversity Offset Delivery Plan (**BODP**)³⁶ for the WSA is proposed restoration and management of native vegetation as a direct offset at the Defence Establishment Orchard Hills, land owned by the Commonwealth Department of Defence. The core offset area is contained within a Commonwealth Heritage Listed area. Critics of the BODP have raised concerns that the use of the Orchard Hills site does not provide additional benefits, consistent with the principle of additionality.³⁷ Similar examples have arisen in other areas of the state including the lack of additionality regarding offsetting in areas that are already protected by planning laws such as E2 zones. This issue was examined closely by the NSW Parliamentary Inquiry which recommended the BOS must ensure offsets result in genuinely additional gains to biodiversity that would not have occurred otherwise (Recommendation 1).

Further analysis and recommendations

EDO’s submission to the NSW parliamentary inquiry into integrity of the NSW Biodiversity Offsets Scheme expands on the key concerns outlined above and makes a number of key recommendations for reform which are set out in **Appendix 3**.

The recommendations of the Audit Office of New South Wales and NSW Parliamentary Inquiry are also set out in **Appendix 3**.

Case Study 2

Draft Cumberland Plain Conservation Plan

The Cumberland Plain region is a biologically diverse area with significant biodiversity values. Parts of the Cumberland Plain have been identified by WWF as priority unburnt areas, meaning they are important areas for species and ecosystem recovery in the broader landscape, which was impacted by the 2019-2020 bushfires.

In 2020, the NSW Government released the Draft Cumberland Plain Conservation Plan (**the Draft Plan**) for public comment. The Draft Plan was prepared to support both an application to the NSW Minister for Energy and Environment (**the Minister**) for strategic biodiversity certification of the area under the BC Act, and an application to the Commonwealth Minister for the Environment seeking endorsement of the plan under the strategic assessment provisions of the EPBC Act. It is the first application seeking approval for strategic biodiversity certification under the BC Act.

The Draft Plan identifies that there will be potential impacts from future development on:

- 1,777.8 hectares of native vegetation;
- 8 threatened ecological communities listed under the BC Act and 4 threatened ecological communities listed under the EPBC Act (and a fifth subsequently nominated for listing); and
- 25 flora species and 24 fauna species.³⁸

While the Draft Plan includes a number of key proposals for ameliorating impacts on biodiversity, EDO has identified a number of key concerns, including that:

- Appropriate offset sites have not been identified upfront;
- The avoid, minimise, offset hierarchy has been inappropriately applied;
- The proposed offset ratio is low given the critically endangered and endemic status of many ecological communities and threatened species in the region;
- Offset areas will include a significant proportion of revegetated areas which are not guaranteed to deliver the required vegetation communities or ecological functions needed to offsets impacts; and
- It is unclear exactly which proposed 'actions' and 'commitments' are intended to be approved conservation measures.

The full case study, as originally published in EDO's submission to the NSW parliamentary inquiry into the integrity of the Biodiversity Offsets Scheme,³⁹ is provided at **Appendix 4**.

At the time of publication, the Plan has been approved by the NSW Minister under Part 8 of the BC Act, and has been submitted to the Commonwealth Minister for assessment.⁴⁰



3.3 Queensland

Overview

In Queensland, biodiversity offsetting is regulated under the *Environmental Offsets Act 2014 (EO Act)*, *Environmental Offsets Regulation 2014* and *Queensland Environmental Offsets Policy*.⁴¹

Key concerns

- **Offsetting is not like for like.** Instead, offsets are calculated using capped ratios that are not scientifically based (see, for example, *Queensland Environmental Offsets Policy*, section 2.2.2 and Appendix 4). The current ratios have no scientific relationship to what is needed to adequately ‘counterbalance’ an impact. Its only purpose is to limit the liability of those who are responsible for significant impacts where the science warrants a higher ratio to be applied.
- **Offsets are only required for significant residual impacts rather than all residual impacts.** The EO Act introduced the standard that only ‘significant’ residual impacts must be offset, which is a lower standard than previous Queensland offsets policies, which referred to residual impacts generally. This narrow definition of impacts allows discretion as to what impacts are considered sufficiently ‘significant’ for an offset to then be required, and can lead to cumulative and incremental impacts on prescribed environmental matters being ignored.

- **Certain activities are exempt from offsetting requirements:** Under Queensland planning and development laws, there are numerous environmental impacts that are exempt from offset requirements, including for urban development, community infrastructure, unregulated vegetation clearing,⁴² and for state government-related development and development assessed by the Coordinator-General.⁴³ The impacts of these types of projects are not insubstantial. Where these projects put the future viability of a species at risk there is no appropriate justification for exempting these types of developments from being required to provide offsets.
- **The avoid, mitigate, offset hierarchy is poorly implemented.** No guidance material is provided under the EO Act framework to ensure the avoid, mitigate, offset hierarchy is applied consistently and objectively. There is little guidance in determining when impacts must be avoided, or what actions are reasonable mitigation activities. Without any statutory guidance, decision makers may be reluctant to require that an impact be avoided, for fear of legal challenge.
- **Financial payments can be made in lieu of genuine offsets.** For example, financial settlement offsets (i.e. paying money for the Government to provide an offset) are available upon the proponent’s election (EO Act, s 18). In 2019, the Government’s own Discussion Paper on Queensland’s offsets framework found that 97 per cent of developers simply made an upfront

financial payment to clear land in lieu of genuine offsets.⁴⁴ That same Discussion Paper stated that the Government had received \$9.6 million as financial settlement offsets, and only \$1.5 million had been spent or committed at that time since the EO Act commenced in 2014. This delay in securing appropriate offsets when payments are made impedes the ability of those offsets to effectively compensate for the loss incurred. That is, the clearing of vegetation and habitat is allowed to occur before an appropriate offset has been secured.

- **Indirect offsets are available:** Indirect actions such as research and education can be identified in a Direct Benefit Management Plan (**DBMP**) - a pre-approved plan that outlines priority actions (both direct and indirect) for addressing threats to, and providing substantial benefits for, a particular prescribed environmental matter. However, unless otherwise agreed by the Department of Environment and Science, research and education is not to be greater than 10% of the offset requirement (*Queensland Environmental Offsets Policy*, s 2.3.1.2 and Appendix 6).
- **Additional considerations can be taken into account in some instances.** For example, offsets providing social, cultural, economic or environmental benefits are allowed in national parks (EO Act, s 7(3)). Allowing vague offsets not directly relevant to the impacted environment

means significant impacts are causing significant loss without the recompense required in effective best practice offsets schemes. The use of national parks to deliver offsets is also consistent with the principle of additionality, as those areas are already protected and it is unclear what additional benefits may be provided.

- **Lack of accountability:** Approval conditions relating to offsets have to date been weak, for example by requiring that offsets plans be developed post-approval, prior to determination of whether an offset is even possible for the impact. The significant use of financial settlement offsets means there is very little ability for the public to hold the State Government to account on the effectiveness of the provision of any offsets through these funds, let alone to require that the funds be spent in a timely way to create effective offsets. In addition, local governments are empowered to require offsets for development impacts they assess, however there are no registers required of these offsets, limiting the accountability around their effectiveness.

Further analysis and recommendations

EDO’s submission to the Review of the Queensland’s Biodiversity Offsets Framework⁴⁵ expands on the key concerns outlined above and contains recommendations for strengthening the rules for biodiversity in Queensland – see **Appendix 5**.



3.4 Victoria

Overview

Victoria's principal biodiversity offsetting rules can be found in the *Guidelines for the removal, destruction or lopping of native vegetation*⁴⁶ (**Guidelines**). The Guidelines are a document incorporated into the Victorian Planning Provisions (**VPPs**)⁴⁷ which are State standard planning provisions made pursuant to the *Planning and Environment Act 1987* (Vic) (**P&E Act**). VPPs provide standard content to all planning schemes operating under the P&E Act.

The primary way in which the Guidelines have effect is through operation of clause 52.17 of the VPPs. This provision governs the clearing of native vegetation, including permit requirements for proposals affecting native vegetation (habitat), the headline objective for native vegetation clearing (no net loss), and obligation to act in accordance with the Guidelines.

The Guidelines (and supporting amendments and other materials) were introduced in 2017 following a review of Victoria's native vegetation clearing regulations commencing in 2015.⁴⁸ The scheme in the Guidelines represents the fourth iteration of native vegetation clearing rules in Victoria since 1989.

Key concerns

- **The Guidelines do not aim to improve biodiversity:** Rather, the Guidelines require no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. As outlined above, simply requiring 'no net loss' does not acknowledge current trajectories of biodiversity loss and that positive action is required to halt and reverse this trend.
- **The Guidelines do not provide clear limits (e.g. no go zones) for the use of offsets:** Rather, 'decision guidelines' must be considered by the responsible authority (Guidelines, Part 7). As with planning decisions generally, decisions on permits to clear native vegetation require the exercise of discretion, albeit controlled and conditioned by the Guidelines. Key factors affecting decisions include biodiversity risk associated with clearing, assessed as habitat extent and condition, alongside other factors, such as impacts on rare or threatened species or communities, on important wetlands, and on large, scattered trees. Limits to the use of offsets operate in terms of obligations to avoid and minimise clearing prior to resorting to offsets, with greater imperative to avoidance where higher conservation value associated with the vegetation is to be affected.⁴⁹
- **Like-for-like offsetting is not guaranteed:** In general, offset obligations are calculated according to abstract metrics (e.g. a 'strategic biodiversity score') that are based on modelled ecological information, occasionally combined with on-ground ecological assessments (Guidelines, Part 5). These metrics ('score') inform offsetting as well as permit decisions. In many

cases (general offsets) there is no requirement for vegetation to provide the same ecological function to that being cleared, i.e. there is no 'like-for-like' obligation. In the case of habitat for rare or threatened species, where the relevant threshold is triggered (species offset), like-for-like requirements are more robust; offsets must compensate for the removal of that particular species' habitat.

