

## MEMO

**TO:** Dan Martin  
**FROM:** Alex Cockerill  
**SUBJECT:** **Biodiversity Offset Areas**  
**OUR REF:** BOGGABRI-ECO-MEM-  
**DATE:** 15 April 2019

WSP have been engaged by Boggabri Coal Operation Pty Limited (BCOPL), a subsidiary of Idemitsu Australia Resources Limited (Idemitsu) to provide further information to the Independent Planning Commission of NSW on the timing and status of the biodiversity offset area (BOA) requirements for the Boggabri Coal Project (the Project). The commissioners have requested further information on;

- History of the offsets, noting the four year delay in getting the offsets
- Where up to with the offsets, what still need to be done
- Why there is a further delay from Dec 2019 until Feb 2020
- Detail the offsets that have been sought to replace the originally proposed TSR land.

### 1.1 HISTORY OF BCOPL BIODIVERSITY OFFSETS

BCOPL are committed to delivering a comprehensive biodiversity offset package that meets and exceeds the Biodiversity offset requirements of the Project Approval (PA 09\_0182). This is evident by the recent revised Biodiversity Offset Strategy (BOS) Rev F submitted to the Department of Planning and Environment (DPE) 15 November 2018 which outlines the 10,642.5 ha of land BCOPL, currently own and manage for biodiversity conservation. The previous version of the BOS was approved in September 2017 by DPE.

The history of biodiversity offsets for the Project Approval (PA 09\_0182) has required a staged approach involving the initial identification and quantification of the offset areas within an approved BOS that incorporated the commitment to provide additional 1000 ha of Box Gum Woodland offset (Condition 43 of Schedule 3) and subsequent revision of the BOS following the development of the DPE Leard Forest Mining Precinct Regional Biodiversity Strategy (Schedule 3, Condition 50).

The initial approved BOS also incorporated a commitment for the management of approximately 441 ha of Crown land within the overall BOS. In the absence of these Crown land commitment offsets a suitable alternative offset area was required.

To meet the project's residual offset requirements under Condition 43 and Crown Land exclusions, BCOPL acquired five additional BOAs, including:

- Sunshine (738 ha)

- Nioka North (867.9 ha)
- Goonbri (223.6 ha)
- Jerralong (570 ha)
- Braefield (1,400.7 ha).

These offset areas were acquired by BCOPPL and incorporated into a revised BOS Rev E submitted to the Department of Planning and Environment (DPE) 16 August 2017, and approved, 1 September 2017.

In addition to the BOS a Biodiversity Management Plan (BMP) outlining the management requirements for the offset areas was required (Schedule 3, Condition 49) and submitted to DPE for Approval in October 2015. The BMP was required to be revised and developed in accordance with Stage 2 of the Leard Forest Mining Precinct Regional Biodiversity Strategy (Schedule 3, Condition 50).

As part of the State conditions of approval for the Project, specifically Conditions 47 and 52, BCOPPL is required to provide long term security of the offset areas identified in the BOS and a conservation bond for the implementation of restoration and management of these areas. The EPBC Approval (EPBC 2009/5256) provides conditions 7 and 8 which are also relevant to the establishment of securing offset areas within the BOS.

The delays to the approval of the BOS and BMP have directly impacted on the finalisation and timeframe for establishing the long term security of the offset areas under conditions 47 and 52. Many of the delays are subject to a range of factors outside of the control of BCOPPL, including;

- Significant delays to the various stages of the DPE, Leard Forest Mining Precinct Regional Biodiversity Strategy which guides the requirement for the revision to the BOS and BMP
- delays and changes to the offset areas identified for possible inclusion within the NPWS reserve estate.
- Significant delays in confirmation from Crown Lands the areas suitable for acquisition
- Changes in the relevant biodiversity conservation legislation in NSW and corresponding conservation mechanisms available to the Project.

