



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 7

# Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Report 22

October 2024

7



[www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)



Portfolio Committee No.7 – Planning and Environment

# **Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024**

Published on 11 October 2024 according to Standing Order  
238

**New South Wales. Parliament. Legislative Council. Portfolio Committee No. 7 - Planning and Environment Report no. 22.**

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

"October 2024"

Chair: Ms Sue Higginson MLC



A catalogue record for this  
book is available from the  
National Library of Australia

ISBN: 978-1-922960-90-0

# Table of contents

	<b>Terms of reference</b>	<b>v</b>
	<b>Committee details</b>	<b>vi</b>
	<b>Chair’s foreword</b>	<b>vii</b>
	<b>Recommendations</b>	<b>ix</b>
	<b>Conduct of inquiry</b>	<b>x</b>
<b>Chapter 1</b>	<b>Background</b>	<b>1</b>
	<b>Background and purpose of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024</b>	<b>1</b>
	2021-2022 Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme	2
	Independent review of the <i>Biodiversity Conservation Act 2016</i>	3
	NSW Plan for Nature	3
	<b>The provisions of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024</b>	<b>5</b>
	Proposed amendments to the <i>Biodiversity Conservation Act 2016</i>	6
	Proposed amendments to the State Environmental Planning Policy (Biodiversity and Conservation) 2021	8
<b>Chapter 2</b>	<b>Key issues</b>	<b>11</b>
	<b>Offsetting as a method of biodiversity conservation</b>	<b>11</b>
	Adopting 'red flag' areas and 'no-go' zones	12
	Using existing/new data and spatial tools to map 'red flag' areas and 'no-go' zones	13
	<b>Application of the 'avoid, minimise, offset' hierarchy</b>	<b>14</b>
	Lack of clear guidance	14
	The adoption of safeguards and a 'non-regression' clause	16
	<b>The transition to 'net positive' biodiversity outcomes</b>	<b>17</b>
	'Net positive' not defined	18
	Development and implementation of the net positive strategy	19
	'Nature positive'	19
	<b>Changes to the Biodiversity Conservation Fund</b>	<b>20</b>
	Restrictions on payments into the Biodiversity Conservation Fund	21
	Changes to the way the Biodiversity Conservation Fund can meet offset obligations	22
	<b>Proposed exemptions to the Biodiversity Offsets Scheme</b>	<b>24</b>
	Low impact local development	24
	Natural disasters	25
	State Significant Development	25

	<b>Other concerns raised by stakeholders</b>	<b>26</b>
	Proposed direction powers	26
	Engagement with First Nations	27
	Climate change impacts to be incorporated into legislation	28
	Rural and regional perspectives	28
	Timeframe provided for stakeholder engagement	29
	<b>Committee comment</b>	<b>31</b>
<b>Appendix 1</b>	<b>Submissions</b>	<b>34</b>
<b>Appendix 2</b>	<b>Witnesses</b>	<b>36</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>39</b>

---

## Terms of reference

That:

- (1) the [\*Biodiversity Conservation Amendment \(Biodiversity Offsets Scheme\) Bill 2024\*](#) be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report.
- (2) That the committee report by 11 October 2024.

## Committee details

### Committee members

<b>Ms Sue Higginson</b>	The Greens	<i>Chair</i>
<b>Hon John Ruddick MLC</b>	Libertarian Party	<i>Deputy Chair</i>
<b>Hon Mark Buttigieg MLC</b>	Australian Labor Party	
<b>Hon Stephen Lawrence**</b>	Australian Labor Party	
<b>Hon Sarah Mitchell MLC*</b>	The Nationals	
<b>Hon Jacqui Munro MLC</b>	Liberal Party	
<b>Hon Emily Suvaal MLC***</b>	Australian Labor Party	

### Contact details

<b>Website</b>	<a href="http://www.parliament.nsw.gov.au/committees">www.parliament.nsw.gov.au/committees</a>
<b>Email</b>	PortfolioCommittee7@parliament.nsw.gov.au
<b>Telephone</b>	(02) 9230 2989

- \* The Hon Sarah Mitchell MLC substituted for the Hon Scott Farlow MLC from 16 August 2024 for the duration of the inquiry.
- \*\* The Hon Stephen Lawrence MLC substituted for Hon Peter Primrose MLC from 21 August 2024 for the duration of the inquiry.
- \*\*\* The Hon Emily Suvaal MLC substituted for the Hon Anthony D'Adam MLC from 30 August 2024 for the duration of the inquiry.

### Secretariat

Alice Wood, Senior Council Officer  
 Faith Aghahowa, Administration Officer  
 Emma Rogerson, Director



## Chair's foreword

On 15 August 2024 the Legislative Council referred the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 to Portfolio Committee No. 7 – Planning and Environment for inquiry and report by 11 October 2024.

The bill proposes a range of amendments to the Biodiversity Offsets Scheme. The scheme, established in 2016, provides a mechanism to avoid, minimise and offset the impacts of development and some types of clearing on biodiversity in New South Wales. Biodiversity offsetting essentially enables the destruction of nature. The idea is that nature is destroyed in one place and is justified by nature being protected and apparently improved in another place. In between the destruction and protection of nature is a regulated market, based on accounting methods, rules and integrity measures.

The scheme has been widely criticised, subject to several reviews and has been found to be part of a system that is driving biodiversity loss. The bill is intended to amend the scheme by increasing transparency and fairness, providing clearer guidance for industry, reducing regulatory burdens for low-risk local development, and requiring the scheme to deliver overall net positive biodiversity outcomes over time.

The bill is a part of the first set of proposed changes under the NSW Government's biodiversity legislative reform program, which was announced in response to the 2023 statutory review of the *Biodiversity Conservation Act 2016* undertaken by Dr Ken Henry AC, the 2022 Auditor-General's report on the effectiveness of the Biodiversity Offsets Scheme, and the 2021 parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme.

The Henry Review was scathing of the current system of biodiversity protection. It found the laws that are meant to protect the environment in NSW are failing and unlikely to ever succeed unless they are substantially changed. It found that there should be a shift to a nature positive system, which requires a substantial change in mindset, policy and program design. It found that nature positive is not only an environmental necessity, but crucial for underpinning future economic growth and wellbeing.

The inquiry received 57 submissions and 10 responses to an online questionnaire. The committee also heard from 39 witnesses during two public hearings. The committee is grateful to all of the inquiry participants for their contributions, particularly given the short timeline.

A common view shared by stakeholders, consistent with previous reviews, was that the Biodiversity Offsets Scheme, as it currently stands, simply does not work. As a result, most stakeholders welcomed reform, and broadly supported the intentions of the bill. In particular, stakeholders endorsed the strengthening of the 'avoid, minimise, offset' hierarchy and the transition of the Biodiversity Offsets Scheme to net positive.

Stakeholders who participated in the inquiry recognised that the bill will go some way to improve the scheme. However, participants claimed that the bill misses the opportunity to provide more meaningful change and that additional measures are required to protect threatened species and reverse the decline of biodiversity in New South Wales. Further changes such as implementing 'no-go' zones to protect high biodiversity value ecosystems, enforcing like-for-like offsets, and implementing a 'nature positive' approach, should be legislated now.

There were concerns with respect to the lack of clear guidance and support within the provisions of the bill to help guide and inform authorities and proponents, particularly on how to apply the 'avoid, minimise, offset' hierarchy in practice. Considerations should be made with respect to amending the provisions of the bill to provide greater guidance, definitions of any new terms, and consistent terminology.

The bill presents an opportunity to improve the current system, therefore it is important that the provisions of the bill provide clear and effective change to the scheme to ensure it truly meets its objective of protecting biodiversity in New South Wales.

The committee thanks the secretariat for their due diligence and professional capacity for making it possible to undertake this inquiry in such a short timeframe.

The committee has recommended that the Legislative Council proceed to debate the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 and that the concerns raised by stakeholders be addressed during debate in the House.

Ms Sue Higginson MLC  
**Committee Chair**

## Recommendations

### Recommendation 1

33

That the Legislative Council proceed to debate the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 15 August 2024.

The committee received 57 submissions.

The committee held 2 public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, and answers to questions on notice.

# Chapter 1 Background

This chapter outlines the background and purpose of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, and gives an overview of the bill's provisions, including the amendments proposed to the *Biodiversity Conservation Act 2016* and the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

## Background and purpose of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

1.1 The Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 (the bill) was introduced in the Legislative Council on 15 August 2024 by the Hon Penny Sharpe MLC, Minister for the Environment, Climate Change, Energy and Heritage.<sup>1</sup> The bill was referred to Portfolio Committee No. 7 – Planning and Environment by the House for inquiry and report by 11 October 2024.<sup>2</sup>

1.2 In her Second Reading speech, the Minister explained the rationale for the bill, noting the rapid decline of biodiversity in New South Wales:

Biodiversity in New South Wales is in crisis. Half of the threatened species currently listed are on track to extinction within the next 100 years. Without urgent action many species like mountain frogs, koalas, pygmy possums and regent honeyeaters, as well as plants such as the Wollemi pine, could be lost. Our landscapes are a shadow of their former selves. Half the bioregions in New South Wales have less than one-third of their original ecological capacity remaining. We have seen rivers run dry, increasingly severe drought, the rise of soil salinity and disconnected habitat, all of which are further compounded by the impacts of climate change.<sup>3</sup>

1.3 The Minister stated that the NSW Government is committed to stopping excess land clearing and improving environmental protections and that the bill 'is a significant step forward to fixing the Biodiversity Offsets Scheme and setting nature in New South Wales on the path to recovery'.<sup>4</sup>

1.4 Ms Sharpe also addressed the steps that had been taken prior to the introduction of the bill and acknowledged the 2021 parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme, and the statutory reviews undertaken by Dr Ken Henry AC of the *Biodiversity Conservation Act 2016* and the native vegetation provisions of the *Local Land Services Act 2013*.<sup>5</sup> The Minister also noted the 2022 Auditor-General's report on the effectiveness of the Biodiversity Offsets Scheme (the scheme), which concluded that:

---

<sup>1</sup> *Minutes*, NSW Legislative Council, 15 August 2024, pp 1444-1445.

<sup>2</sup> *Minutes*, NSW Legislative Council, 15 August 2024, pp 1444-1445.

<sup>3</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>4</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>5</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

The effectiveness of the scheme's implementation by DPE [Department of Planning and Environment] and the BCT [Biodiversity Conservation Trust] has been limited... Key concerns around the scheme's integrity, transparency, and sustainability are also yet to be fully resolved. As such, there is a risk that biodiversity gains made through the scheme will not be sufficient to offset losses resulting from the impacts of development.<sup>6</sup>

- 1.5 The Minister acknowledged that 'since these reports, and since the introduction of the laws in 2016, there have been policy changes made to improve the operation and integrity of the scheme' and that this bill 'continues that work'.<sup>7</sup>

### 2021-2022 Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme

- 1.6 As previously mentioned, a New South Wales parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme was established on 24 June 2021. The inquiry looked at the effectiveness of the scheme to halt or reverse the loss of biodiversity values, the use of offsets by the NSW Government for major projects and strategic approvals, the impact of non-additional offsetting practices on biodiversity outcomes, offset prices and the opportunities for private landowners to engage in the scheme.<sup>8</sup>

- 1.7 The report was tabled on 24 November 2022 and made 19 recommendations.<sup>9</sup> The report called for a complete review of the scheme and recommended major reform to:

- strengthen the 'avoid, minimise, offset' hierarchy
- establish clear thresholds for where offsets should not be used
- ensure that offsets result in genuine biodiversity gains
- increase transparency of the use of offsets to enable public scrutiny.<sup>10</sup>

- 1.8 In response to the report, the NSW Government advised that a statutory review of the *Biodiversity Conservation Act 2016* (the Act) was being undertaken by independent experts led by Dr Ken Henry AC.<sup>11</sup>

---

<sup>6</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024; See also Audit Office of New South Wales, Effectiveness of the Biodiversity Offsets Scheme (30 August 2022), <https://www.audit.nsw.gov.au/our-work/reports/effectiveness-of-the-biodiversity-offsets-scheme>.

<sup>7</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>8</sup> Parliament of New South Wales, Portfolio Committee No. 7 – Planning and Environment, NSW Legislative Council, *Inquiry into the integrity of the NSW Biodiversity Offsets Scheme*, Terms of Reference.

<sup>9</sup> Parliament of New South Wales, Portfolio Committee No. 7 – Planning and Environment, NSW Legislative Council, *Inquiry into the integrity of the NSW Biodiversity Offsets Scheme* (2022), pp xi -xiv.

<sup>10</sup> Parliament of New South Wales, Portfolio Committee No. 7 – Planning and Environment, NSW Legislative Council, *Inquiry into the integrity of the NSW Biodiversity Offsets Scheme* (2022), p xi and xiii.