- **'Alternative arrangements' and discounting can reduce offsetting obligations:** The Guidelines allow 'alternatives arrangements' to vary and discount offsetting requirements. For example:
 - The strategic biodiversity value score for general offsets can be reduced by a maximum of ten per cent (i.e. to no less than 70 per cent of the strategic biodiversity value score of the native vegetation to be removed) if the offset secured includes protection of ten per cent more general habitat units than are required and/or at least two large trees for every large tree to be removed (Guidelines, cl 11.2);
 - If a proponent is unable to secure a suitable species offset, alternative arrangements for species offsets can be on a case-by-case basis (Guidelines, cl 11.3); and
 - Offset requirements for removing native vegetation for timber harvesting can be met via regeneration (Guidelines, cl 11.4).
- **Certain activities are exempt from offsetting requirements:** The VPP identifies an extensive list of activities that do not require a permit to clear vegetation, meaning that the offsetting framework in the Guidelines is not applicable. In some instances, the Guidelines are still applied as a matter of policy (e.g. in relation to certain activities

undertaken on Crown land), however concerns have been raised about the ability to review or enforce offsetting arrangements in the same manner as when a planning permit is required.⁵⁰

Some improvements were made to the Victorian framework in 2017. This included, for example, improved guidance on the avoid, mitigate, offset hierarchy, including improved requirements for demonstrating avoidance; and consideration of the biodiversity values large trees, Ecological Vegetation Class (**EVC**) and sensitive wetlands and coastal areas. However, the framework still fails to meet fundamental best practice principles.

Further analysis and recommendations

Environmental Justice Australia (EJA) has published various reports and submissions outlining key concerns with Victoria's offsets framework and suggestions for improvement. Notably, EJA's analysis has shown a weakening of Victoria's biodiversity offsetting rules over the last decade, concluding that overall, offsetting rules in Victoria do not meet best practice standards. Key analysis can be found in the following EJA publications:

- *EJA Briefing note – Native vegetation regulation – New Victorian planning provisions and guidelines on native vegetation removal*, 2018⁵¹
- *EJA Submission in response to Draft native vegetation clearing regulations and guidelines*, 2017⁵²
- *EJA Briefing Paper – Review of the Native Vegetation Clearing Regulations: Consultation Paper*, 2016⁵³
- Former Environmental Defenders Office (Victoria), *Reforming native vegetation offset rules in Victoria*, 2013⁵⁴



Four:

Implications for Defending the Unburnt

Biodiversity offsetting frameworks across priority unburnt landscapes fail to meet best practice standards. This means that, in the aftermath of the 2019-2020 bushfires, excessive flexibility and discretion in biodiversity rules is allowing development (e.g. urban development, industry, infrastructure) to continue 'business-as-usual'.

Governments have allocated resourcing and capacity to assess impacts of bushfires on the environment and wildlife, and distributed funds for bushfire recovery programs and resilience programs. However, when it comes to ensuring our planning and development assessment processes are adequately responding to the bushfires, they have been reluctant to step in and intervene.

For example, EDO wrote to the Commonwealth Environment Minister, and Premiers of NSW and Queensland requesting that they use their respective powers under environment and planning laws to ensure the protection of threatened species and ecological communities that have been affected by the 2019-2020 bushfires. However, we have not seen any significant steps taken, such as temporarily suspending planning decisions, systemically reviewing applications to ensure bushfire impacts are addressed in assessments, or varying or suspending approvals, where able, to take into account the impacts of the bushfires. We have also not seen any similar action in response to flooding events.

Without intentional intervention, there is a real risk that the 'business-as-usual' approach to planning and development decisions will fail to adequately protect bushfire and flood-impacted wildlife and ecological communities. This is because biodiversity offsetting has become so prevalent, and biodiversity offsetting schemes so lax, that few safeguards remain. Proponents can rely on biodiversity offsetting rules to push ahead with development that may otherwise be considered inappropriate when taking into account the devastating impacts of the bushfires on certain wildlife and landscapes.

The failure of governments to update policy settings, and implications this may have for wildlife and landscapes, was highlighted by the recent assessment of the Brandy Hill Quarry Expansion by the NSW Independent Planning Commission (IPC) – see **Case Study 3**.

Ultimately, under current settings, these flawed schemes may very well be offsetting certain species to extinction.



Case Study 3

Brandy Hill Quarry Expansion

In July 2020, the NSW IPC granted consent to the Brandy Hill Quarry Expansion.⁵⁵ The quarry is located approximately 15 km north of Maitland, in the NSW Hunter Valley, in the general vicinity of priority, unburnt areas identified by WWF.

The expansion proposed extending the extraction area by 55 hectares (ha) from 19.5 ha to 74.5 ha; and increasing production from 700,000 tonnes per annum to 1.5 million tonnes per annum.

One of the key issues considered during the assessment of the project, was impacts on biodiversity, including koalas. Public comments on the proposal raised concerns about the impacts of the 2019-2020 bushfires on koalas and cumulative pressures on broader koala populations.

The IPC requested information from the Department of Planning and Environment (**DPE**) as to whether an assessment of the loss of native vegetation, which provides habitat for a number of threatened species, had been undertaken having regard to the broader NSW context and in recognition of the 2019-2020 bushfires.

In response DPE advised that:

“...the current biodiversity calculator applied in the Biodiversity Assessment Methodology (BAM) has not been updated to account for changes associated with bushfire impacts associated with the Black Summer Bushfires. That is, all project’s (sic) currently under assessment by the Department continue to be assessed in accordance within the framework of the relevant biodiversity policy and so not require reassessment due to the recent bushfires.

However, a key change to the biodiversity assessment framework since the bushfires has been additional guidance for the assessment of bushfire affected land (ie to ensure habitat is being assessed, albeit in a burnt state). This change is

not relevant the project as the Project area and its surrounds were not affected by the bushfires and previous ecological surveys were completed in accordance with the relevant requirements”.

This approach is obviously concerning because of the following reasons:

- The additional guidance provided does not alter the fundamental policy settings under the BAM – that is, variations to like-for-like offsetting and indirect measures are still available, including in burnt areas.
- It fails to take into account the importance of unburnt areas. Although the Project area and surrounds was not directly affected by the bushfires, the area has been identified by WWF as a priority unburnt area, critical for the recovery of species and ecosystems in the wake of the fires. This fact that reassessment of impacts was not required demonstrates that the planning system is failing to adequately take into account the impacts of the bushfires from a landscape perspective.
- The discussion focused primarily on impacts of koalas, failing to adequately acknowledge that other threatened species in the vicinity of the Project site may also rely on the unburnt areas as critical refugia.

The failure of the planning system to require an adequate assessment of bushfire impacts did not go unnoticed by the IPC, who, after hearing community concerns about the impacts of development on bushfire impacted species and landscapes, commented that:

“the Commission is of the view that in light of the “Black Summer” bushfires and the Parliamentary Review [into koala populations and habitat in New South Wales], it may be appropriate to reevaluate the policy framework under which the impact on koalas is required to be assessed”.

The project also highlights the broader failure of the BOS to require proponents to secure appropriate offsets prior to development consent being granted. In this case, the IPC acknowledged that 51.63 ha of koala habitat would be destroyed; and that the proponent was in discussions with a neighbour to secure offsets, noting the benefit of using neighbouring land to secure offsets, as this would increase the likelihood of like-for-like offsets being achieved.

However, ultimately the conditions of consent do not specify exactly how the offsets are to be achieved. They simply state that the number of koala species credits required to be offset in a Biodiversity and Rehabilitation Management Plan is to be approved by the Planning Secretary. The BOS provides excessive flexibility as to how the biodiversity offsetting obligations may be met, including variations to the like-for like rules, and indirect offsets.





Five:

Conclusion – Recommendations and Opportunities

Recommendations

Urgent reform is needed to tighten the rules around biodiversity offsetting and establish important safeguards that will protect not only bushfire-impacted species and landscapes, but biodiversity more broadly.

Over many years, EDO has engaged with governments, experts and stakeholders regarding the design and implementation of biodiversity offset frameworks. We have consistently recommended that the rules for biodiversity offsetting must meet best practice and deliver genuine improvements for the environment. Yet governments have continually failed to implement those recommendations, and iconic species like the koala are one step closer to extinction.

In the aftermath of the 2019-2020 bushfires, and now the multiple flooding events of 2022, our ongoing concerns are heightened. Proponents are able to rely on flawed biodiversity offsetting rules to push ahead with development that may lock in extinction, particularly taking into account the devastating impacts of the bushfires on certain wildlife and landscapes. This is putting our vulnerable wildlife at ongoing risk of further decline and ultimately extinction.

To that end, we make the following **overarching recommendation:**



Overarching recommendation for biodiversity offsetting

A national environmental standard for biodiversity offsetting must be implemented as part of broader national environmental law reform, **based on robust and objective science and consistent with the following best practice standards:**

- 1) Offsets must be designed to improve biodiversity outcomes
- 2) Biodiversity offsets must only be used as a last resort, after clear demonstration of alternatives to avoid, minimise or mitigate impacts
- 3) Offsets must be based on genuine 'like for like' principles
- 4) Legislation and policy must set clear limits on the use of offsets
- 5) Time lags in securing offsets and gains should be minimised
- 6) Indirect offsets must be strictly limited
- 7) Discounting and exemptions should not be permitted
- 8) Offsetting must achieve benefits in perpetuity
- 9) Offsets must be additional
- 10) Offset arrangements must be transparent and legally enforceable
- 11) Offset frameworks must include monitoring and reporting requirements to track whether gains and improvements are being delivered
- 12) Offset frameworks should build in mechanisms to respond to climate change and stochastic events

State and territory biodiversity offsetting frameworks must be consistent with the national environmental standard.