Throughout this process BCOPPL have always provided ongoing and regular consultation with the relevant regulatory authorities (DPE, OEH, DP&I-Lands and Namoi Catchment Management Authority (CMA) (now North West Local Land Services (NWLLS)) on the status and timing of the review of the BOS, BMP and long term security of the offset areas under conservation agreements. A summary of the consultation time line is provided below;

- On 18 July 2012 Idemitsu met with David Kitto from DP&I to discuss the projects approval conditions specifically in relation to the BOS previously prepared for the modification.
- On 20 November 2013 Idemitsu met with OEH (Peter Christie and Sonya Ardill) to discuss the development of the BOS in particular the acquisition of identified additional offset properties.
- On 20 November 2013 Idemitsu met with David Kitto and Mike Young from DP&I to discuss the development of the BOS in particular the acquisition of identified additional offset properties.

- DP&I identified that while the regional strategy was still in development and uncertainty remained on the timing of the Stage 1 and Stage 2, DP&I would be supportive of Idemitsu moving forward with the development of a revised BOS incorporating the additional 1000 ha of Box Gum Woodland.
- On 21 April 2015 Idemitsu met with Peter Christie from OEH to present the revised BOS properties and implementation plans for threatened biodiversity.
- OEH identified that the revised BOS should include the species-specific outcomes in regards to habitat provided within the biodiversity offsets, ratios and a split between the remnant and proposed restoration of derived grassland.
- OEH requested that the vegetation types within the biodiversity offset areas be linked to the state-wide classification of vegetation (PCTs).
- On 23 April 2015 Idemitsu met with Dennis Boschma from North West Local Land Services (NWLLS) to present and discuss the BOS additional properties and implementation plans for TS.
- On 4 June 2015 BCOPL met with Steve O'Donoghue from DP&E and Terry Mazzer from OEH and inspected the Nioka North and Sunshine Offsets.
- Detailed ecological reports on the proposed BOAs were also provided to DP&E in June 2015.
- The various draft BMPs have been sent to the Department of Environment and Energy for comment. No further comments have been provided.
- DP&E provided comments on the BOS in correspondence dated 28 October 2015. These comments have been incorporated and addressed in the revised BOS. The BOS was discussed in the CCC meeting on the 15th of November 2015 no comments at the meeting. No further comments were provided.
- OEH provided comments on the BOS in correspondence provided on the 18 January 2016. These comments have been considered and addressed in the revised BOS.
- The BMP and BOS has been sent to the CCC on the 16th of February 2016, and was discussed at the CCC on the 3rd of March. No further comments were provided.
- BCOPL have undertaken ongoing consultation with the DPI-Lands regarding the proposed purchase and /or land management of these remaining Crown Land parcels (approximately 330.7 ha) previously identified within the BOS. In a letter dated 11 March 2016, DPI-Lands advised BCOPL that they were unlikely to be in a position to sell and/or agree to the management for conservation of the majority of the remaining land parcels. Given the unlikely suitability of these land parcels and associated timeframes identified by DPI-Lands of any potential sale, a revised BOS was prepared in accordance with Condition 43, which identified substitute areas that would provide an equivalent increase in biodiversity values to the residual 298.9 ha of land. This additional area was included and approved in BOS Rev E 2017
- November 2016, BCOPL met with Steve O'Donoghue from DP&E and Steve Cox from OEH and inspected the additional offset properties Braefield, Goonbri and Jerralong.
- OEH provided comments on the BOS in correspondence provided on 15 May 2017. These comments were considered and addressed in the revised BOS.
- On 1 June 2017 BCOPL and WSP met with OEH to present and discuss the revised BOS, specifically regarding OEH recommendations for the BOS - August 2016 version.

## 1.2 REVISIONS TO THE BOS AND BMP

BCOPL have undertaken a number of modifications (modification 3, 4 and 5) to the Project Approval resulting in minor changes to the proposed offset areas and revisions to the BOS and BMP to accommodate these changes. These incorporate:

