

# IPART BIODIVERSITY OFFSETS SUBMISSION

Lynda Newnam 8<sup>th</sup> October 2024

**NSW Minister for the Environment Penny Sharpe** (Appendix A.1)

“We cannot ignore the truth: biodiversity in NSW is in **CRISIS**. Our goal must be to leave nature better off than we have found it.”

**Participant IPART Hearing 24<sup>th</sup> September 2024** (Appendix A.1)

Offsets “should be there to promote better environmental outcomes”.

Firstly, thankyou IPART for the consultation process adopted. Your public hearing of 24<sup>th</sup> September 2024 (see Appendix A) was in marked contrast to what I experienced the previous day for freight. Both biodiversity and supply chain planning and management are critical where government and experts require broad community ‘buy-in’.

I participated in your first hearing on offsets last year and subsequently made a submission (Appendix C.8). Since then, the NSW Auditor General has provided a damning report on the management of Threatened Species (Appendix C.5), the Government has provided its response (Appendix 7) to the Henry Review of the Biodiversity Conservation Act (BCA) and introduced to NSW Parliament the Offsets Amendment Bill which is currently being reviewed by Portfolio Committee 7 of the NSW Legislative Council. I made a submission (Appendix C.4) and attended the second Hearing 20<sup>th</sup> September 2024 (Appendices C.2 & D.)

In submissions I’ve referred to my experiences of Offsets, beginning with the application of the 2002 EPA Draft Green Offsets for conditioning the Port Botany Expansion. \$8million was allocated to support target shorebird species protected at State, Federal and International levels. Not one target has been achieved. I followed the Port development for over 20 years, including the ‘sale’ and ‘Newcastle Penalty’ which is still ‘live’ in the Federal Court with Mayfield Developments vs NSW Ports case. I mention this in the context of the first rule in Biodiversity Conservation being **AVOID**. I provided some details on the case last year (Appendix C.8) and suggested at the time that case studies need to be provided to demonstrate what works and

doesn't work and to assess truth, transparency and accountability within NSW Planning processes. All I have ever seen have been a few random 'good news' stories from the Department.

Another case study I provided concerned Marine Biodiversity Offsets which rarely get a mention. Notwithstanding, the UNSW Centre for Ecosystem Science did recommend amalgamating the two scientific committees in their Henry BCA Review (Appendix C. 10) This appears not to have been considered despite the recognised expertise of the group. It was only 1 of 2 Academic submissions to the Review. I've quoted this recommendation on several occasions in the context of observing the 'pass the parcel' played out at NSW Budget Estimates, when the Environment Minister was asked about loss of threatened seagrasses (also threatened species



habitat) off the National Park at Kurnell. For anyone unfamiliar with the environment it would have been reasonable to conclude that whales and seals existed in an ecosystem without seagrass and fish. For this MBOS the value is around \$3million<sup>i</sup> for a project that is well known to be a folly, the \$78million Kamay Ferry(Fishing) Wharves at Kurnell and La Perouse. My submission was made in May 2022 (Appendix C.12) to the NSW Legislative Council's Inquiry into the Integrity

of the Biodiversity Offsets Scheme. I wrote this shortly after being told (verbally) by the Infrastructure Minister at the time that it was 'a crock of a project'. It was on the backburner unlikely to proceed, however, around late June/July additional funding was forthcoming with the contract finalised late July and Planning providing a final report publicly in early August. My submission in May 2022 concerned process and how the proponent's threatened seagrass expert contradicted what the Fisheries expert had to say. Further along in the process questions were asked at NSW Budget Estimates on 'frank and fearless' advice that had been provided and I learnt that this was a requirement of NSW Public Servants under the GSE Act and in fact there were 22 instances of 'frank and fearless' in the August 2022

## Behaving Ethically Guidelines

[https://www.psc.nsw.gov.au/assets/psc/documents/nsw\\_psc\\_behaving\\_ethically\\_2022.pdf](https://www.psc.nsw.gov.au/assets/psc/documents/nsw_psc_behaving_ethically_2022.pdf) issued under the Act and in the October 2014 edition:

<https://www.psc.nsw.gov.au/sites/default/files/2020-10/Behaving%20Ethically%20Guide.pdf>

Another 'interesting' example I have previously provided has concerned the removal of critically endangered ESBS in February this year after development approval was provided in 2022. Ten years previous, the Office of Environment and Heritage along with Randwick Council staff had recommended environmental rezoning in the 2012 LEP. Rezoning didn't occur and instead about \$1million has been spent in legal and consulting fees and staff time. The EPBC referral that was made with the 2018 DA (there were many DAs over the period) was withdrawn May this year. I haven't had an answer from my written inquiry to Federal DCCEEW and their State counterpart DCCEEW wasn't interested when approached. I provided some detail at Appendix C.4.