Opportunities

Given the significant deficiencies of biodiversity offsetting schemes across all jurisdictions, urgent reform is needed, and law makers must not delay strengthening the rules for biodiversity offsetting in the absence of a national environmental standard. We recognise the following opportunities for governments to ensure their respective frameworks are consistent with best practice:

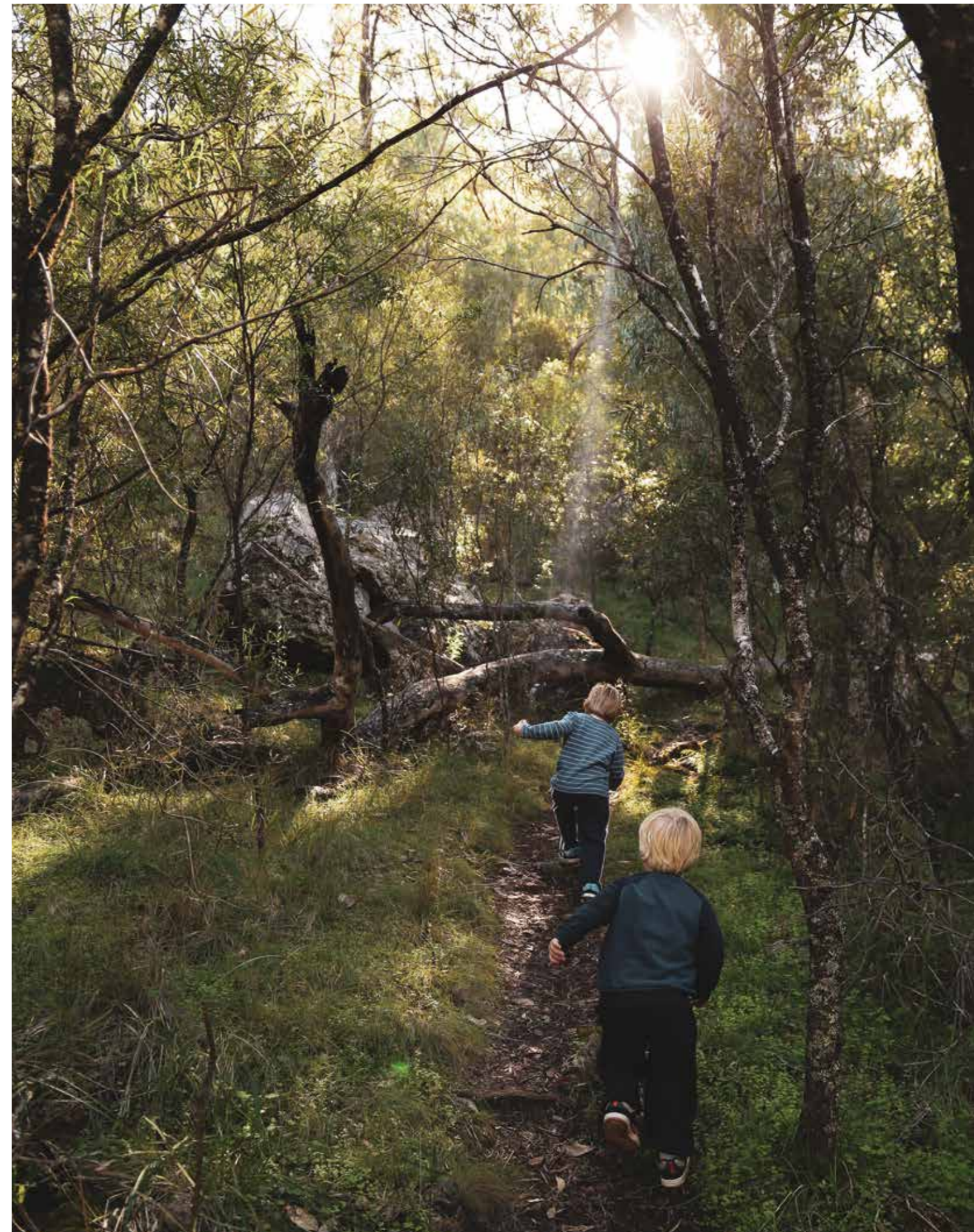
Commonwealth Government: The new Federal Government must re-write national environmental laws, generally consistent with the *Final Report of the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* published in October 2020.⁵⁶ This would include updating the Commonwealth's environmental offsetting framework to ensure it is consistent with best practice and introducing a national environmental standard for biodiversity offsetting.

New South Wales Government: The NSW Biodiversity Offset Scheme is due to be reviewed as part of the broader 5-year statutory review of the BC Act, commencing in August 2022. A parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme is also due to report its findings in November 2022. The 5-year statutory review provides a clear opportunity for the NSW

Government to review and improve its biodiversity offsetting framework, taking into account any relevant recommendations of the parliamentary inquiry and the 2022 Audit Office report.

Queensland Government: Beginning in 2019, the Queensland Government undertook a comprehensive review of its environmental offsetting scheme. It is currently delivering the second stage of its reforms, which includes developing regulatory and non-regulatory reforms that aim to improve and support the environmental offsets framework. With this process still in progress, the Queensland Government must ensure that any reforms bring the Queensland environmental offsetting policy in line with best practice.

Victorian Government: Victoria's current offsetting framework has been in operation close to five years, after commencing operation in December 2017. Strengthening of the framework remains warranted, particularly considering in the past twelve months the Victorian Auditor-General's Office has found that *"DELWP cannot demonstrate if, or how well, it is halting further decline in Victoria's threatened species populations"*,⁵⁷ and that *"Victoria is not achieving its objective of no net biodiversity loss from native vegetation clearing on private land"*.⁵⁸ A Parliamentary Inquiry has also found that: *"there is an overreliance on offsetting the removal of native vegetation at the expense of avoidance and minimisation approaches"*.⁵⁹



Appendix 1

Examples of government-led initiatives to assess impacts of bushfires on the environment and wildlife, and distribute funds for bushfire recovery programs and resilience programs

- The Commonwealth Government appointed a Wildlife and Threatened Species Bushfire Recovery Expert Panel to inform the Government’s response to the impacts of the 2019-2020 bushfires on wildlife and habitat, and identify species and actions for urgent management intervention. The Commonwealth Environment Minister allowed for interim threatened species nomination and prioritised listing assessments for bushfire impacted species. The Commonwealth government also provided funding to undertake mapping and monitoring of species post-bushfires and support further scientific assessment, planning and coordination.⁶⁰
- In NSW, the Department of Planning and Environment (**DPE**) analysed and published information on the impacts of the 2019-2020

bushfires in NSW, including most recently the *NSW Wildlife and Conservation Bushfire Recovery: Medium-term response plan* which includes updated post-bushfire data and a five-year plan to support the recovery of biodiversity in NSW following the 2019-2020 bushfires.⁶¹

- The Queensland Government’s *2019 Queensland Bushfires - State Recovery Plan 2019-2022* identifies impacts of the bushfires in Queensland and recovery strategies. The Queensland government is implementing a *2019–20 bushfires: Threatened species recovery program* identifying priority species and actions for recovery.⁶²
- The Victorian Department of Environment, Land, Water and Planning (**DWELP**) has analysed and published information on the impacts of the 2019-2020 bushfires, including its biodiversity response titled *Victoria’s bushfire emergency: biodiversity response and recovery - Version 2*, published in August 2020.⁶³



Appendix 2

Extract from EDO’s Submission to the 10 year review of the EPBC Act April 2020

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“A recommendation to establish an offsets market in law (rather than just policy) (Discussion Paper p26) would need to include clear scientific limits, to avoid a weakening of standards as has occurred in NSW and Queensland. The Commonwealth must avoid a lowest common denominator standard that relies solely on the market to deliver outcomes and instead enshrine scientifically rigorous, best practice offsetting designed to ensure biodiversity outcomes.

A new Act (or amended EPBC Act) should have clear science-based limits. As a minimum, the Act should not permit biodiversity ‘offsetting’ of impacts on critical habitat, endangered or critically endangered species and ecological communities. This recognises that some assets are too significant (or outcomes too uncertain) to ‘offset’. This approach also reinforces incentives to conserve species at a landscape scale to avoid extinction risk in the first place.

Resort to biodiversity offsets, if any, should be minimised, with clear guidance on what impacts are so unacceptable that they should not be allowed and cannot be offset. Offsets should require a precautionary approach given the long timeframes and current uncertainty of offsetting being capable of delivering successful outcomes.

Any offsetting (such as for vulnerable, near-threatened or non-threatened biodiversity and ecological communities) would require a scientifically robust National Offsets Policy and consistent standards.

Policy and standards must:

- *Ensure biodiversity offsets are not available for critical habitat (due to its essential role in preventing extinction), endangered or critically endangered species and ecological communities;*
- *require that offsets are a last resort, after all efforts are made to avoid and minimise impacts;*
- *provide clear guidance as to what impacts must be ‘avoided’, for example where they trigger a level of impact over a certain threshold on endangered matters of national environmental significance;*
- *meet strict scientific like-for-like biodiversity principles;*
- *adopt a ‘maintain or improve’ or ‘net gain’ standard to measure outcomes;*
- *ensure offsets are protected in perpetuity (offsets cannot be offset);*
- *provide accountability, transparency and enforceability (including third party enforceability) in the delivery of the offset;*
- *provide for offsets that are truly ‘additional’ protections rather than securing already protected areas;*
- *be consistent with a precautionary approach;*
- *make clear that no offsets should be available for future mine remediation due to lack of evidence of success; and*
- *any offsetting must be consistent with recovery goals in recovery plans.”*

Appendix 3

Key recommendations for strengthening the NSW Biodiversity Offsets Scheme

EDO Recommendations

In 2021, EDO’s submission to the inquiry into the integrity of the NSW Biodiversity Offsets Scheme⁶⁴ made the following recommendations:

Overarching recommendation 1: Significant reform of the BOS is needed to increase its effectiveness in halting or reversing the loss of biodiversity values. Given the significant challenges in achieving genuine biodiversity outcomes through offsetting, it should only be allowed in limited circumstances, in line with best practice science-based principles. The principles are:

1. Biodiversity offsets must only be used as a last resort, after consideration of alternatives to avoid, minimise or mitigate impacts
2. Offsets must be based on the ‘like for like’ principle
3. Legislation and policy should set clear limits on the use of offsets
4. Indirect offsets must be strictly limited
5. Offsetting must achieve benefits in perpetuity
6. Offsets must be designed to *improve* biodiversity outcomes
7. Offsets must be additional
8. Offset arrangements must be legally enforceable
9. Offset frameworks should build in mechanisms to respond to climate change and stochastic events

Recommendation 2: Impose a clear and objective environmental standard to improve biodiversity outcomes (e.g. no net loss or better) under the BOS and BC Act.