- Minor changes to the type and extent of vegetation/ habitats within identified offsets resulting from independent verification under Condition 9 of the project's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) approval (EPBC 2009/5256).
- Inclusion of additional offset areas required under Condition 43 of Schedule 3 of the project's state conditions of approval, incorporating an additional 1,000 ha offset
- Minor modifications (modification 3, 4 and 5) to the project boundary and the upgrade of Goonbri Road within previously identified BOAs of the approved BOS (Parsons Brinckerhoff 2010)
- Incorporation of additional offsets for minor understorey clearing outside of the approved mine disturbance boundary
- Suitable alternative offset areas to the residual Crown Land area excluded from previously identified BOAs of the approved BOS (Parsons Brinckerhoff 2010).
- Revision of the BOS with reference to the Leard State Forest Regional Biodiversity Stage 1 – Scoping Report and recent changes to the NSW biodiversity offset policy and guidelines, including the Office of Environment and Heritage (OEH) principles for the use of biodiversity offsets in NSW, Plant Community Types (PCTs) for classifying vegetation and the NSW Biodiversity Offsets Policy for Major Projects – Framework Biodiversity Assessment Methodology.
- Revisions of the BMP and BOS in accordance with Schedule 3, Condition 50 of the Project Approval. Under this condition the BMP is to be revised in consultation with OEH, DoEE, DPI, the CCC and the North West Branch of the LLS to demonstrate consistency with the findings of the Leard Forest Mining Precinct Regional Biodiversity Strategy (Umwelt 2017) and include implementation plans arising from Conditions 44 and 46.
- Revisions to address:
  - Minor changes to the type and extent of vegetation/ habitats within identified offsets resulting from exclusion of easements identified on title
  - Minor change to the Merriendi offset property following a review of land title documentation and ownership.

A summary of each of these matters is discussed below.

### 1.2.1 INDEPENDENT AUDIT OF BIODIVERSITY OFFSET AREAS

In accordance with Condition 9 of the project's EPBC Act approval an independent audit of the approved BOS was undertaken to '*validate the quantity, quality and ecological characteristics of the offset areas in line with the requirements of the department's Environment Protection and Biodiversity Conservation Act 1999 Environmental Offsets Policy October 2012*'.

Results of the independent audit conducted by Niche in December 2013 made changes to the vegetation community/ habitat extents with the BOAs (Niche Environment and Heritage

2014). The verified vegetation community mapping undertaken as part of the independent audit have been adopted in the revised BOS.

## 1.2.2 PROJECT MODIFICATIONS AND GOONBRI ROAD UPGRADE

Following project approval in July 2012, BCOPL have applied for modifications to the project approval, to modify the project's approval boundary for additional activities and ancillary infrastructure. Environmental assessments in accordance with the EP&A Act have been completed for modification 3, 4 and 5. For each of these modification approvals, commitments to provide alternative offsets of similar condition were included in the respective modifications to the Project Approval. These alternative offsets are in addition to the offset requirements for each of the modifications specific impacts, which are now included in the revised BOS with DPE for approval.

Leard State Forest Road was the only road that passed through Leard State Forest and as a result of future mining operations and rail infrastructure, this road was partially decommissioned eliminating access from south to north. Goonbri Road was subsequently upgraded with the realignment passing through the Wirrilah BOA. In accordance with the condition of the Project Approval applicable to the Goonbri Road Upgrade (and relevant to the revised BOS), biodiversity offsets for the impacts of the road upgrade on native vegetation and threatened species habitat was required.

## 1.2.3 REMOVAL OF CROWN LAND

Under Condition 43 of the EP&A Act project approval, BCOPL were required to incorporate a number of parcels of Crown Reserve land (441 ha) subject to a funding/ management agreement with DPI Catchments and Lands. BCOPL purchased a number of the committed parcels of land from DPI-Lands, totalling 110.3 ha. Following ongoing consultation, DPI-Lands subsequently advised BCOPL that they are unlikely to be in a position to sell and/ or agree to the management for conservation of the majority of the remaining parcels of land. Given the improbable suitability of these land parcels and associated timeframes identified by DPI-Lands for any further acquisition, BCOPL provided a revised BOS in accordance with Condition 43, to *identify substitute areas that would provide an equivalent increase in biodiversity values* to the residual 330.7 ha of land.

## 1.2.4 CLEARING OUTSIDE APPROVED PROJECT CLEARING BOUNDARY

A small area of understorey clearing was undertaken by one of BCOPL's contractor's outside the mine disturbance limit but inside the project boundary during the 2014 clearing program. The NSW Department of Planning was informed of the incident and an additional offset area was incorporated into a revised BOS to offset the understorey clearing.