<sup>11</sup> Correspondence from Hon James Griffin MP, Minister for Environment and Heritage, to the Clerk of the Parliaments, providing government response to the inquiry into the integrity of the New South Wales Biodiversity Offsets Scheme, 14 February 2023.

### Independent review of the *Biodiversity Conservation Act 2016*

- 1.9** The Final Report - Independent Review of the Biodiversity Conservation Act 2016 (the review) was tabled in the New South Wales Parliament on 24 August 2023 and published.<sup>12</sup> The purpose of the review was 'to determine whether the policy objectives of the Act remain valid and whether the terms remain appropriate for securing those objectives'.<sup>13</sup>
- 1.10** Within the review, Dr Ken Henry AC advised that 'biodiversity is not being conserved at bioregional or State scale. The diversity and quality of ecosystems is not being maintained, nor is their capacity to adapt to change and provide for the needs of future generations being enhanced' despite these being the principal purposes of the Act.<sup>14</sup>
- 1.11** The key issues raised within the review included the following:
- that the present *Biodiversity Conservation Act 2016* is not meeting its primary purpose of maintaining a healthy, productive and resilient environment, and is never likely to do so
  - that the principal operative provisions of the Act, and their delivery, are deficient
  - that the failure of the Act to achieve its principal purpose is contributing to the continuing deterioration of the environment.<sup>15</sup>
- 1.12** The review made a total of 58 recommendations to the NSW Government, of which the NSW Government agreed to accept 49 of them.<sup>16</sup>

### NSW Plan for Nature

- 1.13** On 17 July 2024, the NSW Government released its NSW Plan for Nature, in response to the statutory reviews undertaken by Dr Ken Henry AC of the *Biodiversity Conservation Act 2016* and the native vegetation provisions of the *Local Land Services Act 2013*.<sup>17</sup>

<sup>12</sup> NSW Government, Environment and Heritage, *Statutory review of the Biodiversity Conservation Act 2016*, (17 July 2024), <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform/statutory-review-of-the-biodiversity-conservation-act-2016>

<sup>13</sup> NSW Government, Environment and Heritage, *Statutory review of the Biodiversity Conservation Act 2016*, <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/overview-of-biodiversity-reform/statutory-review-of-the-biodiversity-conservation-act-2016>.

<sup>14</sup> Dr Ken Henry AC, NSW Department of Planning and Environment, *Final Report - Independent review of the Biodiversity Conservation Act 2016* (August 2023), p iii.

<sup>15</sup> Dr Ken Henry AC, NSW Department of Planning and Environment, *Final Report - Independent review of the Biodiversity Conservation Act 2016* (August 2023), pp 1 and 3.

<sup>16</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024. Also note 30 of those recommendations relate to the Biodiversity Offsets Scheme.

<sup>17</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 5, <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>

1.14 The key objectives of the NSW Government's NSW Plan for Nature (the plan) are to reform the Biodiversity Offsets Scheme, to stop excess land clearing and to strengthen environmental protections.<sup>18</sup> The plan outlines the NSW Government's ambition to 'protect, restore and improve biodiversity in NSW' by transitioning to a 'nature positive' legislative framework.<sup>19</sup> As described in the plan, 'nature positive means the environment is being repaired and regenerated. This contrasts with traditional sustainability approaches, which have sought to minimise negative impacts by slowing or stabilising the rate of biodiversity loss.'<sup>20</sup>

1.15 The plan outlines the following six key pillars of reform:

- **Nature positive strategy:** the NSW Government will prepare and publish the NSW Nature Strategy which will be a legal requirement under the Act that will guide public and private investment and action to protect, connect and restore ecosystems and landscapes and set conservation and restoration goals and targets.<sup>21</sup>
- **Nature positive spatial tools:** the NSW Government will identify and map areas of high biodiversity value.<sup>22</sup>
- **Nature positive development:** this includes the following:
  - biodiversity considerations will be front-loaded in regional planning processes
  - improve bio-certification to drive better strategic land-use planning outcomes
  - improve biodiversity outcomes from the Biodiversity Offsets Scheme
  - support a functioning biodiversity credit market
  - increase the efficiency and transparency of the Biodiversity Offsets Scheme
  - better balance the application of the Biodiversity Offset Scheme with biodiversity risks.<sup>23</sup>
- **Species and ecosystem recovery:** this includes improving species and ecosystems programs, coordinating the approach to listing threatened species and ecological communities, and expanding private land conservation initiatives.<sup>24</sup>

---

<sup>18</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 5.

<sup>19</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 5.

<sup>20</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 5.

<sup>21</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 10.

<sup>22</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), p 11.

<sup>23</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), pp 12-14.

<sup>24</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), pp 14 and 16.



- **Data-informed decision-making:** improve and upgrade biodiversity data gathering and management.<sup>25</sup>
- **Leveraging private investment:** this includes building landholder capability to embed practice change and boost participation, diversify and expand access to conservation and natural capital investments and support the growth of robust natural capital markets.<sup>26</sup>

## The provisions of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

1.16 In her Second Reading speech, Ms Sharpe advised that the bill has two key objectives; 'firstly, to make sure that biodiversity risks are known and avoided early in the planning process and, secondly, to shine a light on the process of biodiversity assessment so that informed decisions can be made going forward and biodiversity impacts can be tracked'.<sup>27</sup> The Minister added 'by focusing on early avoidance, our most important ecosystems will be protected, while unexpected costs and delays of development for proponents will be reduced'.<sup>28</sup>

1.17 The five key components of the bill are as follows:

- it requires that steps be taken to avoid impacts, first and foremost
- [it] requires the [Biodiversity Offsets] Scheme to transition to delivering overall net positive outcomes over time
- allows for the circumstances where developers can pay into the Biodiversity Conservation Fund to be reduced and, when the fund is used, ensures quicker investment in impacted species and ecosystems
- increases transparency through new public registers and increases accountability for biodiversity impact assessors
- allows for regulatory burden on lower impact local development to be reduced in exceptional circumstances, particularly in regional areas.<sup>29</sup>

1.18 The Minister advised that:

[f]urther regulatory amendments not contained in this bill but committed to in the NSW Government's plan for nature will be made ... to refine the rules for trading ecosystem credits; amend the scheme entry thresholds so that small, low-impact local development does not come into the scheme; and remove the option for major mining proponents

<sup>25</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), pp 17-18.

<sup>26</sup> NSW Government, *NSW Plan for Nature - NSW Government response to the reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013* (July 2024), pp 18-19.

<sup>27</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>28</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>29</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

to meet a credit obligation through a commitment to ecological mine site rehabilitation.<sup>30</sup>

### **Proposed amendments to the *Biodiversity Conservation Act 2016***

#### ***Establishing the 'avoid, minimise, offset' hierarchy as a key principle***

- 1.19** Under section 6.3A of the bill, a proponent of action must first 'take all reasonable measures to avoid the impacts of the action on biodiversity values,' before attempting to minimise those impacts and then offset 'any residual impact on biodiversity values'.<sup>31</sup>
- 1.20** Section 6.12 of the bill states that the Biodiversity Development Assessment Report must set out and assess, in accordance with the biodiversity assessment method and the regulations, the genuine measures that the proponent of the development has taken (or proposes to take) to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values.<sup>32</sup>
- 1.21** Section 6.13 of the bill states that the Biodiversity Certification Assessment Report must set out and assess, in accordance with the biodiversity assessment method and the regulations, the genuine measures that the proponent for the biodiversity certification has taken (or proposes to take) to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values.<sup>33</sup>
- 1.22** Section 6.16 of the bill states that the regulations may make provisions about what constitutes 'genuine measures to avoid and minimise the impact of the proposed development, activity or clearing on biodiversity values'.<sup>34</sup> This means that proponents will need to identify biodiversity risks early on in the planning stages and will need to demonstrate that genuine measures have been or will be implemented.<sup>35</sup>

#### ***Transition of the Biodiversity Offsets Scheme to net positive***

- 1.23** Section 6.2A of the bill states that the Minister 'must make a strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes'.<sup>36</sup> This strategy must specify the actions required and include targets and timeframes for the transition.<sup>37</sup> Section 9.1(1)(d) of the bill notes that public consultation in relation to the making of the strategy is

---

<sup>30</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>31</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.3A.

<sup>32</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, ss 6.12 and 6.13.

<sup>33</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, ss 6.12 and 6.13.

<sup>34</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.16.

<sup>35</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024. Additionally, sections 1.3, 1.6, 6.2 (h1), 6.3A, 6.4, 6.12 (c), 6.13 (b1), 6.16 (1A) and 9.7 (1) (h2) of the bill work together to strengthen the application of the 'avoid, minimise, offset' hierarchy.

<sup>36</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.2A(2).

<sup>37</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.2A(3).

required.<sup>38</sup> Section 6.2A also adds that the Environment Agency Head must review and report on the implementation of the strategy 12 months after the strategy is published, and once every 12 months after the first review.<sup>39</sup>

- 1.24** According to the Minister, a transition to net positive outcomes will look beyond 'the current "no net loss" standard to one where the scheme will achieve overall biodiversity gains'.<sup>40</sup> These sections of the bill will allow the NSW Government to work with 'experts, stakeholders and the public on the development of the strategy, and carefully consider the views of scheme participants and impacts on the biodiversity credit market'.<sup>41</sup>

***Reducing the use of the Biodiversity Conservation Fund and increasing efficiency***

- 1.25** Establishing the 'avoid, minimise, offset' hierarchy as discussed above, where offsetting is to be used as a last resort, will likely reduce the need for proponents to use the Biodiversity Conservation Fund.<sup>42</sup>
- 1.26** Under section 6.30 of the bill, regulations are to be introduced which may 'enable limits to be imposed on the ability of proponents to meet an offset obligation through payment into the fund in certain circumstances'.<sup>43</sup> The Minister stated that this reform will 'facilitate greater participation in the biodiversity credit market while still ensuring that the fund is available when needed'.<sup>44</sup>
- 1.27** In circumstances where the use of the fund is required, the bill aims to 'strengthen the processes, requirements and administration of the Biodiversity Conservation fund to support the Biodiversity Conservation Trust in achieving outcomes for biodiversity'.<sup>45</sup> Amendments under new sections 6.31(5) to 6.31(8) of the bill, 'require the trust to acquit offset obligations paid into the fund within three years, after which is must enter into an agreement with the Minister for Environment on how the obligation will be met'. The Minister advised that this 'will ensure impacts to biodiversity are offset sooner, ensuring minimal delay in biodiversity outcomes ... [and] offsets are realised in a timely manner'.<sup>46</sup>

<sup>38</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 9.1(1)(d).

<sup>39</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.2A(6).

<sup>40</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>41</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>42</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>43</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.30.

<sup>44</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>45</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>46</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

***Establishing new public registers***

**1.28** Sections 9.7 and 9.11 of the bill establish new public registers to:

- keep track of commitments made by proponents to avoid and minimise impacts to biodiversity,
- track offset obligations imposed for projects under the scheme and decisions made to approve serious and irreversible impacts, and
- track the decisions made to exempt certain developments from the scheme.<sup>47</sup>

**1.29** The Minister advised that the NSW Government will invest in 'digital systems underpinning the scheme so that these registers are reliable and accessible for public access'.<sup>48</sup> These provisions will improve transparency and increase accountability for biodiversity impact assessors.<sup>49</sup>

***Low-impact local development exemptions***

**1.30** In the Second Reading of the bill, the Minister advised that 'the bill will ensure that small-scale development and local communities are supported by better balancing the application of the scheme against the risks to biodiversity posed by development'.<sup>50</sup>

**1.31** Section 7.2(3) of the bill allows 'for scheme entry thresholds to be revised through subsequent regulatory amendments' so that the regulatory burden on lower impact local development, (including in regional areas), is reduced.<sup>51</sup> New sections 7.7 (3) and (4), 7.11 (2A) (a), 7.16 (2A) (b) and 7.17 (2) (c) (ii) under the bill 'introduce a new power that enables the Minister for Environment to provide exemptions from the scheme for local development in exceptional circumstances or in response to natural disasters'.<sup>52</sup>

**Proposed amendments to the State Environmental Planning Policy (Biodiversity and Conservation) 2021**

**1.32** Under new sections 6.10A, 5.8, 5.11 (7), 6.14, 6.15, 7.1, 8.1 of the bill and consequential amendments to the Biodiversity and Conservation State Environmental Planning Policy 2021 under Schedule 2 of the bill, new powers will be established 'to improve the quality and

---

<sup>47</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, ss 9.7 and 9.11.

<sup>48</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>49</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>50</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

<sup>51</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 7.2(3).