Recommendation 3: Prescribe additional biodiversity-related values in the BC Regulation, including for soil quality, salinity, and water quality.

Recommendation 4: Update the BAM to include components for the assessment of soil quality, salinity, and water quality.

Recommendation 5: Require genuine attempts to avoid and minimise impacts on threatened species and ecological communities be demonstrated before the BOS can be applied. Clear guidance on the required steps and evidence of steps taken should be developed.

Recommendation 6: Tighten like-for-like offsetting requirements and variation rules.

Recommendation 7: Significantly limit indirect offset options.

Recommendation 8: Set stricter parameters around the payment of money to the BCT in lieu of offsets, including allowing/requiring the BCT to refuse to accept an offset liability for a proponent where it would not be possible for them to obtain like-for-like offsets.

Recommendation 9: Do not allow future mine rehabilitation to generate offset credits and be counted as an upfront offset.

Recommendation 10: Remove the ability to discount offsets. However, if a discounting mechanism is retained, it should be strictly limited – i.e. any discounts should only be allowed if based on ecological reasons, and if reasons are provided for decisions.

Recommendation 11: Formulas used to determine credit pricing must incorporate an appropriate risk factor to ensure that like for like offsets can be sourced and managed in perpetuity and that increasing scarcity of biodiversity is embedded in the pricing mechanism in a non-linear fashion (to ensure that it becomes increasingly expensive to purchase credits for increasingly scarce species and ecosystems).

Recommendation 12: The NSW BOS must meet or exceed national biodiversity offset standards by strictly limiting indirect offsetting. The BOS should not be accredited for the purpose of handing over federal approval powers, without significant reform.

Recommendation 13: Upland swamps should be considered red-flag areas and excluded from the offset system.

Recommendation 14: Biodiversity offset reform should include recommendations for strengthening of the native vegetation clearing rules under the LLS Act, including the ‘set aside’ system.

Recommendation 15: Offsetting under the NSW biocertification system be reviewed and strengthened in line with best practice offsetting principles.

Recommendation 16: Offset rules for major projects should be strengthened, and in particular:

- a) Red flags must apply to major projects (e.g. major projects must be refused if there are serious and irreversible impacts).
- b) Discounting of offsets requirements should not be allowed, or very strictly limited (as noted above).

Audit Office of New South Wales Recommendations

The Audit Office of New South Wales report into the effectiveness of the NSW Biodiversity Offsets Scheme⁶⁵ made the following recommendations: By December 2022, DPE should:

1. establish governance arrangements with separate reporting lines to better oversee and manage risks related to the BCT and/or other agencies with multiple roles in the Scheme (for example as market participants and intermediaries, and as administrators of BSA sites)
2. collate and maintain centralised information about offset obligations and discounting for major projects (State Significant Development and Infrastructure), including documentation related to ministerial decisions
3. evaluate the overall quality of biodiversity assessment reports (for development and stewardship sites) and implement improvement strategies, including a quality assurance process, in collaboration with the BCT.

By July 2023, DPE should:

4. implement a long-term strategic plan for the Scheme that defines biodiversity goals with respect to the Act. The strategic plan should include:

- clearly allocated roles between DPE and the BCT and other relevant agencies, to ensure effective Scheme oversight, delivery, and market operations
- guidance to the BCT on timeframes and priorities for acquitting its acquired offset obligations, including a method for moving through its acquittal options
- performance indicators for the Scheme’s administration, including the BCT’s activities such as the ecological monitoring of BSA sites
- an approach to measuring and publicly reporting on biodiversity outcomes from the Scheme, including its contribution to State and regional biodiversity goals

5. enhance its public credit register to include unique credit identifiers, ownership and transaction history, and information about each offset obligation and rules against which each credit was retired

6. implement a resourced plan to improve the operation of the biodiversity credit market, including by improving the transparency of market information and by supporting adequate credit supply. The plan should allocate roles and timeframes for:

- publishing enhanced information about current and expected credit supply and demand, and credit prices
- proactively identifying potential Biodiversity Stewardship Agreement (BSA) sites
- reducing barriers to landholders establishing BSA sites, and accelerating timeframes for the establishment of BSA sites on private land.

By July 2023, the DPE and the Biodiversity Conservation Trust should:

7. implement a decision-making and intervention framework to ensure adequate initial and ongoing funding for the long-term management of new and existing BSA sites

8. review the status of passive BSA sites and implement a plan to support biodiversity on sites that are at risk of not entering active management

9. establish protocols for supporting BSAs where biodiversity outcomes are not on-track due to events that cannot be reasonably controlled or planned for 10. Implement plans to ensure ecological monitoring occurs on all BSA sites.

By July 2023, the Biodiversity Conservation Trust should:

11. report annually on the estimated number and type of offset obligations that can/cannot be met on a like-for-like basis, and the estimated costs for acquitting these within 12 months.

New South Wales Parliament, Legislative Council, Portfolio Committee No. 7 Recommendations

The NSW Parliamentary Inquiry into integrity of the NSW Biodiversity Offsets Scheme⁶⁶ made the following recommendations:

Recommendation 1

That the Department of Planning and Environment review and reform the design of the Biodiversity Offsets Scheme, to ensure it meets best practice principles for biodiversity offsetting. The review should be undertaken in consultation with stakeholders, and the reform must ensure that:

- the avoid, minimise, offset hierarchy in the scheme is strengthened to ensure offsetting is genuinely used as a last resort only for unavoidable impacts of development
- clear thresholds for where offsets should not be used are established, in order to protect threatened species and ecosystems that cannot be offset elsewhere

- the ecological equivalence of offsets is significantly strengthened by tightening the geographic and species equivalence requirements of the like-for-like rules and curtailing the use of variation and ancillary rules
- offsets result in genuinely additional gains to biodiversity that would not have occurred otherwise
- indirect offsets available under the scheme are reduced, and, where this does occur, the transparency around this mechanism is increased
- the option to use mine rehabilitation as an offset under the scheme is removed
- the discretion to discount offset requirements for non-ecological reasons is reduced, and, where this does occur, the transparency around this mechanism is increased.

Recommendation 2

That the NSW Government define a set of scientifically sound principles that govern the operation of the Biodiversity Offsets Scheme, and ensure these are embedded in the Biodiversity Conservation Act 2016.

Recommendation 3

That the Department of Planning and Environment commission an independent expert review of the Biodiversity Assessment Method and its underlying assumptions, including:

- the use of ‘averted loss’ to calculate biodiversity gains at offset sites
- the value placed on landscape connectivity and preservation of high quality habitat
- how the method accounts for cumulative loss arising from multiple developments in an area.

Recommendation 4

That the Department of Planning and Environment review the Biodiversity Offset Scheme’s biodiversity certification process to ensure that it meets best practice principles for offsetting, achieves positive environmental outcomes, and there is transparency in its use.

Recommendation 5

That the Biodiversity Conservation Trust:

- urgently implement an application and review process for developer payments into the Biodiversity Conservation Fund to ensure proponents have exhausted all other private market avenues prior to paying into the Fund, and
- in the event credit supply is unavailable on the market, have a process to demonstrate that genuine like-for-like offset credits will be available, and there is a plan to bring those credits online, prior to receiving payments.

Recommendation 6

That the Department of Planning and Environment and Biodiversity Conservation Trust develop and implement a resourced plan to ensure the Biodiversity Offsets Scheme promotes protection of strategically important biodiversity.

Recommendation 7

That the Department of Planning and Environment develop and implement a monitoring, evaluation, reporting and improvement framework for the Biodiversity Offsets Scheme in a way that enables:

- assessment of the scheme’s impact on biodiversity at the local, regional and state level
- assessment and reporting on the scheme’s performance against agreed principles for biodiversity offsetting
- assessment of cumulative impacts of development
- identification of unintended impacts of the scheme
- public reporting on the scheme’s performance against biodiversity conservation goals
- ongoing learning to improve the scheme.

Recommendation 8

That the Department of Planning and Environment institute measures to improve the quality of biodiversity assessment reports, including:

- instituting a quality assurance process
- ensuring the guidance on surveying and use of the Biodiversity Assessment Method is complete and up to date
- ensuring the maps essential to the scheme, such as the Biodiversity Values Map, are accurate and up to date.

Recommendation 9

That the Department of Planning and Environment and the Biodiversity Conservation Trust institute measures to increase compliance monitoring and enforcement, and ensure appropriate ecological monitoring occurs on all biodiversity stewardship sites.

Recommendation 10

That the NSW Government review and reconsider the appropriateness of land clearing pathways under the Local Land Services Act 2013, working with landholders, with the aim of increasing and incentivising biodiversity protections on rural land.

Recommendation 11

That the Department of Planning and the Environment and Local Land Services, in consultation with landholders, develop and implement a plan to prevent land clearing on rural land regulated by the Local Land Services Act 2013 that would have otherwise triggered or increased obligations under the Biodiversity Offsets Scheme.