Critically Endangered I understood meant 'one step away from extinction'. Avoid, I thought meant don't proceed unless something was needed. Yet when it came to the Kamay Ferry Wharves they weren't 'needed'. As the TfNSW Coordinator-General said at NSW Budget Estimates this was not a Transport initiative. It wasn't plugging a critical public transport gap. The statement of purpose provided in the EIS and in the EPBC referral changed significantly during the course of the project, however, the Commonwealth didn't address that in their Statement of Reasons

[https://epbcpublicportal.awe.gov.au/entity/sharepointdocumentlocation/2bb2e0b3-440a-ee11-8f6d-000d3a794f5a/2ab10dab-d681-4911-b881-](https://epbcpublicportal.awe.gov.au/entity/sharepointdocumentlocation/2bb2e0b3-440a-ee11-8f6d-000d3a794f5a/2ab10dab-d681-4911-b881-cc99413f07b6?file=2020-8825-Statement-of-Reasons.pdf)

[cc99413f07b6?file=2020-8825-Statement-of-Reasons.pdf](https://epbcpublicportal.awe.gov.au/entity/sharepointdocumentlocation/2bb2e0b3-440a-ee11-8f6d-000d3a794f5a/2ab10dab-d681-4911-b881-cc99413f07b6?file=2020-8825-Statement-of-Reasons.pdf). The Energy Australia Cable project from Kurnell to La Perouse had severely impacted threatened seagrass when that part of the project was poorly executed. The expert opinion was 'no more' and yet with \$millions in the offering others stepped up for replanting experiments. Replanting naturally detached fragments is 'rehabilitation' that should be part of the management regime of Botany Bay for industrial impacts<sup>ii</sup>. Removing healthy established seagrass and replanting is another matter altogether. Working Dog's September 2014 satire Utopia captures Project Need perfectly (Appendix C.13)

What the Environment Minister refers to as a Biodiversity CRISIS has been happening because there are case histories like the above all over the state along with poor management of protected areas, poor design in identifying and establishing protected areas and corridors, and clueless managers who don't provide leadership for major landholders (LGAs, Commercial and Industry) and don't bring community along.

At the Legislative Council Hearing 20<sup>th</sup> September 2024 (Appendices C2) I almost found myself nodding when ██████████ reminisced on the 'good old days' with his mention of ██████████ ██████████ of Draft Green Offsets fame. (Appendix D). Likewise, at the IPART hearing 24<sup>th</sup> September 2024, when ██████████ spoke about VPAs and S94/S7.11. <sup>iii</sup> Departmental staff I gather are making the best of what they can with the 'deck chairs'. But who else? Enthusiastic small landholders like those I met when the scheme was first being rolled out are not accommodated in the process (Appendix B. + comments on cost of entry). Major players express frustration (Appendix B).

I do think a simpler system of up front planning for conservation, with AVOID taken seriously and truth, transparency and accountability mandated and 'policed' should be considered. There are the comments in Appendix B, noted at the hearing, and adding those to what I heard in Parliament and at last year's IPART hearing and then from environmental activists, my conclusion is the Offsets system is 'not fit for purpose' and the Amendment Bill and your efforts to tinker will make little difference.

It is highly unlikely to improve outcomes for housing, and we'll likely still have a Biodiversity CRISIS (terrestrial and marine) with most conservationists (paid and unpaid) as well as various reviewers documenting the decline of all but a few species, probably most of those being invasive. ██████████ at a recent Chief Scientist seminar (Appendix C.6) spoke passionately about bees. I didn't see any interest from NSW's DCCEEW when Critically Endangered ESBS was being cleared for 75 dwellings (with 30/15 standard uplift now at 98) on the border of Kamay Botany Bay National Park. When Critically Endangered don't ring alarm bells the species that support species supporting Threatened Species are not in the race.

I recommend you add a preamble to your Review indicating that you are reporting within the TOR, however, that we need a new system not more tinkering.