<sup>52</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.

consistency of biodiversity assessments, including allowing directions to be issued to accredited persons in relation to the preparation or modification of biodiversity assessment reports'.<sup>53</sup>

- 1.33** According to the Minister 'these new powers will improve the quality and consistency of biodiversity assessments and reporting, leading to more efficient and timely decision-making throughout the planning process'.<sup>54</sup>

---

<sup>53</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, ss 6.10A, 5.8, 5.11 (7), 6.14, 6.15, 7.1, 8.1 and schedule 2.

<sup>54</sup> Penny Sharpe, Second reading speech: Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, 15 August 2024.



## Chapter 2 Key issues

This chapter will address the key issues that were raised by inquiry participants in relation to the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. It considers offsetting as a method of biodiversity conservation and outlines stakeholder support for the adoption and enforcement of 'red flag' areas and 'no-go' zones. This is followed by an examination of concerns raised by stakeholders with respect to the application of the 'avoid, minimise, offset' hierarchy and the proposed transition to net positive. The chapter then discusses the proposed changes to the Biodiversity Conservation Fund and exemptions to the Biodiversity Offsets Scheme under the bill. It concludes with a summary of other concerns raised by stakeholders such as the proposed direction powers under section 6.10A of the bill, engagement with First Nations and incorporating climate change impacts into legislation, rural and regional perspectives and timeframe provided for stakeholder engagement.

### Offsetting as a method of biodiversity conservation

**2.1** Throughout the inquiry process, stakeholders raised concerns with the overall use of offsets as a method of biodiversity conservation.<sup>55</sup> The Environmental Defenders Office stated that biodiversity offsetting 'is often viewed ... as a way of protecting the environment without restricting development' however:

[c]oncerningly, 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.<sup>56</sup>

**2.2** In their submission, Save Sydney's Koalas stated that '[f]undamentally, the very concept of offsets undermines the value of conservation and protection of habitat and results in a net loss of biodiversity'.<sup>57</sup> Sydney Basin Koala Network also agreed with this principle and added that 'the Biodiversity Conservation Act must acknowledge that many environmental impacts cannot be offset and must incorporate stricter regulations to prevent the misuse and overuse of offsets'.<sup>58</sup> They explained that if there are rare circumstances where offsets are used, they must be:

- like-for-like: the same population and species being impacted must be the benefactor of the offset [and] offsets must be in close proximity to the impacts...
- ...secured and proven effective up-front before any development is approved...
- genuinely positive for biodiversity...
- transparent to the community...
- in perpetuity.<sup>59</sup>

<sup>55</sup> Submission 1, Dr Suzanne Allen, p 1; Submission 4, Sydney Basin Koala Network, p 1; Submission 5, STEP Inc, p 1; Submission 21, Environmental Defenders Office, p 9; Submission 38, Cr Cath Blakey, p 4; Submission 40, Save Sydney's Koalas, p 1; Submission 43, Nature Conservation Council of NSW, p 1.

<sup>56</sup> Submission 21, Environmental Defenders Office, p 9.

<sup>57</sup> Submission 40, Save Sydney's Koalas, p 1.

<sup>58</sup> Submission 4, Sydney Basin Koala Network, p 1.

<sup>59</sup> Submission 4, Sydney Basin Koala Network, pp 1-2.

**2.3** It was widely accepted by inquiry participants that there are some ecosystems and areas of high biodiversity value that simply cannot and should not be offset.<sup>60</sup> These areas were described as 'red flag' areas and 'no-go' zones.

### **Adopting 'red flag' areas and 'no-go' zones**

**2.4** A common concern raised throughout the inquiry process was the lack of protections within the bill for areas of high biodiversity value.<sup>61</sup> In evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW stated that '[o]ffsets should only be used as a last resort and should never be permitted in high biodiversity value areas such as those with threatened species or ecological communities, or those that are important for maintaining landscape and habitat connectivity'.<sup>62</sup> She explained that '[i]n its current form, the bill would continue to allow for the approval of serious and irreversible impacts on ecological communities and species that are at risk'.<sup>63</sup>

**2.5** Likewise, Mr Jaden Harris, Advocacy Manager, Nature Conservation Council of NSW, added that establishing no-go zones will help support 'a functioning and viable offsets market, because we keep running into these situations where credits are not available for a particular development because an ecosystem is so high value and there is no possibility of creating credits for it'.<sup>64</sup>

**2.6** In their submission, Humane Society International stated that '[a]dditional provisions to create clear protections for those species and areas that cannot withstand any further loss must be included' in the bill.<sup>65</sup> They stated that at a minimum, these would include:

- any areas of critically endangered and endangered ecological communities;
- critical habitat for critically endangered and endangered species;

---

<sup>60</sup> Submission 1, Dr Suzanne Allen, p 1; Submission 4, Sydney Basin Koala Network, p 1; Submission 5, STEP Inc, p 1; Submission 6, Friends of Berowra Valley, p 1; Submission 11, World Wildlife Fund Australia, pp 1-2; Submission 14, Local Government NSW, pp 2-3; Submission 21, Environmental Defenders Office, pp 9-10; Submission 28, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), p 6; Submission 35, Humane Society International, p 6; Submission 36, Wando Conservation and Cultural Centre Ince, p 2; Submission 38, Cr Cath Blakey, p 1; Submission 41, Jan Barham, p 1; Submission 43, Nature Conservation Council of NSW, pp 6-7; Submission 47, Lock the Gate Alliance, p 2.

<sup>61</sup> Submission 1, Dr Suzanne Allen, p 1; Submission 4, Sydney Basin Koala Network, p 1; Submission 5, STEP Inc, p 1; Submission 6, Friends of Berowra Valley, p 1; Submission 11, World Wildlife Fund Australia, pp 1-2; Submission 14, Local Government NSW, pp 2-3; Submission 21, Environmental Defenders Office, pp 9-10; Submission 28, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), p 6; Submission 35, Humane Society International, p 6; Submission 36, Wando Conservation and Cultural Centre Ince, p 2; Submission 38, Cr Cath Blakey, p 1; Submission 41, Jan Barham, p 1; Submission 43, Nature Conservation Council of NSW, pp 6-7; Submission 47, Lock the Gate Alliance, p 2.

<sup>62</sup> Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW, 12 September 2024, p 17.

<sup>63</sup> Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW, 12 September 2024, p 18.

<sup>64</sup> Evidence, Mr Jaden Harris, Advocacy Manager, Nature Conservation Council of NSW, 12 September 2024, p 20.

<sup>65</sup> Submission 35, Humane Society International, p 6.



- all areas where an approval would be responsible for a SAI [serious and irreversible impact];
- Areas of Outstanding Biodiversity Value;
- existing protected areas, stewardship sites and legally protected private land conservation sites;
- climate refugia; and
- areas that have been previously "avoided" as part of an approved development's justification under the mitigation hierarchy.<sup>66</sup>

**2.7** The Environmental Defenders Office advised that '[o]ffset schemes must recognise that there are ecological constraints to offsetting and some areas and entities are just not suitable for offsetting'.<sup>67</sup> In their submission, the Environmental Defenders Office made the recommendation that the bill should 'set clear thresholds for where offsets cannot be used' and that this should include:

- mandating the refusal of applications with serious and irreversible impacts for all development and activities; and
- adopting 'no-go' zones where offsets are not available, and impacts cannot be allowed to occur.<sup>68</sup>

**2.8** The National Parks Association of NSW also added that the *Biodiversity Conservation Act 2016* and the *National Parks and Wildlife Act 1974* should 'both be amended to include outright prohibition on all forms of infrastructure development in Protected Areas, including those classified as State Significant'.<sup>69</sup>

### **Using existing/new data and spatial tools to map 'red flag' areas and 'no-go' zones**

**2.9** The mapping of no-go zones, and having these maps publicly available, was supported by many ecological groups and organisations.<sup>70</sup> These maps would help to inform authorities, developers and proponents from the outset as to whether an area of land can be developed on, providing clarity and certainty, whilst protecting areas of high biodiversity value.<sup>71</sup>

**2.10** When asked if identifying 'no-go' zones and mapping these areas would be useful, Dr Louisa Mamouny, Executive Director, Nature Markets and Offsets Division, NSW Department of Climate Change, Energy, the Environment and Water stated 'I would love to be in that situation; it would be ideal' but had concerns with respect to the detail and level of mapping required:

<sup>66</sup> Submission 35, Humane Society International, p 6.

<sup>67</sup> Submission 21, Environmental Defenders Office, p 9.

<sup>68</sup> Submission 21, Environmental Defenders Office, p 10.

<sup>69</sup> Submission 9, National Parks Association of NSW, p 3. Further details with respect to 'Protected Areas' can be found at the following site: Environment and Heritage, Types of Protected Areas, <https://www2.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/protected-areas>.

<sup>70</sup> Submission 7, Wentworth Group of Concerned Scientists, pp 5-6; Submission 11, World Wildlife Fund Australia, pp 1-2; Submission 28, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), p 8; Submission 35, Humane Society International, p 6; Submission 43, Nature Conservation Council of NSW, p 7.

<sup>71</sup> Submission 28, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), p 8; Submission 35, Humane Society International, p 6.

We do have very good mapping in New South Wales. ... Unfortunately, the level of assessment that we need to do for biodiversity is quite granular—appropriately granular—looking at particular species and what is actually on the site. Unfortunately, mapping often doesn't get to that level of detail and the precision that we need to do assessments. If we are trying to identify no-go maps across the entire State, it will be quite costly. But I would be very happy if we were in the situation where we had that level of information available to us.<sup>72</sup>

## Application of the 'avoid, minimise, offset' hierarchy

- 2.11** As discussed in chapter one, under proposed section 6.3A of the bill, a proponent must first 'take all reasonable measures to avoid the impacts of the action on biodiversity values,' before attempting to minimise those impacts and then (as a last resort), offset 'any residual impact on biodiversity values'.<sup>73</sup> Throughout the inquiry many stakeholders raised concerns with respect to the practical application of the 'avoid, minimise, offset' hierarchy.<sup>74</sup>

### Lack of clear guidance

- 2.12** A number of inquiry participants were concerned about the lack of clear guidance and support within the provisions of the bill to help guide and inform authorities and proponents on how the 'avoid, minimise, offset' hierarchy will work in practice.<sup>75</sup> Concerns with respect to the lack of guidance, definitions, and consistent language were raised in participants' submissions and in evidence.

### *What does it mean to 'avoid' and 'minimise?'*

- 2.13** In its submission, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), explained that both 'avoid' and 'minimise' need to be clearly defined, 'including clear criteria, supporting thresholds, and an objective test for determinations of where avoid and minimise are both addressed and achievable in application documentation – across planning and impact assessment reports – for proposals will provide clarity [and] transparency'.<sup>76</sup> This view was supported by many other inquiry participants.<sup>77</sup>

---

<sup>72</sup> Evidence, Dr Louisa Mamouney, Executive Director, Nature Markets and Offsets Division, NSW Department of Climate Change, Energy, the Environment and Water, 20 September 2024, p 35.

<sup>73</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.3A.

<sup>74</sup> Evidence, Mr Gary Dunnett, Chief Executive Officer, National Parks Association of NSW, 12 September 2024, p 4; Submission 12, Planning Institute of Australia, p 4; Submission 23, Cement Concrete, Aggregates Australia, p 3; Submission 27, Property Council of Australia, p 4; Submission 29, Urban Development Institute of Australia, p 7.

<sup>75</sup> Submission 12, Planning Institute of Australia, p 4; Submission 23, Cement Concrete, Aggregates Australia, p 3; Submission 27, Property Council of Australia, p 4; Submission 29, Urban Development Institute of Australia, p 7; Evidence, Mr Gary Dunnett, Chief Executive Officer, National Parks Association of NSW, 12 September 2024, p 4.

<sup>76</sup> Submission 28, NSW Wildlife Information, Rescue and Education Service Inc (WIRES), pp 6-7.

<sup>77</sup> Submission 12, Planning Institute of Australia, p 4; Submission 23, Cement Concrete, Aggregates Australia, p 3; Submission 27, Property Council of Australia, p 1; Submission 29, Urban Development Institute of Australia, p 7; Evidence, Mr Gary Dunnett, Chief Executive Officer, National Parks Association of NSW, 12 September 2024, p 4.