## 1.2.5 REVISION OF APPROVED 2017 REVISED BIODIVERSITY OFFSET STRATEGY

A revision of the approved 2017 BOS Rev E (WSP 2017) was required for the project to address:

- Minor changes to the type and extent of vegetation/ habitats within identified offsets resulting from exclusion of easements identified on title
- Minor change to the Merriendi offset property following a review of land title documentation and ownership.

Furthermore, this revised BOS was prepared to accurately reflect the final offset areas to be subject to in perpetuity conservation in accordance with Schedule 3 Condition 47 of Project Approval (PA 09\_0182). The areas previously included within the easements are also likely to be included in the BOAs and will be managed by BCOPL under the BCOPL Biodiversity Management Plan (BMP).

### 1.2.6 SUMMARY OF ADDITIONAL BIODIVERSITY OFFSET REQUIREMENTS RELEVANT TO REVISED BOS

Additional offset requirements for the project include:

- 1,000 ha of Box Gum Woodland EEC associated with Condition 43 of the EP&A Act project approval
- 74.5 ha of native vegetation associated with modification 3
- 127.1 ha of native vegetation associated with modification 4
- 106 ha of native vegetation associated with modification 5
- 40.4 ha of native vegetation associated with the Goonbri Road Upgrade
- 19.3 ha of native vegetation associated with understorey clearing outside Boggabri Coal's mine disturbance limit
- an additional area of 330.7 ha for replacement of the Crown Land excluded from the approved BOS.

### 1.3 WHERE UP TO WITH THE OFFSETS, WHAT STILL NEED TO BE DONE

The revised BOS Rev F submitted to the Department of Planning and Environment (DPE) on 15 November 2017, outlines the 10,642.5 ha of land BCOPL currently own and manage for biodiversity conservation.

A revised BMP reflecting the changes in the revised BOS Rev F has also been submitted to DoEE for review and Approval. Once the Boggabri Biodiversity Offset Strategy Rev F June 2018 is approved the BMP will be submitted to DPE for approval.

Concurrently with the regulatory review of the BMP, BCOPL is currently finalising its approach to establishing long term security of the offset areas through a range of conservation mechanisms.

BCOPL is seeking further consultation with NPWS for review of the current offset package that it may be considered appropriate for inclusion in the under the National Parks estate.

The remaining offset areas will be secured either via a Biodiversity Stewardship Agreement (BSA) under Biodiversity Conservation (BC) Act 2016 or a Conservation Agreement (CA) under BC Act.

If a BSA is identified as the preferred mechanism for any offset areas, additional field surveys and assessment requirements in accordance with the Biodiversity Assessment Methodology (BAM) are likely to be required and further consultation with the Biodiversity Conservation Trust (BCT).

## 1.4 DETAIL THE OFFSETS THAT HAVE BEEN SOUGHT TO REPLACE THE ORIGINALLY PROPOSED TSR LAND.

Under Condition 43 of the BCOPL Project Approval (PA 09\_0182) BCOPL are required to incorporate a number of parcels of Crown Reserve land within and/ or adjoining the proposed “Namoi Offset Area”. Specifically, this condition requires BCOPL to:

- Identify the special lease/Crown Reserve land subject to a funding/ management agreement with DPI Catchments and Lands, and if this land area is less than the identified 441 ha, then the Proponent must identify substitute areas that would provide an equivalent increase in biodiversity values.

To date BCOPL have purchased a number of the committed land parcels from DPI-Lands, however of the 441 ha committed to in the BOS, a shortfall of approximately 298.9 ha associated with the following parcels remain:

- Lot 160 and Lot 171 DP 755475 – Reserve 93765 for Future Public Requirements
- Lot 263 DP1193634 – Reserve 83990 for Travelling Stock
- Lot 7001 DP 1052587 – Reserve 28354 for Camping and Travelling Stock
- Lot 87 and 89 DP 755475 – Reserve 82995 for Public Recreation and Trigonometrical Purposes
- Lot 7015 DP 1051978, Lot 145 DP 755475 and Lot 1 DP 1197060 – Reserve 52313 for Camping and Water.