Recommendation 12

That the Department of Planning and Environment continue to investigate and implement options for reducing the costs, financial risks and complexities associated with establishing stewardship sites, without compromising the ecological integrity of the Biodiversity Offsets Scheme. This should involve consideration of:

- upfront cost and complexity of establishing a stewardship site
- costs and risks incurred by landholders who have established a stewardship site but have not sold sufficient credits to receive management action payments
- the availability of information and support to landholders interested in participating in the scheme.

Recommendation 13

That the Department of Planning and Environment provide greater certainty for developers on the likely scale of biodiversity offsetting liabilities in the lead up to land rezoning decisions.

Recommendation 14

That the Department of Planning and Environment continue to increase the level of support for local governments in their role as consent authorities in the Biodiversity Offsets Scheme.

Recommendation 15

That the NSW Government continue to, as a matter of priority, take action to promote development of a functioning biodiversity credit market, ensuring that:

- structural issues stemming from the government acting as a regulator, facilitator and buyer in the market are addressed
- the price distortion caused by the role of the Biodiversity Conservation Trust and the way payments to the Biodiversity Conservation Fund are calculated is remedied
- there is transparency of market information about supply and demand for credits and credit pricing
- the market is able to set prices in a way that recognises scarcity and incentivises landholder participation in the scheme
- the ecological credibility of the Biodiversity Offsets Scheme is maintained by upholding the ‘like-for-like’ principle

Recommendation 16

That the NSW Government review its handling of the transition from the BioBanking Scheme to the Biodiversity Offset Scheme with a view to building confidence in the long term operation of the biodiversity credit market.

Recommendation 17

That the Department of Planning and Environment investigate and implement feasible options for making the Biodiversity Offsets Scheme more accessible and attractive for potential philanthropic and conservation-minded investors.

Recommendation 18

That the Department of Planning and Environment and Biodiversity Conservation Trust increase transparency of the use of offsets to enable public scrutiny of the Biodiversity Offsets Scheme. This should include a centralised, publicly accessible database that:

- enables spatial viewing of development and stewardship sites, including site boundaries
- contains information about biodiversity stewardship agreements, such as type and quantity of credits, management actions and restoration uplift
- contains information about the ecological outcomes of biodiversity stewardship agreements
- contains information about which credits or offset sites have been used to offset which developments
- shows all offset obligations transferred to the Biodiversity Conservation Trust
- shows offset obligations for all major projects, including any discounting.

Recommendation 19

That the Department of Planning and Environment:

- continue to review arrangements for managing conflict of interest in the Biodiversity Offsets Scheme, with a view to providing transparent processes for declaring and managing conflicts of interest among scheme stakeholders
- review arrangements for the accreditation and monitoring performance of accredited assessors, with a view to ensuring the quality of ecological assessments in the scheme, and appropriate management of conflicts of interest.



Appendix 4

Full case study - Draft Cumberland Plain Conservation Plan

The Draft Cumberland Plain Conservation Plan was prepared to support both an application to the NSW Minister for Energy and Environment (**the Minister**) for strategic biodiversity certification under the BC Act and an application to the Commonwealth Minister for the Environment seeking endorsement of the plan under the strategic assessment provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

It is the first plan developed under the new BC Act provisions, and is a test-case for whether the new provisions of the BC Act will achieve the objects of the BC Act, including to maintain a healthy, productive and resilient environment, conserve biodiversity at bioregional and State scales and slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature.

Biodiversity values of the Cumberland Plain

The Cumberland Plain region is a biologically diverse area with significant biodiversity values. The Draft Plan summarises key features of the landscapes and ecosystems of the area covered by the Draft Plan as including:

- More than 100 threatened or migratory fauna and flora species, including matters of national environmental significance;
- Approximately 61,000 hectares of retained native vegetation, much of this being ecological communities or habitats for species listed under the BC Act and/or EPBC Act;

- 40 plant community types in the area, approximately 30 of which are associated with BC Act or EPBC Act listed threatened ecological communities or classified as over-cleared vegetation types;
- Areas of remaining native vegetation that are often of high conservation value as they may contain the only remaining habitat for species and ecological communities that occur only in the Cumberland sub-region; and,
- Severely fragmented landscapes. Connectivity in the Cumberland sub-region is already compromised - once clearing levels exceed 70% of the landscape, biodiversity loss from fragmentation increases. This threshold has been passed in the Cumberland sub-region.

The Draft Plan identifies that there will be potential impacts from future development on:

- 1,777.8 hectares of native vegetation;
- 8 threatened ecological communities listed under the BC Act and 4 threatened ecological communities listed under the EPBC Act (and a fifth currently under nomination); and
- 25 flora species and 24 fauna species.⁶⁷

Key proposals for ameliorating impacts on biodiversity

The Draft Plan includes a number of key proposals for ameliorating impacts on biodiversity. These include:

- *Avoided areas*: 2,735 hectares of native vegetation avoided from development for its biodiversity value and 935 hectares of native vegetation avoided for other purposes including riparian corridors and steep slopes. These areas will be zoned E2 Conservation with strict development controls.

- *Strategic conservation area*: 28,300 hectares of strategic conservation area that will be subject to development controls set out in a new strategic conservation planning SEPP.
- *New, protected conservation lands*: Creating a minimum of 5,475 hectares of new, protected conservation lands for impacted native vegetation communities.
- *Ecological restoration*: Undertake up to 1,370 hectares of ecological restoration of threatened ecological communities.
- *Koala reserves and corridors*: Secure important koala movement corridors by establishing the Georges River Koala Reserve.
- *Prioritise and investigate other reserves*: The establishment of two new reserves - Gulguer Reserve Investigation Area and The Confluence Reserve Investigation Area.

Impacts on biodiversity, and use of offsets and approved conservation measures

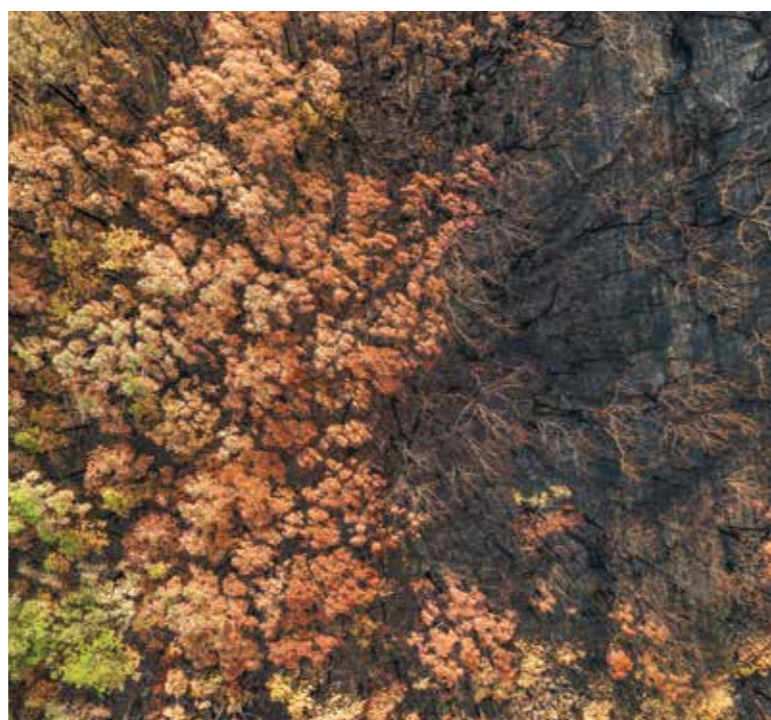
- *Impacts on critically endangered Cumberland Plain Woodland (CPW)*: The Biodiversity Assessment anticipates that a total of 1,015 ha of CPW will be directly impacted by the development. This is approximately 68 per cent of the threatened ecological community in the nominated areas. In contrast, only 393 ha was avoided for biodiversity purposes and 80 ha was avoided for other purposes. Given the critically endangered nature of this ecological community such a large amount of clearing should be considered unacceptable. The Conservation Plan proposes securing an offset target of 3,170 ha of CPW (Commitment 8.1) in conservation lands within strategic conservation areas. We are concerned that this commitment will be difficult to meet, particularly because:

- Appropriate offset sites have not been identified upfront. The Confluence Reserve Investigation Area is considered unlikely to benefit CPW;
- Limited funding for securing offsets has been secured; and
- Securing offsets for CPW is known to be difficult
 - the Growth Centres Biodiversity Offset Program, which was developed as part of the 2010 Sydney Growth Centres Strategic Assessment, was intended to secure offsets for CPW, but publicly available reporting shows that cost and suitability constraints may impede the ability to secure high-value biodiversity offsets on the Cumberland Plain in a timely manner.⁶⁸
- *Impacts on threatened ecological communities and species*: We are concerned that the Draft Plan will have a significant impact on listed threatened species and communities. For example:
 - The offset hierarchy has been inappropriately applied, with areas that have been identified as unavailable for development being considered 'avoided' land;
 - Impacts are not limited to the identified areas, as infrastructure routes have not been determined and the Draft Plan envisages permitting infrastructure in otherwise 'avoided' land. This creates a significant risk of increased fragmentation;
 - The proposed offset ratio is low given the critically endangered and endemic status of many ecological communities and threatened species in the region;
 - Offset areas will include a significant proportion of revegetated areas which are not guaranteed to deliver the required vegetation communities or ecological functions and even if successful, won't provide many ecological functions for tens - and for some important habitat features such as hollows - hundreds, of years; and

- Cumulative impacts of development in surrounding areas have not been adequately considered.
- *Approved conservation measures:* In conferring strategic biodiversity approval under the BC Act, the Minister has broad discretion under section 8.3(2)(b) to authorise ‘approved conservation measures’ for strategic biodiversity certification. In this instance, we are concerned that:
 - It is unclear exactly which proposed ‘actions’ and ‘commitments’ are intended to be approved conservation measures - the terminology used in the Draft Plan is confusing, and inconsistent with the BC Act, EPBC Act Terms of Reference,⁶⁹ or Guidelines for Conservation Measures.
- Implementation of the commitments and actions identified in the Draft Plan will be challenging. Key challenges include:
 - Lack of committed funding beyond the first five years of the Draft Plan;
 - Multiple agencies and levels of government being responsible for delivering the various actions identified in the Draft Plan; and,
 - Reliance on a SEPP as a key mechanism for implementing key proposals such as the rezoning of avoided land to E2 – Environmental Conservation, and the implementation of development controls for strategic conservation areas, and DCPs for implementing other development controls. These instruments do not create fixed, permanent controls – there are broad discretions for making, amending and repealing these instruments.