Thank you again and please don't hesitate to contact me should I need to clarify or correct anything.

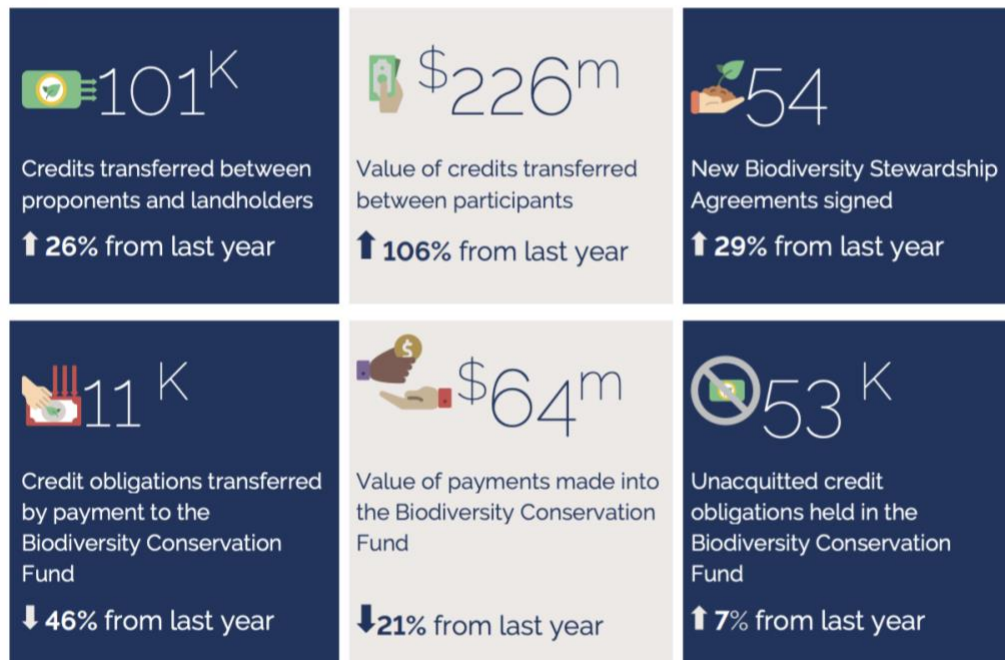


## **APPENDIX A – comments noted at IPART Hearing 24/9/24 – 40 participants**

1. Should be there to promote better environmental outcomes.
2. We've been hearing for last hour how complicated it is. What are we trying to achieve?
3. Valuers don't know how to value.
4. A key issue with the market is that there are multiple registers (transactions, demand, BCT credits sought, etc) which are fragmented and unclear. There are also multiple errors in the credit transactions register. Thus, it is very hard to get clarity on what is occurring in the market.
5. Increased timeframes to allow for (a) credit transfers and (b) credit retirements. Also issues with sign offs needed making things very slow; could be greatly improved.
6. SAll (serious and irreversible impact) category 4 entities are an emerging issue, as Nature Markets and Offsets (NMO) are not allowing Stewardship sites to generate credits. This means that there effectively can't be a market for these entities, and landholders with these biodiversity values are not rewarded.
7. Lack of clarity on application of species polygons across both impact (BDAR) and BSA sites.
8. Price distortion recorded on register especially if there this an interrelated party credit transfer. The department then uses that sale price (below market) towards weighted averaging of pricing, this is distorting the true credit market values.
9. A market oversight function needs to look at costs for participation.
10. These markets are about to explode.
11. Volumes are going to increase exponentially in future years.
12. Registers are backward in functionality and static.
13. Some Government Departments don't record true values of credits. Look at the dashboards with pricings all over the place.
14. Very difficult dealing with Biodiversity Conservation section.
15. Too much uncertainty and lack of general knowledge.
16. Fair amount of exhaustion in the department.
17. Sponsoring private landholders is very difficult.

18. Problems with database and species don't have unique ID. Why is it so difficult. Our finance people are at their wits end.
19. Lots of red tape.
20. Some species difficult to create credits.
21. Biodiversity issues biggest problem with housing crisis.
22. Doesn't deliver certainty.
23. It is so difficult.
24. Lots drop by a third to a half because of BCA.
25. Registers fragmented and unclear.
26. Data is not reliable.
27. Problem with government staff who don't understand they work in markets.
28. S94, S711 easier for a similar system.
29. Provide more data in registers.
30. The data just isn't there.