**2.14** With respect to the application of the 'avoid, minimise, offset' hierarchy, Mr Adam Muir, Nature Positive Policy Manager, World Wildlife Fund Australia, advised that it cannot simply become a 'tick-the-box' exercise and that specific standards need to be devised and adhered to:

...historically, the mitigation hierarchy has generally been seen by a lot of proponents ... as a tick-the-box exercise where we know that, if we can find a compliant offset, then we should be able to get the approval and the "avoid" and "minimise" steps were really just quick discussions to be had with regulators, or tick-the-box exercises. ... We need to be as specific as possible, and some kind of a standard needs to be devised to hold proponents to account for that – and regulators.<sup>78</sup>

**2.15** With respect to the application of the 'avoid, minimise, offset' hierarchy, the following recommendations were made by stakeholders:

- that the Government should provide clear guidance on how the 'avoid, minimise, offset' hierarchy provisions of the bill should be interpreted and applied<sup>79</sup>
- that the Government should develop and introduce clear standards and regulations to 'provide objective quantitative thresholds and criteria' for each step within the 'avoid, minimise, offset' hierarchy<sup>80</sup>
- that 'the "avoid" and "minimise" requirements be set in legislation, rigorously applied and publicly available'<sup>81</sup>
- that decision-makers should have 'to avoid future impacts in areas identified on the [avoid and minimise] register,' or 'at a minimum, make it a mandatory requirement for decision-makers to consider the avoid and minimise register when making approval decisions'.<sup>82</sup>

***Definitions required for 'reasonable measures' and 'genuine measures'***

**2.16** A significant number of inquiry participants agreed that the terms 'reasonable measures' under section 6.3A and 'genuine measures' under sections 6.12, 6.13 and 6.16 need to be defined within the provisions of the bill.<sup>83</sup> In their submission, the Biodiversity Council stated that 'there should be a clear definition of what are "genuine efforts" to avoid and mitigate impacts. There needs to be a clearer process and definitions for how decision makers/consent authorities will consider this information in decision making'.<sup>84</sup>

<sup>78</sup> Evidence, Mr Adam Muir, Nature Positive Policy Manager, World Wildlife Fund Australia, 12 September 2024, p 4.

<sup>79</sup> Submission 12, Planning Institute of Australia, p 4; Submission 27, Property Council of Australia, p 1; Evidence, Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre, p 4; Evidence, Mrs Elizabeth York, Policy and Regional Manager, Urban Development Institute of Australia, 20 September 2024, p 6.

<sup>80</sup> Submission 11, WWF-Australia, p 1.

<sup>81</sup> Submission 11, WWF-Australia p 2.

<sup>82</sup> Submission 21, Environmental Defenders Office, p 15.

<sup>83</sup> Submission 7, Wentworth Group of Concerned Scientists, p 4; Submission 27, Property Council of Australia, p 4; Submission 29, Urban Development Institute of Australia, p 5; Evidence, Ms Cerin Loane, Special Counsel, Nature, Environmental Defenders Office, 12 September 2024, p 18; Evidence, Mrs Elizabeth York, Policy and Regional Manager, Urban Development Institute of Australia, 20 September 2024, p 7.

<sup>84</sup> Submission 56, Biodiversity Council, p 3.

### *Language used*

2.17 The following issues with respect to the language of sections 6.3A, 6.12 and 6.13 of the bill were identified by stakeholders:

- **vague terminology:** Dr Megan Kessler, Nature Campaigner, Humane Society International, stated that '[i]n terms of the mitigation, one of our key concerns around that in this bill is that the language of things like "reasonable steps" and "genuine steps"—those are completely undefined terms. It's very vague language'.<sup>85</sup>
- **inconsistent terminology:** the Environmental Defenders Office argued that the terms "measures" and "steps," were used interchangeably throughout the bill, as well as the terms "genuine measures" and "reasonable measures," that 'these inconsistencies should be resolved before the Bill is passed'.<sup>86</sup>
- **consistent application of 'avoid, minimise and offset' hierarchy:** the Environmental Defenders Office recommended that sections 6.12 and 6.13 'be amended to specifically reference the avoid, minimise, offset hierarchy set out in section 6.3A to ensure proper application of the hierarchy'.<sup>87</sup>
- **non-standard approach:** some stakeholders argued that the international and interstate standard of 'avoid, minimise, rehabilitate or restore, offset' should be used, rather than just 'avoid, minimise, offset'.<sup>88</sup> Other stakeholders recommended that "minimise" be replaced with the term "mitigate" within the hierarchy, as 'the term has a higher basis and more likelihood of achieving positive outcomes'.<sup>89</sup>

### **The adoption of safeguards and a 'non-regression' clause**

2.18 The Environmental Defenders Office made the recommendation that safeguards should be adopted 'in relation to the establishment of principles, standards and requirements for applying the avoid, mitigate and offset hierarchy, including a "non-regression clause" in the BC Act [*Biodiversity Conservation Act 2016*] to prevent principles and standards from weakening over time'.<sup>90</sup> The need for a non-regression clause was also supported by Humane Society International who stated that 'any future changes to the principles, standards and requirements [should] only be approved if they deliver improved outcomes for nature'.<sup>91</sup>

---

<sup>85</sup> Evidence, Dr Megan Kessler, Nature Campaigner, Humane Society International, 12 September 2024, p 19.

<sup>86</sup> Submission 21, Environmental Defenders Office, p 13.

<sup>87</sup> Submission 21, Environmental Defenders Office, p 14.

<sup>88</sup> Submission 33, Australian Land Conservation Alliance, p 2; Submission 43, Nature Conservation Council of NSW, p 8.

<sup>89</sup> Submission 20, Wollondilly Shire Council, p 2.

<sup>90</sup> Submission 21, Environmental Defenders Office, p 13.

<sup>91</sup> Submission 35, Humane Society International, p 7.

## The transition to 'net positive' biodiversity outcomes

**2.19** The transition to 'net positive' was widely supported by inquiry participants.<sup>92</sup> However, Sydney Basin Koala Network claimed that '[i]f the aim is net positive biodiversity outcomes, then much stronger legislation is needed. The proposed amendments are not strong enough to reverse current biodiversity decline'.<sup>93</sup> In evidence, Dr Megan Kessler, Nature Campaigner, Humane Society International, stated, '...to do more, to go further, we need to be saying, "It's not enough to have a no net loss standard, as we currently have. You actually have to have a positive standard"'.<sup>94</sup>

**2.20** The National Parks Association of NSW advised that:

it is not possible to achieve a net positive for nature by destroying natural habitats and the species they contain. Even in the best-case scenario, the best that the flawed offsetting mechanisms in the BC Act [*Biodiversity Conservation Act 2016*] can do is to improve the security of retained habitats.<sup>95</sup>

**2.21** The National Parks Association of NSW added that 'the only means by which a net positive outcome could truly be achieved is through the creation of equivalent habitats to those lost to development in areas that are currently cleared or highly degraded'.<sup>96</sup>

**2.22** Some inquiry participants raised concerns about the transition to net positive.<sup>97</sup> The NSW Minerals Council Ltd argued that the transition to net positive 'is likely to have very minimal impact on the overall delivery of a nature positive strategy for NSW, given that ... the scheme is already required to meet a no-net loss standard'.<sup>98</sup>

**2.23** In their submission, the Property Council of Australia stated:

[i]n its current form, the proposal to transition the BOS [Biodiversity Offsets Scheme] to "net positive" could potentially jeopardise NSW Government commitments to address housing supply concerns, deliver critical infrastructure and construction projects to support growth and transition to net zero, and undermine the incentive and cooperation required for private land conservation.<sup>99</sup>

<sup>92</sup> Submission 11, World Wildlife Fund Australia, p 1; Submission 14, Local Government NSW, p 3; Submission 18, Goulburn Mulwaree Council, p 5; Submission 30, Total Environment Centre, p 1; Submission 33, Australian Land Conservation Alliance, p 2; Submission 35, Humane Society International, p 7; Submission 56, Biodiversity Council, p 3.

<sup>93</sup> Submission 4, Sydney Basin Koala Network, p 2.

<sup>94</sup> Evidence, Dr Megan Kessler, Nature Campaigner, Humane Society International Australia, 12 September 2024, p 21.

<sup>95</sup> Submission 9, National Parks Association of NSW, p 1.

<sup>96</sup> Submission 9, National Parks Association of NSW, p 1.

<sup>97</sup> Submission 16, NSW Minerals Council Ltd, p 5; Submission 27, Property Council of Australia, p 3; Submission 46, Urban Taskforce Australia, p 7.

<sup>98</sup> Submission 16, NSW Minerals Council Ltd, p 5.

<sup>99</sup> Submission 27, Property Council of Australia, p 3.

**2.24** The Property Council of Australia recommended that 'an objective definition of "net positive" with a clear baseline' be included in the Act 'to ensure that industry can contribute to this target with confidence'.<sup>100</sup>

**2.25** When asked if the bill will delay housing approvals or impact the NSW Governments housing targets, Mr David Gainsford, Deputy Secretary, Development Assessments and Sustainability, Department of Planning, Housing and Infrastructure, stated 'we don't believe so' and added '[o]ne of the matters we are considering ... and are very supportive of in what's being proposed here is the ability to front-load the process, and to identify at a strategic level the sorts of biodiversity protections that are needed to give some certainty for housing development'.<sup>101</sup>

### **'Net positive' not defined**

**2.26** According to the Wentworth Group of Concerned Scientists, the bill 'fails to define what is meant by net positive outcomes and relegates the timeframe and mechanisms for transition to a subordinate strategy'.<sup>102</sup>

**2.27** Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW, also stated that '[a] standard with a clear definition of "net positive" should be embedded in the Act at this opportunity'.<sup>103</sup> The need for a 'net positive' definition within legislation was raised by multiple inquiry participants.<sup>104</sup>

**2.28** The Wentworth Group of Concerned Scientists recommended 'that "net positive" outcomes be clearly defined in legislation to set the standard and expectations for the transition' and that this definition should include explicit reference to:

- the sites/locations to which the definition applies...
- the quantum of the increase required...
- the timeframe within which the outcome must be delivered (after which it should be maintained) ...
- the type of the outcome to be achieved for affected entities.<sup>105</sup>

**2.29** The Property Council of Australia noted that 'there is a risk that the absence of a statutory definition may cause uncertainty within the industry' and that 'any definition should be supported by the development of key metrics and implementation of tools for the industry and government to measure and report on contributions at their respective levels'.<sup>106</sup>

---

<sup>100</sup> Submission 27, Property Council of Australia, p 3.

<sup>101</sup> Evidence, Mr David Gainsford, Deputy Secretary, Development Assessments and Sustainability, Department of Planning, Housing and Infrastructure, 20 September 2024, p 35.

<sup>102</sup> Submission 7, Wentworth Group of Concerned Scientists, p 3.

<sup>103</sup> Evidence, Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW, 12 September 2024, p 18.

<sup>104</sup> Submission 7, Wentworth Group of Concerned Scientists, p 3; Submission 16, NSW Minerals Council Ltd, p 5; Submission 21, Environmental Defenders Office, p 12; Submission 23, Cement Concrete Aggregates Australia, p 3; Submission 29, Urban Development Institute of Australia, p 5; Submission 54, Australian Climate and Biodiversity Foundation, p 3; Evidence, Mr Greg Steenbeeke, Director, Henribark Property Ltd, 12 September 2024, p 8.

<sup>105</sup> Submission 7, Wentworth Group of Concerned Scientists, p 3.

<sup>106</sup> Submission 27, Property Council of Australia, p 3.

## Development and implementation of the net positive strategy

**2.30** The following issues and concerns were raised by stakeholders with respect to the development and implementation of the NSW Government's net positive strategy, which is required under section Schedule 1 [15] of the bill:

- a clear timeline for the completion of the proposed strategy to move to net positive must be set in legislation<sup>107</sup>
- that the net positive strategy 'should be delivered as soon as possible and should identify further changes to the BC Act and [Biodiversity Conservation] Regulations that will be required to reach net positive'<sup>108</sup>
- that '[a]ny strategy and its implementation should be developed in close consultation with stakeholders including the development industry. Any amendments to the strategy should also be subject to public consultation'<sup>109</sup>
- that the bill 'allows the Minister to amend any future strategy at any time reducing any commitment of the system to long-term outcomes for reducing biodiversity loss'.<sup>110</sup>

**2.31** The Urban Development Institute of Australia argued that '[t]he transition relies on a strategy that has not been prepared, and guidelines for which have not been provided. It is not possible to understand how development proponents would be impacted by such a transition until further detail is provided about how and when the transition will occur'.<sup>111</sup>

### 'Nature positive'

**2.32** A number of inquiry participants argued that a transition to 'net positive' was not enough, and that instead the NSW Government should amend legislation to transition to, and achieve, 'nature positive' biodiversity outcomes.<sup>112</sup>

**2.33** In their submission, the Australian Land Conservation Alliance stated that 'Australian governments must adopt genuinely nature positive approaches to its social, environmental and economic development. As with other states, New South Wales needs to build and develop our natural capital rather than forever drawing it down'.<sup>113</sup> This was also supported by World Wildlife Fund Australia, who advised that the Biodiversity Offsets Scheme 'should be nature positive. It should be leveraged to achieve an overall enhancement of biodiversity'.<sup>114</sup>

<sup>107</sup> Submission 35, Humane Society International, p 8. This was also supported by Submission 33, Australian Land Conservation Alliance, p 2 and Submission 49, Cessnock City Council, p 2.