- Commitments and actions being drafted inadequately for the purposes of compliance and enforcement (for example, use of uncertain language such as “where possible”, “consult”, “consider” etc.; or ‘high-level’ actions - where lack of specificity makes it difficult to determine whether an action has been adequately completed - e.g. “Provide ongoing support to Councils in the application of DCP controls within the nominated areas, including the sharing of knowledge, maps and data”).
- The Minister has broad discretion to determine ‘equivalent conservation measures’ as alternatives to the conservation actions identified, and to give effect to those equivalent measures without the need for further biodiversity assessment or public consultation (BC Act, ss 8.13, 8.13, 8.22).

Further information is available in EDO’s full submission on the Draft Cumberland Plain Conservation Plan.⁷⁰



Appendix 5

Key recommendations for strengthening Queensland’s Biodiversity Offsets Framework, as set out in EDO’s 2019 Submission to the Review of Queensland’s Biodiversity Offsets Framework:

Recommendation 1:

Prohibitions effective across all Qld laws to prevent impacts on our most vulnerable environmental values, avoiding the impact completely and therefore making the offset unnecessary (e.g. legal protection of critical habitat). This requires clear planning and development laws that specify when impacts must be ‘avoided’, due to the sensitivity of the species and/or due to the unessential nature of the development proposal threatening the impact, and also clarity on what mitigation action must be required by proponents.

Recommendation 2:

Require evidence and assessment of whether an impact can actually be offset during the application assessment process, to ensure that the ability to offset an impact is determined prior to a decision being made on whether to approve an impact. If it can’t, the project should be amended to avoid the impact or refused.

Recommendation 3:

- Remove the cap on the ratio of offset required.
- Scientifically valid ratios must be required to be determined for each species impacted if we are to have any legitimacy to our biodiversity offset framework.

Recommendation 4:

- Redefine the required conservation outcome for offsets, such that the offset required takes into account the degree of impact and the quality of the environmental value impacted.

- Rather than having objectives of ‘no net loss’, or ‘net gain’, which are relative to a counterfactual of decline, we need a framework that leads to losses being compensated with tangible improvements for the matter being impacted such that there is no net decline, considering both the impact and the offset sites – that there is just as much habitat after the impact as before. Consider population targets for tangible, measurable outcomes that each offset can go towards achieving.

Recommendation 5:

Require that all residual impacts, not just significant impacts, be offset where they cannot be avoided or mitigated and they are essential.

Recommendation 6:

Remove exemptions from the offset framework which currently allow significant tree clearing, urban development, community infrastructure, development assessed by the Coordinator-General and state government related development across Queensland to go ahead without requiring that these substantial impacts be offset.

Recommendation 7:

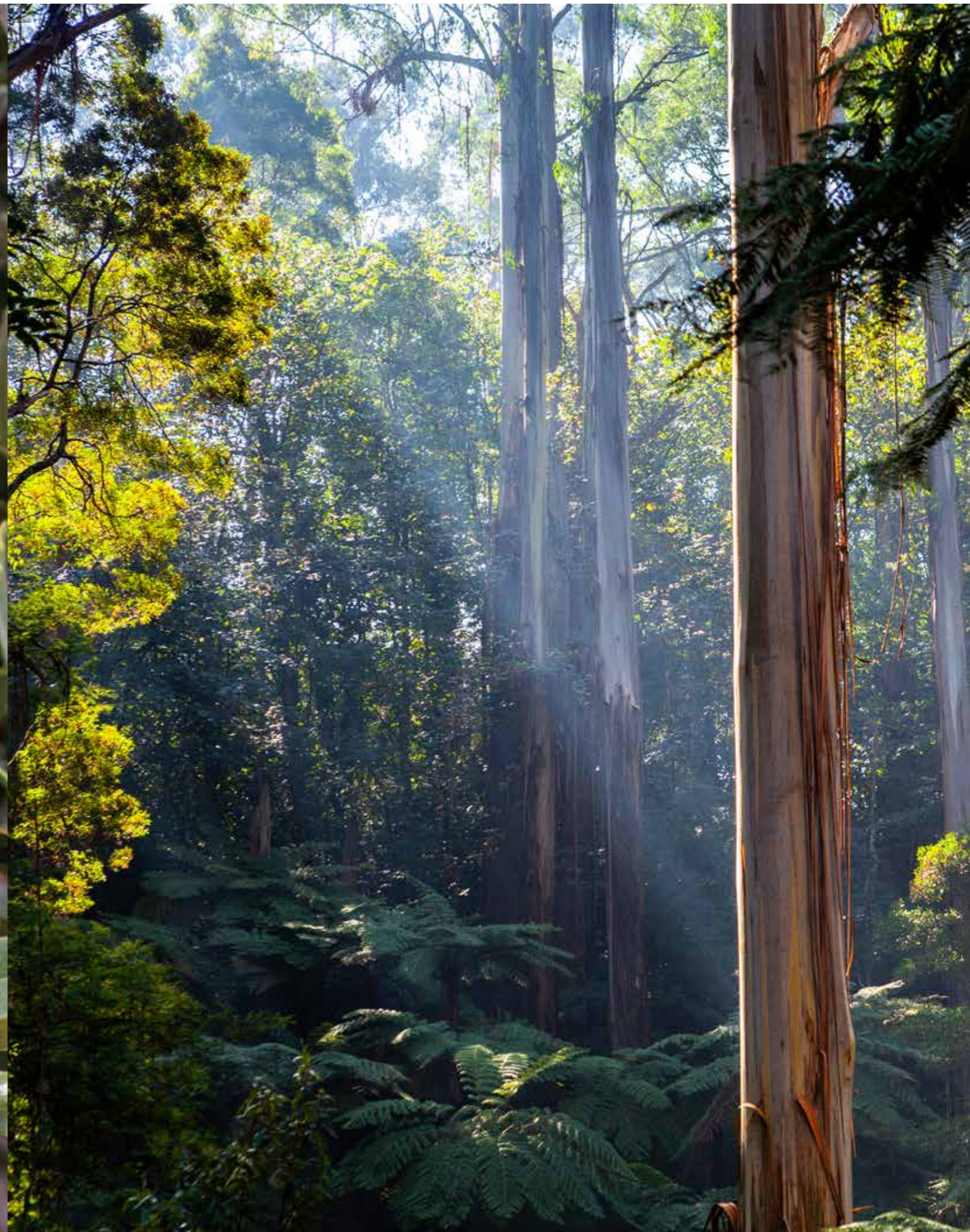
Require long term security of offsets – such that they cannot be impacted to remove the effect of their offset, or in circumstances where it is essential that the offset area is impacted require that this impact is required to be sufficiently offset with an even greater, appropriate area to compensate for this highly undesirable outcome.

Recommendation 8:

- a) Provide a clear standard in the EO Act against which the effective achievement of offsets can be enforced by government and through third party enforcement rights.
- b) Require timely implementation of offsets – ideally offsets should be commenced prior to the impact being undertaken.
- c) Update the Offsets Register to include trackable detail on the success and failures of offsets and measures undertaken to address failures, as well as local government provided offsets. Require regular reporting by the government or proponents as to the status of the offset.
- d) Ensure sufficient resources and mandates are provided to departments to effectively monitor and enforce the achievement of offsets.
- e) Ensure accountability of offset brokers by requiring that they be registered.

Recommendation 9:

Return the concurrence agency power to the Department of Environment and Science for the assessment of offsets proposed during development assessment processes across all frameworks.



End Notes

¹ See, for example: Maron, M. et al. (2012). *Faustian bargains? Restoration realities in the context of biodiversity offset policies*, Biological Conservation 155 141-148, available at <http://www.lerf.esalq.usp.br/divulgacao/recomendados/artigos/maron2012.pdf>; Ruoso, L. & Plant, R. (2021) *Distributive and contextual equity in landholder participation in biodiversity offsets: a case study of biodiversity offsets in New South Wales, Australia*, Ecosystems and People, 17:1, 6-24, DOI: 10.1080/26395916.2020.1862914, available at <https://cogentia.tandfonline.com/doi/full/10.1080/26395916.2020.1862914>

² See, for example: Bull, J.W., Blake Suttle, K., Gordon, A., Singh, N.J., and Milner-Gulland, E.J. (2013). *Biodiversity offsets in theory and practice*, Fauna and Flora International, Oryx, 47(3) 369-380, available at <https://www.cambridge.org/core/journals/oryx/article/biodiversity-offsets-in-theory-and-practice/EDBF70717C273662B6D8EE0876370095>; Curren, M. et al. (2014). *Is there empirical support for biodiversity offset policy?* Ecological Applications, 24(4) pp 617-632, available at <https://esajournals.onlinelibrary.wiley.com/doi/abs/10.1890/13-0243.1>; Fallding, M. (2014). *Biodiversity Offsets: Practice and Promise*, (2014) 31 Environmental Planning & Law Journal 33, available at http://www.biodiversityoffsets.net/wp-content/uploads/2015/01/Biodiversity-offsets_practice-and-promise.pdf; Gordon, A., Bull, J.W., Wilcox, C., Maron, M., (2015). *Perverse incentives risk undermining biodiversity offset policies*. J. Appl. Ecol. 52, 532-537, available at <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1111/1365-2664.12398>; Gibbons, P., Macintosh, A., & Constable, A., and Hayashi, K. (2017). *Outcomes from 10 years of biodiversity offsetting*. Global Change Biology. 24. 10.1111/gcb.13977, available at <https://openresearch-repository.anu.edu.au/handle/1885/251919>; Pope, J., Morrison-Saunders, A., Bond, A. et al. *When is an Offset Not an Offset? A Framework of Necessary*