Figure 1.1 Snapshot of the biodiversity credits market in 2023-24



a. "m" refers to millions, "k" refers to thousands.

b. Figures for Biodiversity Stewardship Agreements exclude variations to existing Biodiversity Stewardship Agreements

Source: IPART analysis, using data from the Department of Climate Change, Energy, Environment and Water and Biodiversity Conservation Trust

## APPENDIX B – LinkedIn Comments September 2024



I am not after money. Only 6 hectares very high value conservation land. How best to protect it?

2d Like Reply



**NSW Biodiversity Conservation Trust** ✓

how wonderful that you're the caretaker of such land.

We're part of a network of private land conservation organisations who offer a range of opportunities for landholders. Our eligibility is, in the main, set at a minimum of 20 hectares, but we do often speak with other landholders who have smaller areas and encourage them to explore the options presented by our friends at **Humane Society International Australia** Wildlife Land Trust, or the Land for Wildlife Program of the **Community Environment Network**.

You can explore both options from [www.bct.nsw.gov.au/cards/apply-voluntary-agreement](http://www.bct.nsw.gov.au/cards/apply-voluntary-agreement).



BCT.NSW.GOV.AU

Apply for a voluntary agreement | BCT



2d Like Reply

## APPENDIX C – References

1. 24<sup>th</sup> September 2024 IPART Workshop for Credit Buyers  
<https://www.ipart.nsw.gov.au/ipart-biodiversity-market-monitoring-2023-24-stakeholder-workshops>



2. 20<sup>th</sup> September 2024 Transcript Legislative Council Inquiry Biodiversity Offsets Amendment Hearing (attended)  
<https://www.parliament.nsw.gov.au/lcdocs/transcripts/3390/Transcript%20-%20Biodiversity%20-%2012%20September%202024%20-%20UNCORRECTED.pdf> and link to video  
<https://www.youtube.com/watch?v=E1bUquBIO1E&t=13602s>
3. 9<sup>th</sup> September 2024 IPART Discussion Paper  
[https://www.ipart.nsw.gov.au/sites/default/files/cm9\\_documents/Discussion-Paper-2023-24-Biodiversity-Market-Monitoring-Review-9-September-2024.PDF](https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Discussion-Paper-2023-24-Biodiversity-Market-Monitoring-Review-9-September-2024.PDF)
4. 6<sup>th</sup> September 2024 Submission Lynda Newnam NSW Legislative Council Inquiry Biodiversity Offsets Amendment  
<https://www.parliament.nsw.gov.au/lcdocs/submissions/87571/0039%20Lynda%20Newnam.pdf>
5. 15<sup>th</sup> August 2024 NSW Auditor General Threatened Species  
<https://www.audit.nsw.gov.au/our-work/reports/threatened-species-and-ecological-communities>
6. 14<sup>th</sup> August 2024 NSW Chief Scientist Seminar Professor Carolyn Hogg, University of Sydney: Biodiversity, Bilbies and Battling Extinction  
<https://www.youtube.com/watch?v=owlaHXgNc3I>
7. July 2024 NSW Plan for Nature  
<https://www.nsw.gov.au/sites/default/files/noindex/2024-07/NSW%20plan%20for%20nature%20NSW%20Government%20response%20to%20the%20reviews%20of%20the%20Biodiversity%20Conservation%20Act%202016%20and%20the%20native%20vegetation%20provisions%20of%20the%20Local%20Land%20Services%20Act%202013.pdf>
8. 15<sup>th</sup> September 2023 Submission Lynda Newnam to IPART Review  
[https://www.ipart.nsw.gov.au/sites/default/files/cm9\\_documents/Supplementary-Submission-Lynda-Newnam-15-September-2023.PDF](https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Supplementary-Submission-Lynda-Newnam-15-September-2023.PDF)
9. April 2023 Submission Lynda Newnam Statutory Review Biodiversity Conservation Act 2016 <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/Biodiversity-Act-5-year-review-submissions/biodiversity-act-consult-submission-113-newman.pdf>