<sup>108</sup> Submission 14, Local Government NSW, p 4.

<sup>109</sup> Submission 29, Urban Development Institute of Australia, p 6.

<sup>110</sup> Submission 49, Cessnock City Council, p 2.

<sup>111</sup> Submission 29, Urban Development Institute of Australia, p 6.

<sup>112</sup> Submission 1, Dr Suzanne Allen, p 3; Submission 11, World Wildlife Fund Australia, p 2; Submission 37, Scout Ecology Property Ltd, p 2; Submission 42, Better Planning Network Inc, p 1.

<sup>113</sup> Submission 33, Australian Land Conservation Alliance, p 2.

<sup>114</sup> Submission 11, World Wildlife Fund Australia, p 2.

- 2.34** In their submission, Cement Concrete and Aggregates Australia noted 'the Federal Government's Nature Positive Plan, in response to the Federal EPBC [*Environment Protection and Biodiversity Conservation Act 1999* (Cth)] Review and its call for "fundamental reform"'. The organisation expressed concerns that 'any amendments in New South Wales legislation may not work hand-in-hand with proposals in the Federal Act'.<sup>115</sup> They suggested that in order 'to avoid costly duplication ... and to deliver nationally consistent outcomes ... the bill be delayed to ensure that legislation can be consistent with the Federal Government work in this space'.<sup>116</sup>
- 2.35** Throughout the inquiry, stakeholders made the following general recommendations with respect to the transition to 'net positive':
- that the 'overarching net positive standard [be embedded] into the Biodiversity Conservation Act 2016 with a clear definition'<sup>117</sup>
  - 'amend proposed section 6.2A(1) to provide that the biodiversity offsets scheme must deliver net positive biodiversity outcomes in accordance with this section (rather than transition to net positive)'<sup>118</sup>
  - 'legislate a mechanism for the no net loss standard to no longer apply once the net positive transition strategy has been given effect'<sup>119</sup>
  - '[a]ny transition to net positive should be achieved at an overall strategic, landscape scale and not imposed on individual BDAR/BCARs'<sup>120</sup>
  - 'provide legislated clarity on the definition of net positive outcomes and a timeline for the development of the strategy to deliver these outcomes'<sup>121</sup>
  - that '[t]he Minister should only be permitted to amend the strategy where the amendments will result in better biodiversity outcomes'<sup>122</sup>
  - that 'a baseline year should be set out in the BC Act [*Biodiversity Conservation Act 2016*] or the forthcoming BC Regulations to measure "net positive" against'.<sup>123</sup>

## Changes to the Biodiversity Conservation Fund

- 2.36** The bill proposes to amend the *Biodiversity Conservation Act 2016* to implement changes to the Biodiversity Conservation Fund (the BCF). These changes include restricting the circumstances where proponents can pay into the BCF to discharge offset obligations and proposes to implement changes to the way in which the BCF can meet offset obligations.<sup>124</sup>

---

<sup>115</sup> Submission 23, Cement Concrete Aggregates Australia, p 4.

<sup>116</sup> Submission 23, Cement Concrete Aggregates Australia, pp 4-5.

<sup>117</sup> Submission 21, Environmental Defenders Office, p 12.

<sup>118</sup> Submission 21, Environmental Defenders Office, p 12.

<sup>119</sup> Submission 21, Environmental Defenders Office, p 13.

<sup>120</sup> Submission 29, Urban Development Institute of Australia, p 2.

<sup>121</sup> Submission 35, Humane Society International, p 2.

<sup>122</sup> Submission 35, Humane Society International, p 8.

<sup>123</sup> Submission 14, Local Government NSW, p 4.

<sup>124</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, ss 6.30 and 6.31.



### Restrictions on payments into the Biodiversity Conservation Fund

- 2.37** The bill proposes changes to section 6.30 of the *Biodiversity Conservation Act 2016* which 'will allow for the regulations to prescribe circumstances in which a person must not satisfy a requirement to retire biodiversity credits by payments into the [Biodiversity Conservation] Fund'.<sup>125</sup>

#### *Like-for-like offsets*

- 2.38** The Wentworth Group of Concerned Scientists recommended that 'the Biodiversity Conservation Trust (BCT) urgently implement a process to ensure developer payments into the Biodiversity Conservation Fund are only permitted once developers have exhausted all other private market avenues and when genuine like-for-like offset credits will be available'.<sup>126</sup> This view was supported by many other stakeholders.<sup>127</sup>
- 2.39** The Wentworth Group of Concerned Scientists explained in their submission that due to the ability to significantly vary like-for-like rules under the current scheme, the scheme itself cannot achieve its objectives:

...the BOS [Biodiversity Offsets Scheme] does not align with international best practice for biodiversity offsetting, it provides for significant variation to like-for-like rules which undermines the ability to genuinely offset impacts on affected species and places, the mitigation hierarchy is not consistently or rigorously applied, the scheme allows proponents to make a payment into a fund for impacts that are not offsettable and as a result the Biodiversity Conservation Trust accrues obligations that it simply cannot deliver.<sup>128</sup>

- 2.40** The Australian Climate and Biodiversity Foundation recommended that the regulation be developed

to ensure the Environment Agency Head has power and responsibility in establishing circumstances where payments into the fund are not possible for acquitting offsetting requirements, especially in the case where like-for-like credits are not likely to be available due to impacted species and ecosystems...<sup>129</sup>

<sup>125</sup> Submission 21, Environmental Defenders Office, p 15; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.30.

<sup>126</sup> Submission 7, Wentworth Group of Concerned Scientists, p 3.

<sup>127</sup> Submission 4, Sydney Basin Koala Network, p 1; Submission 11, World Wildlife Fund Australia, p 2; Submission 14, Local Government NSW, p 3; Submission 21, Environmental Defenders Office, p 17; Submission 35, Humane Society International, p 2; Submission 43, Nature Conservation Council of NSW, pp 2 and 4; Submission 54, Australian Climate and Biodiversity Foundation, p 3.

<sup>128</sup> Submission 7, Wentworth Group of Concerned Scientists, p 2.

<sup>129</sup> Submission 54, Australian Climate and Biodiversity Foundation, p 3.

### *Limiting the ability of proponents to pay into Biodiversity Conservation Fund*

**2.41** Imposing limitations on the ability of proponents to pay into the BCF was supported by a number of stakeholders.<sup>130</sup> The Goulburn Mulwaree Council supported the amendment and advised that:

...[d]evelopers tend to view the biodiversity assessment process merely as an unwelcome business cost and impediment, and often seek to discharge their obligation swiftly by paying into the Fund, without making any serious attempt to seek relevant offset credits representative of the biodiversity values ... that they are harming.<sup>131</sup>

**2.42** In their submission, Local Government NSW recommended that restrictions be introduced into the *Biodiversity Conservation Act 2016* 'where there is limited ability to offset the species or ecological communities, for example when there are no offset credits available to purchase'.<sup>132</sup>

**2.43** Some stakeholders were against having restrictions placed on the use of the Biodiversity Conservation Fund.<sup>133</sup> Cement Concrete and Aggregates Australia voiced concerns about the imposed limitations and explained that 'the BCF is already a last resort in most cases and is also usually the most expensive way to offset a given development'.<sup>134</sup>

**2.44** The Urban Development Institute of Australia stated that 'no amendments should be made that would add time or complexity for proponents. Removing access to the relatively streamlined BCF payment process will only make it harder to deliver more housing and jobs in NSW'.<sup>135</sup> They also raised the issue that further information is required, particularly in relation to what constitutes "prescribed biodiversity conservation measures" and that until the regulations and additional information is provided the amendments cannot be properly considered.<sup>136</sup>

### **Changes to the way the Biodiversity Conservation Fund can meet offset obligations**

**2.45** The bill proposes to make changes to the way the Biodiversity Conservation Trust (BCT) is able to use the Biodiversity Conservation Fund to meet offset obligations. The Environmental Defenders Office explained:

...[i]t introduces a new requirement for the BCT to meet its obligations in relation to each BCF offsets biodiversity credit within 3 years of the relevant amount having been

---

<sup>130</sup> Submission 21, Environmental Defenders Office, p 5; Submission 14, Local Government NSW, p 6; Submission 18, Goulburn Mulwaree Council, p 6; Submission 43, Nature Conservation Council of NSW pp 8-9.

<sup>131</sup> Submission 18, Goulburn Mulwaree Council, p 6.

<sup>132</sup> Submission 14, Local Government NSW, p 6.

<sup>133</sup> Submission 16, NSW Minerals Council Ltd, pp 8-9; Submission 23, Cement Concrete Aggregates Australia, p 4; Submission 27, Property Council of Australia, p 2; Submission 29, Urban Development Institute of Australia, p 9.

<sup>134</sup> Submission 23, Cement Concrete Aggregates Australia, p 4.

<sup>135</sup> Submission 29, Urban Development Institute of Australia, p 9.

<sup>136</sup> Submission 29, Urban Development Institute of Australia, p 8.

deposited into the Fund, otherwise the Trust must enter into an agreement with the Minister about how the Trust will meet its obligations.<sup>137</sup>

### *Establishment of three-year timeframe*

- 2.46** Some stakeholders were of the view that the three-year timeframe proposed under section 6.31 of the bill should be reduced.<sup>138</sup> Local Government NSW welcomed the introduction of a legislated timeframe but recommended that it be reduced to two years, 'to minimise the time lag between the clearing and biodiversity gain'.<sup>139</sup> This was also supported by Sydney Basin Koala Network who advised that 'a lag-time of 3 years (or more) between an impact occurring and an offset being implemented is devastating to wildlife on the ground' and that '[o]ffsets must be secured and proven effective up-front before any development is approved. Paying into a fund is not a viable alternative'.<sup>140</sup>
- 2.47** The Total Environment Centre suggested that the provision 'should go further as BCF funds are a proxy for habitat loss; they should thus only be used for habitat gain via property acquisition to secure existing habitat or to restore it'.<sup>141</sup>

### *Impact on the biodiversity credits market*

- 2.48** The following points were made by stakeholders with respect to the impact of the bill's proposed amendments to the BCF on the current biodiversity credits market:
- NSW Farmers advised that the modification of the like-for-like offsetting rules 'may devalue biodiversity credits currently held by landowners'.<sup>142</sup>
  - the NSW Minerals Council Ltd also advised that the two following points should be considered in relation to the proposed changes to the BCF:
    - [t]o restrict payment into the BCF to only credits not readily available, would concentrate obligations accepted by the BCF in the higher risk credits and potentially reduce the portfolio effect currently achieved and increase the overall risk of the Fund.
    - [t]he administration of a scheme where the credit obligations that are accepted by the BCF fluctuate day to day would be very difficult and would provide a great deal of uncertainty about how and at what price a development can be offset.<sup>143</sup>
  - Local Government NSW stated that '[o]ffset prices should also account for the full biodiversity impact, taking into account time, risk and distance factors, as well as proportionally higher prices in urban areas where there is limited biodiversity remaining'.<sup>144</sup>

<sup>137</sup> Submission 21, Environmental Defenders Office, p 15; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.31.

<sup>138</sup> Submission 14, Local Government NSW, p 4; Submission 4, Sydney Basin Koala Network, p 4.

<sup>139</sup> Submission 14, Local Government NSW, p 4.

<sup>140</sup> Submission 4, Sydney Basin Koala Network, p 4.

<sup>141</sup> Submission 30, Total Environment Centre, p 1.

<sup>142</sup> Submission 15, NSW Farmers, p 2.

<sup>143</sup> Submission 16, NSW Minerals Council Ltd, p 8.

<sup>144</sup> Submission 14, Local Government NSW, p 5.