Conditions for Biodiversity Offsets. Environmental Management 67, 424-435 (2021), available at <https://doi.org/10.1007/s00267-020-01415-0>

³ See, for example, Walker, S. et al. *Why Bartering Biodiversity Fails*, 2009 Conservation Letters 2 (2009) 149-157, available at <https://conbio.onlinelibrary.wiley.com/doi/pdf/10.1111/j.1755-263X.2009.00061.x>; Overton, J. et al., *Net Present Biodiversity Value and the Design of Biodiversity Offsets*, 2012, AMBIO 2013 42:100-110, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3547457/>

⁴ See, for example, Nature Conservation Council of NSW, *Paradise lost: The weakening and widening of NSW biodiversity offsetting schemes*, 2005-2016, 2016, available at https://assets.nationbuilder.com/natureorg/legacy_url/2417/bio-offsetting-report_v14.pdf?1630462684. This report examines the evolution of biodiversity offsetting schemes in NSW between 2005 and 2016, when the current framework was first proposed.

⁵ WWF Australia, *Defending the Unburnt*, April 2021, available at <https://www.wwf.org.au/what-we-do/2-billion-trees/protecting-the-unburnt-six#gs.ud2uij>

⁶ The importance of protecting lightly burnt and some moderately burnt areas from forestry operations post-bushfires was highlighted in the following report: Smith, Dr A. *Review of CFIOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestry/review-of-cfoa-mitigation-conditions-for-timber-harvesting-in-burnt-landscapes>.

⁷ Smith, Dr A. *Review of CFIOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, 14, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestry/review-of-cfoa-mitigation-conditions-for-timber-harvesting-in-burnt-landscapes>.

for-timber-harvesting-in-burnt-landscapes.pdf?la=en&hash=6360E080DB80E7BEF935A1A4A6BDDAB46BBFD0A7

⁸ Smith, Dr A. *Review of CFIOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, 6, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestry/review-of-cfoa-mitigation-conditions-for-timber-harvesting-in-burnt-landscapes.pdf?la=en&hash=6360E080DB80E7BEF935A1A4A6BDDAB46BBFD0A7>

⁹ Copies of our letters are available on our website: <https://www.edo.org.au/2020/02/21/bushfire-emergency-edo-legal-response/pdf?la=en&hash=6360E080DB80E7BEF935A1A4A6BDDAB46BBFD0A7>

¹⁰ Murphy H & van Leeuwen S (2021). Australia state of the environment 2021: biodiversity, independent report to the Australian Government Minister for the Environment, Commonwealth of Australia, Canberra, available at <https://soe.dcceew.gov.au/sites/default/files/2022-07/soe2021-biodiversity.pdf>

¹¹ See, for example, Lane, A., Wallis, K., and Phillips, S. 2020. *A review of the conservation status of New SouthWales populations of the Koala (Phascolarctos cinereus) leading up to and including part of the 2019/20 fire event*. Report to International Fund for Animal Welfare (IFAW). BiolinkEcological Consultants, Uki NSW, available at <https://www.ifaw.org.au/resources/koala-conservation-status-new-south-wales>

¹² Research indicates that delivering offsets at close proximity to the lost habitat increases the chances of contributing to the conservation and integrity of the same ecosystem, as well as the needs of local people. See, for example Gonçalves, B., Marques, A., Soares A., and Pereira, H. *Biodiversity offsets: from current challenges to harmonized metrics*, Current Opinion in Environmental Sustainability,

Volume 14, 2015, p 61-67, available at <https://www.sciencedirect.com/science/article/pii/S1877343515000378#>

¹³ The principle of additionality was considered by the Federal Parliament Senate Environment and Communication Committee's inquiry into Environmental Offsets. After being presented with several examples illustrating the failure to apply the principle appropriately, such as offsets being used to protect land that it is already protected as a park or nature reserve, the Committee recommended that the EPBC Act Offsets Policy be revised to provide further clarity on the principle of additionality, and to ensure that areas are not being used as offsets if they are already protected under existing conservation legislation or agreements. (Recommendation 2 and Recommendation 3). See Senate Environment and Communication Committee, *Environmental offsets*, June 2014, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Environmental_Offsets/Report/~media/Committees/Senate/committee/ec_ctte/enviro_offset/report/report.pdf

¹⁴ See <https://www.awe.gov.au/environment/epbc/publications/epbc-act-environmental-offsets-policy>

¹⁵ See <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.awe.gov.au%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2Foffset-assessment-guide.xlsm&wdOrigin=BROWSELINK>

¹⁶ For example, section 5.10 of the BC Act, allows a Biodiversity Stewardship Agreement to be terminated in certain circumstances.

¹⁷ Australian Network of Environmental Defender's Office, *Submission to the Inquiry into Environmental Offsets*, April 2014, available at <https://www.aph.gov.au/DocumentStore.ashx?id=2b783f27-432b-4e37-8d0e-dc924072dffc&subId=251166>

¹⁸ Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report*, October 2020, available at <https://epbcactreview.environment.gov.au/resources/final-report>

¹⁹ See Professor Graeme Samuel AC, Independent Review of the EPBC Act – Final Report, October 2020, Appendix B1 - Overarching MNES Standard, op. cit.

The recommended standard provides the following description of an offset:

Offset: measures that may be used once it has been demonstrated that all reasonable steps have been taken to avoid and minimise impacts, that are provided to compensate, repair or replace an impacted value, including changes to the integrity, quality, condition and/or extent of habitat. Offsets must be consistent with the *EPBC Act Environmental Offsets Policy* (2012, as updated from time to time), or an accredited policy relating to offsets of a state or territory. Offsets must be achievable and ecologically feasible:

- An offset is achievable where demonstrated scientific knowledge exists on how to restore the habitat with a high confidence of success, and its long-term protection is assured (for example through conservation covenants or conservation agreements), and
- An offset is ecologically feasible where it can be demonstrated that the species or community can be reliably restored in a timeframe proportionate to effectively address the impact of the action and enough space exists to undertake restoration (not ecologically or tenure constrained).

²⁰ See the Commonwealth Department of Agriculture, Water and Environment, *Consultation Document on Listing Eligibility and Conservation Actions for Phascolarctos cinereus (Koala)*, 2021, available at <https://www.awe.gov.au/sites/default/files/env/consultations/180c4bf8-fe57-4fc4-a3b7-cc20d6774c79/files/consultation-document-koala-2021.pdf>

²¹ New South Wales Parliament, Legislative Council. Portfolio Committee No. 7 – Planning and Environment, *Report 3 - Koala populations and habitat in New South Wales*, June 2020, available at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2536#tab-reportsandgovernmentresponses>

²² See http://www.environment.gov.au/cgi-bin/sprat/public/publicspecies.pl?taxon_id=85104

²³ See further, *EDO Analysis: Koala habitat laws and mapping take effect in SEQ*, February 2019, available at <https://www.edo.org.au/2020/02/19/koala-habitat-laws-and-mapping-now-in-effect-for-seq/>

²⁴ *Biodiversity Conservation Regulation 2017*, cl 6.4(1)(c)

²⁵ Nature Conservation Council of New South Wales, *Paradise lost - The weakening and widening of NSW biodiversity offsetting schemes, 2005-2016*, 2016, available at https://assets.nationbuilder.com/natureorg/legacy_url/2417/bio-offsetting-report_v14.pdf?1630462684

²⁶ Audit Office of New South Wales, *Effectiveness of the Biodiversity Offsets Scheme*, 31 August 2022, available at <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>

²⁷ New South Wales Parliament, Legislative Council, Portfolio Committee No. 7, *Integrity of the NSW Biodiversity Offsets Scheme*. Report no. 16, November 2022, available at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822>

²⁸ Native vegetation in NSW is classified under the NSW vegetation classification hierarchy – which includes Vegetation Formations, Vegetation Classes and Plant Community Types. There are currently 99 vegetation classes in NSW. For more information, see <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/nsw-bionet/the-nsw-vegetation-classification-framework>

²⁹ See *Ancillary rules: Biodiversity conservation actions Published under clause 6.5 of the Biodiversity Conservation Regulation 2017*, available at <https://www.environment.nsw.gov.au/resources/bcact/ancillary-rules-biodiversity-actions-170496.pdf>

³⁰ Section 6.5(2) of the Biodiversity Conservation Regulation 2017 permits the creation of ancillary rules that may “set out standards for the ecological rehabilitation of sites impacted by the carrying

out of mining under a mining lease and the credit value of any such rehabilitation”. Providing any offset credits for mine rehabilitation work creates a perverse incentive to allow or recommend poor rehabilitation outcomes during the approval stage, and for mining companies to undertake poor rehabilitation in the first instance and only undertake an adequate standard of rehabilitation where there will be a financial reward through the offsetting system.

³¹ Specifically,

- In the case of Part 4 local development, a consent authority may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the consent authority determines that *the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development*. The consent authority *must give reasons for a decision* to reduce or increase the number of biodiversity credits (BC Act, s 7.13(4)).
- In the case of State Significant Development or State Significant Infrastructure, the Minister *may* require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values. The Minister is not required to justify the decision having regard to the environmental, social and economic impacts of the proposed development, or provide reasons for the decision BC Act, s 7.14(3)).
- In the case of Part 5 activities, the determining may require the proponent to retire biodiversity credits to offset the residual impact on biodiversity values. If the number of biodiversity credits required to be retired is less than that specified in the biodiversity development assessment report, the determining authority is to *give reasons for the decision to reduce the number of biodiversity credits* (BC Act, s7.15(4)).