10. April 2023 Biodiversity Conservation Act 2016 Review Submission from UNSW Centre for Ecosystem Science <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Biodiversity/Biodiversity-Act-5-year-review-submissions/biodiversity-act-consult-submission-127-unsw-centre-for-ecosystem-science.pdf>
11. 30<sup>th</sup> August 2022 NSW Auditor General Biodiversity Offsets <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>
12. 7<sup>th</sup> May 2022 Submission Lynda Newnam NSW Legislative Council Inquiry into Integrity Biodiversity Offsets Amendment [https://www.parliament.nsw.gov.au/lcdocs/submissions/78763/0104%20Lynda%20Newnam\\_REDACTED.pdf](https://www.parliament.nsw.gov.au/lcdocs/submissions/78763/0104%20Lynda%20Newnam_REDACTED.pdf)
13. 17<sup>th</sup> September 2014 Working Dog Productions Excerpt Utopia “Do Tasmanians Want a New Stadium” Season 1 Episode 6 ‘Then We Can Build It’. <https://youtu.be/3XUn-EsThcE?si=hk8HcO MIQ42F39>



**Do Tasmanians Want A New Stadium? | Utopia**

### **Transcript**

JIM: well we've been right through the report

RHONDA: it's very exciting

JIM: yeah they tossed it around with the folks upstairs and it's pretty clear what Tassie is crying out for

RHONDA: loud and clear

TONY: do tell

JIM: a new stadium

RHONDA: just over the page

TONY: that's 14th

JIM: well it's not an order of priority

TONY: I did the report it's an order of priority

JIM: but that's highlighted

TONY: by you

.....

TONY: there's no point in us doing community consultation if we're not actually going to listen to the community

JIM: I thought we wanted to appear consultative

**APPENDIX D. The Good Old Days** from transcript pages 16-17, 20<sup>th</sup> September 2024 <https://www.parliament.nsw.gov.au/lcdocs/transcripts/3390/Transcript%20-%20Biodiversity%20-%202012%20September%202024%20-%20UNCORRECTED.pdf>

*If you lodge a development application there will be further calls, sometimes completely different calls, because they are different teams. The people who do rezonings are strategic planners; the people who do development application assessments are statutory planners. They often have completely different views of the interpretation of anything that is vaguely ambiguous in legislation. It's a note for the Committee that we want to ensure that we avoid ambiguity as much as possible. Yet this is the conundrum: We want to ensure flexibility as well, so that we can get*

*the best possible outcomes overall. Easing the financial burden on housing supply is obviously something that, in our view, will generate a double benefit. The more housing supply we have at a lower price—it has a potential to protect a net positive agenda. How? We would like to see the Government putting money into the biodiversity conservation offset scheme. Put up some grants to support areas where the Government sees there to be an opportunity for development of new communities. It's almost like back in the days of [REDACTED] [REDACTED] when the Growth Centres Commission was established as a bio certified conservation area. [REDACTED] preserved massive swathes of national park in close consultation with [REDACTED] and with lots of environmental groups along the way. I know I worked very closely and personally with [REDACTED] back in those times, about ensuring that we could chew gum and skip rope.*

The CHAIR: *Those were the good old days, weren't they?*

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<sup>i</sup> June 2023 version Marine Biodiversity Offset Strategy <https://www.transport.nsw.gov.au/system/files/media/documents/2023/kamay-ferry-wharves-marine-biodiversity-offset-strategy-june-2023.pdf>

<sup>ii</sup> The Botany Bay Strategy 2004 was supposed to cover this and included a research component, the Botany Bay Studies Unit at UNSW. The \$1.5million promised as seed money was then directed in 2005 to the establishment of the Sydney institute of Marine Science (SIMS). In February 2023 SIMS published the Science of Gamay [https://sims.org.au/wp-content/uploads/2023/02/Gamay-Botany-Bay\\_report\\_WEB\\_Nov16.pdf](https://sims.org.au/wp-content/uploads/2023/02/Gamay-Botany-Bay_report_WEB_Nov16.pdf) It is supposed to be a comprehensive review but there is no section on threatened species and White's Seahorse, 1 of the 4 EPBC species assessed for the Kamay Ferry Wharves SSI-10049 & EPBC2020/8825 does not get mentioned. Although Botany Bay is identified as a PFAS/PFOS hotspot with Ampol at Kurnell required to regularly report under its EPL it isn't listed as a known contaminant in the report.

<sup>iii</sup> Stuart Ayres, Elizabeth York and NSW Planning staff referred to the Cumberland Plan Conservation Plan as 'gold standard', however, conservation activists tell other stories and at the Hearing the Chair provided a disturbing example that didn't sound 'gold'.