- Urban Development Institute of Australia recommended that funding be increased to the Biodiversity Conservation Trust and Credits Supply Taskforce 'to ensure credits are available for purchase and easily sourced, including through improvements to the credits registry'.<sup>145</sup>

**2.49** The following issues were addressed by stakeholders throughout the course of the inquiry with respect to the overall Biodiversity Offsets Scheme:

- that the Biodiversity Offsets Scheme remains overly costly, cumbersome and complex<sup>146</sup>
- that there is a lack of transparency<sup>147</sup>
- that the option 'to pay into the BCF should be phased out'.<sup>148</sup>

## Proposed exemptions to the Biodiversity Offsets Scheme

**2.50** Under the *Biodiversity Conservation Act 2016* certain pathways of development have different standards and requirements when addressing biodiversity impacts. Inquiry participants discussed this in relation to State Significant Developments and how the bill will enable the forthcoming '[r]egulations to revise the BOS [Biodiversity Offsets Scheme] entry thresholds for local development and will allow the Minister for Environment to exempt local development from the BOS due to natural disasters and other exceptional circumstances'.<sup>149</sup>

### Low impact local development

**2.51** The bill's intention to reduce administrative burden for small, low impact developments was broadly supported by stakeholders.<sup>150</sup> In its submission, Local Government NSW advised that:

the proposal to amend entry thresholds for small, low impact local development has the potential to address many of the concerns of rural and regional communities about issues of over-regulation. However, these changes alone may not be sufficient to address the significant challenges with the BOS [Biodiversity Offsets Scheme] in rural and regional areas where offset costs are often disproportionate to the price of land, making many developments unviable.<sup>151</sup>

---

<sup>145</sup> Submission 29, Urban Development Institute of Australia, pp 2 and 10.

<sup>146</sup> Submission 23, Cement Concrete Aggregates Australia, p 5; Submission 29, Urban Development Institute of Australia, p 9; Submission 41, Jan Barham, p 1; Evidence, Mrs Louise Davies, Landowner, Landholder Biodiversity Interest Group, 12 September 2024, p 8; Evidence, Mr Andrew Lothian, President, Ecological Consultants Association of NSW, 20 September 2024, p 22.

<sup>147</sup> Evidence, Mr Greg Steenbeeke, Director, Henribark Property Ltd, 12 September 2024, p 10.

<sup>148</sup> Submission 21, Environmental Defenders Office, p 7.

<sup>149</sup> Submission 14, Local Government NSW, p 7; Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 7.7 (3).

<sup>150</sup> Submission 10, Murrumbidgee Council, p 2; Submission 14, Local Government NSW, p 7; Submission 18, Goulburn Mulwaree Council, pp 7-8.

<sup>151</sup> Submission 14, Local Government NSW, p 7.

- 2.52** Local Government NSW added that 'additional flexibilities for some development in rural and regional areas should be looked at to support job creation, activate economic potential and support community aspirations while at the same time protecting the environment'.<sup>152</sup>
- 2.53** Further, Ms Carys Parkinson, Senior Policy Officer, Environment, Local Government NSW spoke of the need for more regional hands-on support in the form of regional support officers to assist local councils with the practical implementation, assessment or undertaking of the scheme.<sup>153</sup>
- 2.54** STEP Inc advised in their submission that:
- if there are a number of these [low impact local] developments within a particular locality ... several developments are possible within the threshold. The acceptance of the use of offsets in each case will have a cumulative impact on the locality as a whole. The regulations must ensure that the use of offsets is considered holistically.<sup>154</sup>
- 2.55** Similar views were shared by the Humane Society International and Sydney Basin Koala Network.<sup>155</sup>

### **Natural disasters**

- 2.56** Some stakeholders raised concerns with proposed section 7.7 of the bill, with the Humane Society International stating that the 'provisions create far too broad an exemption for natural disasters or any circumstance that the Minister considers to be "exceptional"'.<sup>156</sup> Goulburn Mulwaree Council stated that '[t]he meaning of "natural disaster and other exceptional circumstances" should be clearly and unambiguously defined in the legislative instrument'.<sup>157</sup>
- 2.57** Humane Society International advised that:
- [i]f the provisions are maintained, it should only be applied to declared disasters and there must be safeguards in place to ensure that impacts on threatened wildlife and ecological communities are appropriately considered. Any provisions must include explicit provisions that limit harm to the minimum necessary to respond to the natural disaster.<sup>158</sup>

### **State Significant Development**

- 2.58** Concerns were raised with respect to the lack of consistency in the application of biodiversity conservation rules to different types of development. Ms Cerin Loane, Special Counsel, Nature, Environmental Defenders Office recommended closing 'those exemptions or loopholes where

---

<sup>152</sup> Submission 14, Local Government NSW, p 7.

<sup>153</sup> Evidence, Ms Carys Parkinson, Senior Policy Officer, Environment, Local Government NSW, 12 September 2024, p 34.

<sup>154</sup> Submission 5, STEP Inc, p 1.

<sup>155</sup> Submission 35, Humane Society International, p 8; Submission 4, Sydney Basin Koala Network, p 5.

<sup>156</sup> Submission 35, Humane Society International, p 8.

<sup>157</sup> Submission 18, Goulburn Mulwaree Council, p 8.

<sup>158</sup> Submission 35, Humane Society International, p 8.

certain pathways of development have different standards or requirements, or the scheme's not applied in the same way'.<sup>159</sup> Ms Loane provided two examples with respect to how the biodiversity conservation rules are varied:

- there are provisions in the legislation that allow the planning decision-maker to discount the number of credits for certain development. That's only available for a certain pathway—State significant infrastructure—but what that does is it undermines the scheme
- [there is also] the serious and irreversible impact safeguard ... it requires mandatory reviews for part 4 [development] but, in the case of State Significant Development or major projects, it's only a requirement for the decision-maker to consider it. Again, it's another exemption or loophole for a particular pathway. What those loopholes and exemptions do is it begins to undermine the scheme and it means the rules are not being applied consistently.<sup>160</sup>

**2.59** In evidence, Dr Megan Kessler, Nature Campaigner, Humane Society International, advised that all 'impacts need to be brought into the same system to have the same standards so that we can actually cumulatively consider the impact that we're having on the environment'.<sup>161</sup> This view was also supported by Sydney Basin Koala Network and Humane Society International.<sup>162</sup>

## Other concerns raised by stakeholders

**2.60** Other concerns raised by stakeholders throughout the course of the inquiry include the bill's proposed direction powers under section 6.10A, the lack of engagement with First Nations people, the need for climate change impacts to be incorporated into the bill, rural and regional perspectives, and the timeframe provided for stakeholder engagement.

### Proposed direction powers

**2.61** Many stakeholders were concerned and disagreed with section 6.10A of the bill, which enables the Environmental Agency Head (or delegate) to give directions to accredited assessors in relation to the preparation or modification of Biodiversity Assessment Reports.<sup>163</sup> In their submission, Scout Ecology Pty Ltd advised that they were concerned that the provision could 'undermine the expertise and technical knowledge of accredited assessors, who are bound by

---

<sup>159</sup> Evidence, Ms Cerin Loane, Special Counsel, Nature, Environmental Defenders Office, 12 September 2024, p 23.

<sup>160</sup> Evidence, Ms Cerin Loane, Special Counsel, Nature, Environmental Defenders Office, 12 September 2024, p 23.

<sup>161</sup> Evidence, Dr Megan Kessler, Nature Campaigner, Humane Society International, 12 September 2024, p 21.

<sup>162</sup> Submission 4, Sydney Basin Koala Network, p 4; Submission 35, Humane Society International, p 9.

<sup>163</sup> Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, s 6.10A; Submission 2, EMM Consulting Property Ltd, p 3; Submission 26, The Ecologist Consultants Association, p 3; Submission 32, Umwelt (Australia) Property Ltd, pp 2-3; Evidence, Dr Steven Ward, Associate Ecologist, EMM Consulting Pty Ltd, 20 September 2024, p 12.

codes of conduct, conflict of interest declarations, and professional development requirements'.<sup>164</sup> This view was shared by other stakeholders.<sup>165</sup>

- 2.62** The Ecological Consultants Association added that the proposed direction powers could 'invalidate a legal defence in the Land and Environment Court, where the ecologist has the ultimate ability to demonstrate their facts are correct against the Department and Consent Authority'.<sup>166</sup> The Ecological Consultants Association also added that '[i]t is not in the public interest to grant the Department the legislative power to force an accredited assessor to change a report...'.<sup>167</sup> EMM Consulting Property Limited added that the directions proposed would also likely 'reduce, not increase consistency'.<sup>168</sup>

### Engagement with First Nations

- 2.63** The NSW Aboriginal Land Council noted the bill's proposed amendment 'to reduce regulatory burdens on smaller-scale, low impact development or in other exceptional circumstances', and stated that they 'support such reforms as they relate to Aboriginal Land Councils to ensure that LALCs' [Local Aboriginal Land Councils] unique position as both landowners and community-controlled organisations is supported and facilitates LALCs delivering economic and community outcomes'.<sup>169</sup>
- 2.64** The NSW Aboriginal Land Council recommended that the bill and resulting regulations:
- explicitly acknowledge Aboriginal landowners under the ALRA [*Aboriginal Land Rights Act 1983* (Cth)], and the intent of the ALRA
  - further consider ways in which the BOS [Biodiversity Offsets Scheme] can be used both for improved biodiversity conservation as well as delivering economic, social and cultural benefits to Aboriginal people and communities
  - provide a dedicated pathway to support Aboriginal land councils engage in biodiversity conservation as well as a mechanism to exempt Aboriginal land councils from offset requirements in recognition of the purposes of the ALRA.<sup>170</sup>
- 2.65** In their submission, Awabakal, Biraban, Darkinjung, Gandangara, Illawarra, La Perouse, Metropolitan and Mindaribba Local Aboriginal Land Councils stated that '[t]he bill does not contain any reference to Aboriginal people or LALCs' and that the NSW Government should 'further consult with us and other LALCs to ensure that our aspirations for land are met and that the BCA [*Biodiversity Conservation Act 2016*] does not unfairly burden us'.<sup>171</sup>
- 2.66** In evidence, Dr Louisa Mamouny, Executive Director, Nature Markets and Offsets Division, NSW Department of Climate Change, Energy, the Environment and Water, explained:

<sup>164</sup> Submission 37, Scout Ecology Property Ltd, p 2.

<sup>165</sup> Submission 2, EMM Consulting Property Ltd, p 3; Submission 26, The Ecologist Consultants Association, p 3; Submission 32, Umwelt (Australia) Property Ltd, pp 2-3.

<sup>166</sup> Submission 26, The Ecologist Consultants Association, p 3.

<sup>167</sup> Submission 26, The Ecologist Consultants Association, p 3.

<sup>168</sup> Submission 2, EMM Consulting Property Ltd, p 3.

<sup>169</sup> Submission 17, NSW Aboriginal Land Council, p 3.

<sup>170</sup> Submission 17, NSW Aboriginal Land Council, p 3.

<sup>171</sup> Submission 31, Awabakal, Biraban, Darkinjung, Gandangara, Illawarra, La Perouse, Metropolitan and Mindaribba LALCs, pp 3-4.

We have an Aboriginal engagement strategy, so we are actively working with Aboriginal landholders and through the NSWALC ... There is also an opportunity for LALCs to benefit from the scheme in terms of conservation as well, if that is something that they are interested in doing. Our engagement strategy is to take a respectful approach to that conservation and to be led by community aspirations on that.<sup>172</sup>

### **Climate change impacts to be incorporated into legislation**

**2.67** The Nature Conservation Council of NSW advised that 'climate change and associated impacts (such as more frequent and intense weather events) have a significant impact on biodiversity' and therefore, '[o]ffset frameworks should build mechanisms responding to climate change and sudden events'.<sup>173</sup> They stated that:

a reformed BOS [Biodiversity Offsets Scheme] must build in a response to climate change induced disasters and stochastic events, for example with 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...<sup>174</sup>

**2.68** Many other stakeholders shared the view that the '[o]ffset frameworks should build in mechanisms to respond to climate change and stochastic events'.<sup>175</sup>

### **Rural and regional perspectives**

**2.69** The Country Mayors Association of NSW gave evidence about the impacts the current biodiversity offset scheme is having on building and development in rural and regional communities. Cr Craig Davies, Mayor, Narromine Shire Council, and Committee Member, Country Mayors Association of NSW gave a number of examples of communities in Western New South Wales that have not been able to proceed with various projects because the costs were prohibitive for the proponents.<sup>176</sup>

**2.70** The Country Mayors Association of NSW recommended a number of ways to address these issues in the new legislation, including '[t]hat credit cost be made proportionate to the land value, with a credit cost cap limited to 5% of englobo value of land'.<sup>177</sup>

**2.71** NSW Farmers raised concerns in their submission about additional layers of complexity due to the proposed changes in the bill, which they say 'may deter farmers from participating in the BOS [Biodiversity Offsets Scheme]'.<sup>178</sup>

---

<sup>172</sup> Evidence, Dr Louisa Mamouney, Executive Director, Nature Markets and Offsets Division, NSW Department of Climate Change, Energy, the Environment and Water, 20 September 2024, p 37.

<sup>173</sup> Submission 43, Nature Conservation Council, p 11.

<sup>174</sup> Submission 43, Nature Conservation Council, p 11.