³² For example, landholders are only required to ‘make reasonable efforts to manage the set-aside area in a manner expected to promote vegetation integrity in the set-aside area’ (Land Management (Native Vegetation) Code 2018, clause 18(1)(a)). Without a clear requirement for landholders that

set-asides achieve no net loss or better, or detailed guidance about the location, type, extent, quality and diversity of vegetation provided, there is a high risk that set-asides will not actually deliver outcomes to compensate for the biodiversity values that are lost. Further, while set-aside areas are intended to be managed in perpetuity (i.e. set-asides run with the land so as to apply to future landholders), legal requirements under the LLS Act are that set-asides are recorded on a public register (Local Land Services Act 2013, s 60ZC and Local Land Services Regulation 2014, clause 130). This is not as effective as registering set-asides on title.

³³ *Land Management (Native Vegetation) Code 2018*, clause 18(1)(a).

³⁴ A category of biodiversity certification, called strategic biodiversity certification, is available for planning authorities only – see *Biodiversity Conservation Act 2016*, clause 8.5(2)

³⁵ See, for example, EDO, *Submission on the NSW biodiversity and land management reforms: Draft regulations and products on public exhibition*, June 2017, available at https://www.edo.org.au/wp-content/uploads/2020/08/170615_EDO_NSW_Submission.pdf

³⁶ See <https://www.westernsydneyairport.gov.au/environment-heritage/environment/biodiversity>

³⁷ See, for example:

- The Guardian, ‘*Development should stop*’: serious flaws in offsets plan for new western Sydney airport, 17 February 2021, available at <https://www.theguardian.com/environment/2021/feb/17/development-should-stop-serious-flaws-in-offsets-plan-for-new-western-sydney-airport>
- The Guardian, *Environment officials questioned use of land government already owned as offset for western Sydney airport*, 2 August 2021, available at <https://www.theguardian.com/environment/2021/aug/02/environment-officials-questioned-use-of-heritage-listed-land-as-offset-for-western-sydney-airport>

³⁸ See Table 3: Summary of impacts based on the Assessment Report in Department of Planning, Industry, and Environment, *The Draft Cumberland*

Plain Conservation Plan, August 2020, p 36, available at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Strategic-conservation-planning/Cumberland-Plain-Conservation-Plan/Community-engagement>

³⁹ See <https://www.edo.org.au/wp-content/uploads/2020/10/201009-EDO-Submission-on-the-Draft-Cumberland-Plain-Conservation-Plan.pdf>

⁴⁰ Updates on the status of the Cumberland Plain Conservation Plan can be found on the Department of Planning and Environment's website: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Strategic-conservation-planning/Cumberland-Plain-Conservation-Plan/Final-report#:~:text=The%20Cumberland%20Plain%20Conservation%20Plan%20%28CPCP%29%20was%20finalised,while%20unlocking%20delivery%20of%20urban%20growth%20and%20development>

⁴¹ See https://environment.des.qld.gov.au/__data/assets/pdf_file/0022/266062/offsets-policyv1-12.pdf

⁴² See Schedule 21 of the Planning Regulation 2017 (Qld)

⁴³ While coordinated projects under the *State Development and Public Works Organisation Act 1971* (Qld) are often assessed by the Coordinator-General using the environmental offsets framework as a guide, this is not mandatory, and there is no certainty and transparency around this process.

⁴⁴ Queensland Government, *A review of Queensland's environmental offsets framework a discussion paper*, February 2019, available at https://www.qld.gov.au/__data/assets/pdf_file/0018/94131/qld-enviro-offsets-framework-discuss-paper.pdf

⁴⁵ See <https://www.edo.org.au/wp-content/uploads/2022/06/190424-EDO-Submission-to-Review-of-Biodiversity-Offset-Framework.pdf>

⁴⁶ Victorian Department of Environment, Land, Water and Planning, *Guidelines for the removal, destruction or lopping of native vegetation*, available at https://www.environment.vic.gov.au/__data/assets/pdf_file/0021/91146/Guidelines-for-the-removal,-destruction-or-lopping-of-native-vegetation,-2017.pdf

⁴⁷ <https://planning-schemes.app.planning.vic.gov.au/Victoria%20Planning%20Provisions/ordinance>

⁴⁸ See <https://www.environment.vic.gov.au/native-vegetation/review-of-native-vegetation-clearing-regulations>

⁴⁹ See, for example, *McDonald v West Wimmera Shire Council* (Red Dot) [2019] VCAT 70 (16 January 2019)

⁵⁰ See EJA, *Submission in response to Draft native vegetation clearing regulations and guidelines*, 2017, p 7, available at https://envirojustice.org.au/wp-content/uploads/2017/02/EJA_native_vegetation_clearing_submission_Feb-2017.pdf

⁵¹ See <https://envirojustice.org.au/publications/new-victorian-planning-provisions-and-guidelines-on-removing-native-vegetation/>

⁵² See https://envirojustice.org.au/wp-content/uploads/2017/02/EJA_native_vegetation_clearing_submission_Feb-2017.pdf

⁵³ https://envirojustice.org.au/sites/default/files/files/EJA_briefing_native_vegetation_clearing_regulations_consultation.pdf

⁵⁴ https://envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/native_vegetation_offsets_report.pdf

⁵⁵ See <https://www.ipcn.nsw.gov.au/projects/2020/05/brandy-hill-quarry-expansion-project-ssd-5899>

⁵⁶ See Professor Graeme Samuel AC, *Independent Review of the EPBC Act – Final Report*, October 2020, available at <https://epbcactreview.environment.gov.au/resources/final-report>

⁵⁷ Victorian Auditor-General's Office, *Protecting Victoria's Biodiversity*, October 2021, <https://www.audit.vic.gov.au/sites/default/files/2021-10/20211013-Protecting-Victoria%27s-Biodiversity.pdf>

⁵⁸ Victorian Auditor-General's Office, *Offsetting Native Vegetation Loss on Private Land*, May 2022, <https://www.audit.vic.gov.au/sites/default/files/2022-05/20220511-Offsetting-Native-Vegetation-Loss-on-Private-Land.pdf>

⁵⁹ Parliament of Victoria, Legislative Council Environment and Planning Committee, *Inquiry into ecosystem decline in Victoria, Committee Final Report*, 2 December 2021, available at <https://new.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-ecosystem-decline-in-victoria/reports>

⁶⁰ See further <https://www.environment.gov.au/biodiversity/bushfire-recovery/bushfire-impacts/expert-panel>; see also <https://www.awe.gov.au/environment/biodiversity/threatened/nominations>

⁶¹ See NSW *Wildlife and Conservation Bushfire Recovery: Medium-term response plan*, February 2021, available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Fire/nsw-wildlife-and-conservation-bushfire-recovery-medium-term-response-plan-200478.pdf>; see also the *Wildlife and Conservation Bushfire Recovery: Immediate Response*, published in January 2020 and *Fire and the Environment 2019–20 Summary*, published in May 2020, available at <https://www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/fire/park-recovery-and-rehabilitation/recovering-from-2019-20-fires/understanding-the-impact-of-the-2019-20-fires>

⁶² See Queensland Government, *2019 Queensland Bushfires - State Recovery Plan 2019-2022*, August 2020, available at <https://www.qra.qld.gov.au/2019-queensland-bushfires>;

⁶³ See <https://www.wildlife.vic.gov.au/home/biodiversity-bushfire-response-and-recovery>; See also Victoria Department of Environment, Land, Water and Planning, *Victoria's bushfire emergency: biodiversity response and recovery - Version 2*, August 2020, available at https://www.wildlife.vic.gov.au/__data/assets/pdf_file/0030/484743/Victorias-bushfire-emergency-Biodiversity-response-and-recovery-Version-2-1.pdf

⁶⁴ Environmental Defenders Office, *Submission to the Inquiry into the integrity of the NSW Biodiversity Offsets Scheme*, 14 September 2021, available at <https://www.edo.org.au/wp-content/uploads/2021/11/210914-Inquiry-into-the-integrity-of-the-NSW-Biodiversity-Offsets-Scheme-EDO-submission.pdf>

⁶⁵ Audit Office of New South Wales, *Effectiveness of the Biodiversity Offsets Scheme*, 31 August 2022, available at <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>

⁶⁶ New South Wales Parliament, Legislative Council, Portfolio Committee No. 7, Integrity of the NSW Biodiversity Offsets Scheme. Report no. 16, November 2022, available at <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2822>

⁶⁷ See Table 3: Summary of impacts based on the Assessment Report in Department of Planning, Industry, and Environment, *The Draft Cumberland Plain Conservation Plan*, August 2020, p 36, available at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Strategic-conservation-planning/Cumberland-Plain-Conservation-Plan/Community-engagement>

⁶⁸ Department of Planning, Industry and Environment, *Conserving western Sydney's threatened bushland Growth Centres Biodiversity Offset Program Annual Report 2018-19*, May 2020, available at <https://www.environment.nsw.gov.au/research-and-publications/publications-search/growth-centres-biodiversity-offset-program-annual-report-2018-19>

⁶⁹ EPBC Act Terms of Reference outline the requirements for the Strategic Impact Assessment Report for the Cumberland Plain Conservation Plan for the purpose of the EPBC Act. A copy is available here [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/AA+Exhibitions/Final+Terms+of+Reference+\(1\).pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/AA+Exhibitions/Final+Terms+of+Reference+(1).pdf)

⁷⁰ A copy of our full submission on the Draft Cumberland Plain Conservation Plan is available at <https://www.edo.org.au/publication/submission-draft-cumberland-plain-conservation-plan>





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