BCOPL have undertaken ongoing consultation with the DPI-Lands, regarding the proposed purchase and/ or land management of these remaining Crown Land parcels (approximately 298.9 ha). DPI-Lands have subsequently advised BCOPL that they are unlikely to be in a position to sell and/ or agree to the management for conservation of the majority of the remaining land parcels. For the majority of these parcels the current land-use purposes, including traveling stock reserves, public recreation with right of public access are considered to be incompatible with the proposed management for in perpetuity conservation outlined in the BOS.

While DPI - Lands identified two parcels Lot 160 and Lot 171 DP 755475 – Reserve 93765 for Future Public Requirements) as potentially unconstrained, these parcels would still require consideration of native title. DPI Lands have identified that it is likely that this would significantly delay the timeframe for any potential acquisition.

Given the improbable suitability of these land parcels and associated timeframes identified by DPI-Lands for any further acquisition, BCOPL revised BOS, identifies substitute areas that would provide an equivalent increase in biodiversity to the residual 298.9 ha of Land.

The additional 298.9 ha of Crown Land is currently met by the surplus areas under the revised Namoi, Jerralong and Goonbri BOAs (refer to Table 6.1 of the revised BOS).

## 1.5 WHY THERE IS A FURTHER DELAY FROM DEC 2019 UNTIL FEB 2020

The request for further delay is to align the delivery timeframe of the long term security of the offset areas identified in the BOS under the State Project Approval Condition 47 with the delivery timeframe for securing offsets in the EPBC Approval conditions 7 and 8 which are also relevant to the establishment of securing offset areas within the BCOPL offset package.



The additional extension will provide opportunities to further consultation with OEH and NPWS on the potential dedication of the Merriendi offset adjoining the Leard State Conservation Area within the reserve estate and complete additional assessment of the requirements under BAM to meet a Biodiversity Stewardship Agreement (BSA) from the previous Biobanking Assessment Methodology (BBAM).

## 1.6 CONCLUSION

The revised BOS will provide for the conservation of up to 10,642.5 ha of land, including biodiversity conservation areas and land identified for corridor enhancement. This land consists of approximately 10,494.1 ha of 'Like for Like' native vegetation offsets, to those being impacted by the project, including 7,120.0 ha of remnant vegetation/habitats and the restoration of 3,374.1 ha of derived native grasslands over the medium to long term. The outstanding 148.4 ha of land subject to intensive agriculture and farm dams will be managed as corridor enhancement to provide infilling of canopy within and immediately adjacent existing offset properties to increase connectivity in the region. These corridor enhancement zones will provide an overall improved outcome and support biodiversity conservation areas.

The BOS also incorporates 2,417.3 ha of surplus native vegetation and habitat, additional to its current offset requirements, which will be continually managed to benefit biodiversity conservation within the region but also left available for future offset requirements. The surplus areas of native vegetation and habitat are largely associated with the Namoi, Jerralong, Goonbri, Mallee, Nioka North, Sunshine and Braefield BOAs.

BCOPL are committed to managing the entire offset area (10,642.5 ha) under the BCOPL BMP including the identified surplus native vegetation and habitat, which are of good condition remnant native vegetation with minimal maintenance requirements. The 2,417.3 ha of surplus native vegetation and habitat will be identified as excess areas available for future offsets requirements if required.

There have been several factors contributing to delays to the establishment of the long-term security mechanism of the offset areas identified in the BOS under the State Condition 47. Many of these factors have been outside of the control of BCOPL including delays to the approval of the DPE regional strategy and concomitant delays to the BOS and BMP underpinning the establishment of BOAs and biodiversity legislation changes within NSW to the types and requirements of long term conservation security mechanisms.

Despite the delays to finalising the long term conservation security mechanisms, BCOPL have acquired all of the required offset areas and have been actively managing these areas for conservation. This management has incorporated significant advance restoration activities over significant areas of the offsets. The biodiversity conservation that has been achieved has been repeatedly acknowledged by independent audits of the biodiversity offset areas since 2012.

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