<sup>175</sup> Submission 4, Sydney Basin Koala Network, p 6; Submission 21, Environmental Defenders Office, p 10; Submission 48, National Trust of Australia, p 2; Submission 43, Nature Conservation Council of NSW, p 11.

<sup>176</sup> Evidence, Cr Craig Davies, Mayor, Narromine Shire Council, and Committee Member, Country Mayors Association of NSW, 12 September 2024, pp 30-31.

<sup>177</sup> Submission 8, Country Mayors Association of NSW, p 13.

<sup>178</sup> Submission 15, NSW Farmers, p 1.



- 2.72 NSW Farmers also raised concerns about the changes devaluing the biodiversity credits currently held by landholders and that the bill must 'support both environmental and agricultural objectives'.<sup>179</sup>

### **Timeframe provided for stakeholder engagement**

- 2.73 Some stakeholders raised concerns with the timeframe provided for stakeholder engagement and consultation.<sup>180</sup>

- 2.74 In their submission, the Ecological Consultants Association of NSW stated that there 'needs to be a genuine and representative industry consultation framework to better manage future changes to the biodiversity legislation and instruments'.<sup>181</sup> They added that:

[a]s with the introduction of the BC Act in 2016, the current amendment looks to be repeating the mistake of being rushed through without adequate consultation with key stakeholders (particularly practitioners).<sup>182</sup>

- 2.75 In evidence, Ms Rebecca Hogan, Vice President, Ecological Consultants Association of NSW expressed the need for genuine consultation and that experts and stakeholders should be involved from the outset:

We feel that if there is consultation, then that will really help, but it needs to be genuine. What we tend to find is that we'll be sent a draft bill—or a draft thing, like in this case—that says submissions close in two weeks. We're not paid to be on the Ecological Consultants Association. We're all volunteers that give our time to that. We run businesses. To suddenly have a two-week time frame to respond to a complex piece of legislation and provide meaningful advice—particularly when it has already been almost completely drafted—is not genuine in our mind. We would like to be involved, at the outset, at the conceptual phase...<sup>183</sup>

- 2.76 The Country Mayors Association of NSW also addressed this issue within their submission stating, '...the schedule of the inquiry [is] extremely rushed relative to the scale of impacts outline[d] in this submission, allowing just seven business days to compile a submission'.<sup>184</sup> The Association also noted that the 'timing [of this inquiry] is far from optimal, as it is occurring while Local Councils are in caretaker mode due to elections'.<sup>185</sup>

<sup>179</sup> Submission 15, NSW Farmers, p 2.

<sup>180</sup> Submission 26, Ecological Consultants Association of NSW, p 1; Submission 8, Country Mayors Association of NSW, p 14; Submission 16, NSW Minerals Council, p 1; Evidence, Ms Rebecca Hogan, Vice President, Ecological Consultants Association of NSW, 20 September 2024, p 25; Evidence, Hon. Stuart Ayres, Chief Executive Officer, Urban Development Institute of Australia, 20 September 2024, p 2; Evidence, Ms Claire Doherty, Policy Director, NSW Minerals Council, 20 September 2024, p 10.

<sup>181</sup> Submission 26, Ecological Consultants Association of NSW, p 1.

<sup>182</sup> Submission 26, Ecological Consultants Association of NSW, p 1.

<sup>183</sup> Evidence, Ms Rebecca Hogan, Vice President, Ecological Consultants Association of NSW, 20 September 2024, p 25.

<sup>184</sup> Submission 8, Country Mayors Association of NSW, p 14.

<sup>185</sup> Submission 8, Country Mayors Association of NSW, p 14.

- 2.77** The Hon. Stuart Ayres, Chief Executive Officer, Urban Development Institute of Australia, argued the bill should not proceed until there has been sufficient consultation with stakeholders:

We consider the introduction of the biodiversity conservation bill to be premature as there has not been sufficient consultation with stakeholders during the drafting of the bill ... the legislation should not proceed unless and until proposed regulations are developed through an exposure draft process with stakeholders; with better regulation statements being produced and provided at the same time and accompanying the bill when it is debated in Parliament.<sup>186</sup>

- 2.78** Likewise, Ms Claire Doherty, Policy Director, NSW Minerals Council added that until proper stakeholder consultation takes place, the bill is likely to have a limited impact:

We were given this bill—there was 24 hours notice before it went to Parliament—as were other stakeholders. There was then a period of several weeks to provide a submission here. This Committee has had a really limited amount of time. You had, what, three clear days to look at submissions before hearings started on Thursday. I think, in the big scheme of things, whether this bill gets passed in October this year or sometime early next year after some proper consultation takes place, it's really going to have a limited impact.<sup>187</sup>

- 2.79** In their submission, Business NSW called for 'more detailed engagement and informed thought' regarding the bill and provided the following table outlining the lack of stakeholder consultation.<sup>188</sup>

**Figure 1** Timeframe of stakeholder consultation on the bill<sup>189</sup>

Date	Consultation	Format
November 2022	Meetings with Independent Reviewer and Panel	Listening only.
28 February 2023	Discussion paper released	Issues only. No proposals for change shared.
21 April 2023	Submissions close	
24 August 2023	Independent Review of the BC Act tabled in Parliament	
8 March 2024	Industry and NGO round tables hosted by Department of Housing, Planning and Infrastructure (DHPI) and Local Land Services (LLS)	Listening only. No proposals for change shared.

<sup>186</sup> Evidence, Hon. Stuart Ayres, Chief Executive Officer, Urban Development Institute of Australia, 20 September 2024, p 2.

<sup>187</sup> Evidence, Ms Claire Doherty, Policy Director, NSW Minerals Council, 20 September 2024, p 10.

<sup>188</sup> Submission 57, NSW Business, p 2.

<sup>189</sup> Submission 57, NSW Business, pp 2-3.

17 July 2024	NSW Government response released	High level, does not identify which changes will be included in 2024 amendment legislation.
17 July 2024	Briefings on Government's response (7-hour notice)	Slide pack presented to large group on Microsoft teams.
29 July 2024	Biodiversity Offsets Scheme (BOS) Stakeholder reference group slide pack presented on Bill, advised Bill would be tabled in August 2024	Slide pack presented to large group on Microsoft teams. No other materials provided.
13 August 2024	Bill provided at 5pm to some stakeholders	
15 August 2024	Bill tabled	
27 August 2024	Briefing for industry associations by NSW Department of Climate Change, Energy, the Environment and Water (DCCEEW)	Listening only.

## Committee comment

**2.80** This inquiry explored how the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 would impact the current Biodiversity Offsets Scheme under the *Biodiversity Conservation Act 2016* and the effect that the proposed amendments would have on biodiversity conservation outcomes in New South Wales. The committee heard from a range of stakeholders, including ecologists, development and planning associations, landholders, the NSW Government, and organisations committed to protecting and restoring biodiversity.

**2.81** The committee recognises that overall, most stakeholders are broadly supportive of the intentions of the bill and that generally, stakeholders endorsed the following provisions of the bill:

- the establishment of the 'avoid, minimise, offset' hierarchy
- the transition to net positive
- the development of a NSW Nature Strategy
- engaging with First Nations
- strengthening landholder support and biodiversity conservation capacity
- requiring the Biodiversity Conservation Trust to acquit obligations within three years
- establishment of new public registers to provide transparency and accountability.

- 2.82** The committee notes the view of several stakeholder groups, including independent scientists, who urge the NSW Government to consider adopting and implementing 'red flag' areas and 'no-go' zones within the bill, to provide further protection to areas of high biodiversity value. They also encourage the NSW Government to consider, in consultation with local councils and stakeholders, mapping these 'red flag' areas and 'no-go' zones and making these maps publicly accessible so that they can be used to guide proponents and decision-makers when assessing development applications.
- 2.83** The committee urges the NSW Government to ensure consistency in language and to define new terms within the bill to provide greater guidance and support to proponents and decision-makers, particularly with respect to the practical application of the 'avoid, minimise, offset' hierarchy and the transition to net positive.
- 2.84** The committee notes that the Biodiversity Offsets Scheme was introduced by the former Coalition Government as part of the Land Management and Biodiversity Conservation (LMBC) reforms and has since been subject to a series of inquiries, including the 2021 parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme, the 2022 Auditor-General's report on the effectiveness of the Biodiversity Offsets Scheme and the 2023 statutory review of the *Biodiversity Conservation Act 2016* undertaken by Dr Ken Henry AC. The committee acknowledges that the bill is a part of the first set of changes under the NSW Government's biodiversity legislative reform program and agrees with all stakeholders that further reform is required to improve the Biodiversity Offsets Scheme. We encourage the NSW Government to continue working with and consulting with experts and stakeholders on further reform in the development and implementation of the forthcoming biodiversity conservation regulations and the net positive strategy.
- 2.85** The committee acknowledges the efforts of all stakeholders to meaningfully contribute to the inquiry within a short timeframe and appreciates that the issues canvassed in this inquiry have been raised by stakeholders in their contributions to previous inquiries and reviews.
- 2.86** The committee acknowledges the differing views of stakeholders that were raised during the inquiry with respect to the proposed provisions within the bill. Ecologists and environmental organisations argued that the bill misses the opportunity to provide more meaningful change and that additional changes are required to protect vulnerable species and reverse biodiversity decline; some development and planning associations claimed that the provisions of the bill could potentially impact housing supply, economic development and the ability to deliver critical infrastructure; while other development and planning associations argued the bill was a positive step forward but that further reform was required to reduce complexity and improve the biodiversity assessment process; local government supported the provisions of the bill, however some regional councils argued that the Biodiversity Offsets Scheme has a higher burden on regional communities and called for further government support and the easing of regulatory burden. The committee agree that all viewpoints are important considerations that need to be balanced within the provisions of the bill.
- 2.87** Accordingly, the committee refers the bill back to the House and recommends that it proceed to debate the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

---

**Recommendation 1**

That the Legislative Council proceed to debate the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

---

## Appendix 1 Submissions

No.	Author
1	Dr Suzanne Allen
2	EMM Consulting Pty Ltd
3	Mr Graham Walker
4	Sydney Basin Koala Network
5	STEP Inc
6	Friends of Berowra Valley
7	Wentworth Group of Concerned Scientists
8	Country Mayors Association of NSW
9	National Parks Association of NSW
10	Murrumbidgee Council
11	WWF-Australia
12	Planning Institute of Australia
13	Name suppressed
14	Local Government NSW (LGNSW)
15	NSW Farmers
16	NSW Minerals Council Ltd
17	NSW Aboriginal Land Council
18	Goulburn Mulwaree Council
19	The Alliance of the Northern Basin (MDB) Aboriginal Tribes
20	Wollondilly Shire Council
21	Environmental Defenders Office
22	Confidential
23	Cement Concrete and Aggregates Australia
24	Cath Ireland
25	John Simpson
26	The Ecological Consultants Association of NSW
27	Property Council of Australia
28	NSW Wildlife Information, Rescue and Education Service Inc. (WIRES)
29	Urban Development Institute of Australia (UDIA NSW)
30	Total Environment Centre
31	Awabakal, Biraban, Darkinjung, Gandangara, Illawarra, La Perouse, Metropolitan and Mindaribba LALCs

<b>No.</b>	<b>Author</b>
32	Umwelt (Australia) Pty Limited
33	Australian Land Conservation Alliance
34	Hunter Bird Observers Club Inc
35	Humane Society International
36	Wando Conservation and Cultural Centre Inc
37	Scout Ecology Pty Ltd
38	Cr Cath Blakey
39	Lynda Newnam
40	Save Sydneys Koalas
41	Jan Barham
42	Better Planning Network Inc. (BPN)
43	Nature Conservation Council of NSW
44	Mrs Ashley Bacales
45	Mr Gordon Kennard
46	Urban Taskforce Australia
47	Lock the Gate Alliance
48	National Trust of Australia (NSW)
49	Cessnock City Council
50	Name suppressed
51	Name suppressed
52	Name suppressed
53	Dr Kym Kilpatrick
54	Australian Climate and Biodiversity Foundation
55	Tricketts Arch Biodiversity Site Aboriginal Corporation
56	Biodiversity Council
57	Business NSW

## Appendix 2 Witnesses

Date	Name	Position and Organisation
<b>Thursday 12 September 2024</b> <b>Room 814</b> <b>Parliament House, Sydney</b>	Mr Adam Muir <i>(via videoconference)</i>	Nature Positive Policy Manager, World Wildlife Fund Australia
	Mr Gary Dunnett	CEO, National Parks Association of NSW
	Mr Saul Deane	Urban Sustainability Campaigner, Total Environment Centre
	Mr Andrew Davies <i>(via videoconference)</i>	Landowner, Landholder Biodiversity Interest Group
	Mrs Louise Davies <i>(via videoconference)</i>	Landowner, Landholder Biodiversity Interest Group
	Mr Greg Steenbeeke	Director, Henribark Pty Ltd
	Mr John Brockhoff	National Policy Director, Planning Institute of Australia
	Mr Darren Holloway <i>(via videoconference)</i>	NSW Division Committee Member, Planning Institute of Australia
	Ms Rachel Walmsley	Head of Policy & Reform, Environmental Defenders Office
	Ms Cerin Loane	Special Counsel, Nature, Environmental Defenders Office
	Ms Jacquelyn Johnson	Executive Officer, Nature Conservation Council of NSW
	Mr Jaden Harris	Advocacy Manager, Nature Conservation Council of NSW
	Dr Megan Kessler	Nature Campaigner, Humane Society International
	Ms Meg Lamb	Animal Protection Campaigner, – Law & Policy, Humane Society International
Mr Stephen Hynd	Executive Director, NSW Aboriginal Land Council	



Date	Name	Position and Organisation
	Mr Raymond Kelly	Councillor and Chairperson, NSW Aboriginal Land Council
	Mr David Reynolds	Chief Executive, Local Government NSW
	Ms Susy Cenedese	Strategy Manager, Environment, Local Government NSW
	Ms Carys Parkinson	Senior Policy Officer, Environment, Local Government NSW
	Cr Craig Davies <i>(via videoconference)</i>	Mayor, Narromine Sire Council, Country Mayors Association of NSW
<b>Friday 20 September 2024 Macquarie Room Parliament House, Sydney</b>	Hon. Stuart Ayres	CEO, Urban Development Institute of Australia
	Mrs Elizabeth York	Policy and Regional Manager, Urban Development Institute of Australia
	Ms Claire Doherty	Policy Director, NSW Minerals Council
	Mr Jason Kuchel	NSW State Director, Concrete, Cement Aggregates Australia
	Dr Steven Ward <i>(via videoconference)</i>	Associate Ecologist, EMM Consulting Pty Ltd
	Mr Tom Forrest	CEO, Urban Taskforce Australia
	Mr Andrew Lothian <i>(via videoconference)</i>	President, Ecological Consultants Association
	Ms Rebecca Hogan <i>(via videoconference)</i>	1st Vice President, Ecological Consultants Association
	Mr James Trezise <i>(via videoconference)</i>	Director, Biodiversity Council
	Professor Martine Maron <i>(via videoconference)</i>	Member, Wentworth Group of Concerned Scientists
Ms Debbie Medaris <i>(via videoconference)</i>	Acting Director, Wentworth Group of Concerned Scientists	
Ms Carmel Flint <i>(via videoconference)</i>	National Coordinator, Lock the Gate Alliance	

---

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Michael Cornish <i>(via videoconference)</i>	Policy Lead, Australian Land Conservation Alliance
	Mr Mick O'Flynn	Director and Acting CEO, Biodiversity Conservation Trust
	Dr Louisa Mamouney	Executive Director, Nature Markets and Offsets Division, NSW Department of Climate Change, Energy, the Environment and Water
	Ms Amy Dumbrell	Director, Biodiversity Offsets, Nature Market and Offsets, NSW Department of Climate Change, Energy, the Environment and Water
	Mr David Gainsford	Deputy Secretary, Development Assessments and Sustainability, Department of Planning, Housing and Infrastructure
	Mr Steve Hartley	Executive Director, Resilience and Sustainability, Department of Planning, Housing and Infrastructure

## Appendix 3 Minutes

### Minutes no. 32

Friday 16 August 2024

Portfolio Committee No. 7 – Planning and Environment

Room 1043, Parliament House, Sydney at 10.02 am

#### 1. Members present

Ms Higginson, *Chair*

Mr Donnelly (substituting for Mr Buttigieg)

Mr D'Adam (via videoconference)

Mr Farlow

Ms Munro

Mr Primrose

#### 2. Apologies

Mr Ruddick

#### 3. Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

##### 3.1 Terms of Reference

The committee noted the following terms of reference referred by the House on 15 August 2024:

- (1) That the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 be referred to Portfolio Committee No. 7 – Planning and Environment for inquiry and report.
- (2) That the committee report by 11 October 2024.

##### 3.2 Proposed timeline

Resolved, on the motion of Ms Munro: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close – Friday 6 September 2024
- Hearing – Thursday 12 September 2024
- Report deliberative – Tuesday 8 October 2024
- Report tabling – Friday 11 October 2024.

##### 3.3 Stakeholder list

Resolved, on the motion of Mr Farlow: That

- all stakeholders who made submissions to, or appeared as witnesses in, the 2021-22 inquiry into the Integrity of the NSW Biodiversity Offsets Scheme be invited to make submissions, with the secretariat to circulate a list of these stakeholders to members
- members have two days from when this list is circulated to nominate additional stakeholders
- the committee agree to any additional stakeholders by email, unless a meeting of the committee is required to resolve any disagreement.

##### 3.4 Approach to submissions

Resolved, on the motion of Mr Primrose: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50

or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
  - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
  - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
  - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

### **3.5 Online questionnaire**

Resolved, on the motion of Mr Primrose: That:

- the committee use an online questionnaire to capture individuals' views, and that the draft questions for this questionnaire be circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the closing date for the online questionnaire be Friday 6 September 2024
- the online questionnaire be promoted in the media release announcing the establishment of the inquiry and on the inquiry webpage
- individual responses to the online questionnaire be kept confidential
- the secretariat prepare a summary report of responses to the online questionnaire, with this report circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the committee not accept proformas.

## **4. Previous minutes**

Resolved, on the motion of Mr Primrose: That draft minutes no. 28 be confirmed.

## **5. Correspondence**

The committee noted the following items of correspondence:

### *Received*

- 31 July 2024 – Email from Dr Richard Gates, Evans Head Residents for Sustainable Development Inc to the committee providing an update on the Irons Gate development approval at Evans Head
- 9 and 12 August 2024 – Emails from Mr Brendan Donohoe, President, Surfrider Foundation Australia, Northern Beaches Branch, providing the committee an update to his evidence about the Narrabeen/Collaroy Beach seawall.

### *Sent*

- 15 July 2024 – Email from the secretariat to Ms Arabella Douglas, Member, Save Wallum, regarding her request for the committee to travel to the North Coast to meet with traditional owners of the Bundjalung Nation.

## **6. Inquiry into the planning system and the impacts of climate change on the environment and communities**

### **6.1 Public submissions**

Resolved, on the motion of Mr Primrose: That the committee accept and authorise the publication of submission no. 247.

## 6.2 Answers to questions on notice and additional information

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of answers to questions on notice and their attachments from:

- Mosman Council, received 14 May 2024
- Kiama Municipal Council, received 12 June 2024.

The following answers to questions on notice and additional information were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Hornsby Shire Council, received on 29 May 2024
- answers to questions on notice from Northern Beaches Council, received on 14 June 2024
- answers to questions on notice from Willoughby City Council, received on 7 June 2024
- additional information from Let's Own Our Future - Jetty Foreshores, received on 27 June 2024
- answers to questions on notice from Wamberal Beach Save Our Sands, received on 28 June 2024
- answers to questions on notice from Lismore City Council, received on 2 July 2024.

## 6.3 Documents received at site visits

Resolved, on the motion of Ms Munro: That the committee accept the following documents provided to the committee during site visits:

- Documents from Let's Own Our Future – Jetty Foreshores, received on 30 May 2024 at Coffs Harbour Jetty Foreshore site visit
- Documents from Yamba Community Action Network Inc, received on Friday 31 May 2024 at Yamba site visits
- Documents from Mr Paul and Ms Janeen Scully, received on 31 May 2024 at Maclean site visit
- Documents from Evans Head Residents for Sustainable Development Inc, received on 31 May 2024 at Evans Head site visit.

## 6.4 Site visits – audio recordings and summary reports

Resolved, on the motion of Mr Farlow: That the secretariat not prepare a summary report of site visits undertaken on 3, 30 and 31 May 2024, as the community groups in attendance at these site visits subsequently gave evidence to the committee at a hearing on 17 June 2024.

## 6.5 Future conduct of inquiry

Mr D'Adam moved: That the committee authorise the secretariat to redraft the interim report to be reflected as the final report of the inquiry.

The committee deliberated.

Mr Farlow moved: That the motion of Mr D'Adam be amended by inserting at the end: 'and that the committee table its final report by 19 November 2024.'

Amendment of Mr Farlow put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Farlow, Ms Munro, and Mr Primrose.

Noes: Ms Higginson.

Original question of Mr D'Adam, as amended, put and passed.

## 7. Adjournment

The committee adjourned at 10.39 am until Thursday 29 August 2024, Macquarie Room, Parliament House (public hearing – Budget Estimates).

David Rodwell  
**Committee Clerk**

### **Minutes no. 35**

Thursday 12 September 2024

Portfolio Committee No. 7 – Planning and Environment

Room 814, Parliament House, Sydney at 8.45 am

#### **1. Members present**

Ms Higginson, Chair

Mr Ruddick, Deputy Chair (from 9.16 am until 12.48 pm)

Mr Buttigieg (via videoconference until 8.50 am)

Mr Fang (substituting for Mrs Mitchell until 8.51 am)

Mr Lawrence (substituting for Mr Primrose for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024)

Mrs Mitchell (substituting for Mr Farlow for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024) (via videoconference from 10.19 am)

Ms Munro

Ms Suvaal (substituting for Mr D'Adam for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024) (via videoconference)

#### **2. Correspondence**

The committee noted the following items of correspondence:

##### ***Received***

- 16 August 2024 – Email from the Opposition Whip's Office to the secretariat advising that the Hon Sarah Mitchell MLC will substitute for the Hon Scott Farlow MLC for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 21 August 2024 – Email from the Government Whip's Office to the secretariat advising that the Hon Stephen Lawrence MLC will substitute for the Hon Peter Primrose MLC for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 27 August 2024 – Email from Mr Gary Fry, Secretariat, Country Mayors Association of NSW to the secretariat in response to the stakeholder invitation for submission to the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, encouraging the committee to undertake hearings in regional New South Wales, in the north, south and west of the State
- 3 September 2024 – Email from the Government Whip's Office to the secretariat advising that the Hon Emily Suvaal MLC will substitute for the Hon Anthony D'Adam MLC for the duration of the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 3 September 2024 – Email from Ms Claire Doherty, Policy Director, NSW Minerals Council to the secretariat declining to attend 12 September 2024 hearing for the inquiry into the

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 and encouraging the committee to hold a further public hearing at a later date

- 3 September 2024 – Email from Ms Tessa Faucheur, NSW/ACT State Manager, Planning Institute Australia, to the secretariat requesting to appear alongside an organisation that is better aligned with Planning Institute Australia rather than Urban Taskforce Australia for the hearing on 12 September 2024 for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 5 September 2024 – Email from Georgina Woods, Head of Research and Investigations, Lock the Gate Alliance, to the secretariat declining to attend 12 September 2024 hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 6 September 2024 – Email from Sirena Beveridge, Heritage NSW, to the secretariat declining to attend 12 September 2024 hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 9 September 2024 – Email from the Opposition Whip's Office to the secretariat advising that the Hon Wes Fang MLC will substitute for the Hon Sarah Mitchell MLC between the times of 9.00 am and 10.00 am and 2.00 pm and 3.00 pm for the hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 on Thursday 12 September 2024.

### 3. Inquiry into Budget Estimates 2024-2025

#### 3.1 Tabled document – Climate Change, Energy, the Environment, Heritage hearing (Sharpe), 29 August 2024

Resolved, on the motion of Mr Fang: That the following document, tabled by Mr Fang during the Climate Change, Energy, the Environment, Heritage hearing (Sharpe) held on 29 August 2024 remain confidential:

- Sample asbestos weights in public areas.

### 4. Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

#### 4.1 Public submissions

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of submission nos. 1-12, 14-21, 23-46.

#### 4.2 Partially confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of submission no. 13 with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

#### 4.3 Confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee keep submission no. 22 confidential, as per the request of the author.

#### 4.4 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Fang:

- That members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence for today's hearing
- That witnesses be required to provide answers to questions on notice/supplementary questions within 3 business days.

#### **4.5 Distribution of Chair's draft report**

Resolved, on the motion of Mr Lawrence: That members be provided with a copy of the Chair's draft report in less than 7 calendar days before the scheduled report deliberative date.

#### **4.6 Further inquiry activities**

The committee noted that agreed via email to hold a further half day hearing in the afternoon on Friday 20 September 2024.

#### **4.7 Public hearing**

##### *Sequence of questions*

Resolved, on the motion of Mr Lawrence: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Adam Muir, Nature Positive Policy Manager, World Wildlife Fund *via videoconference*
- Mr Gary Dunnett, CEO, National Parks Association of NSW
- Mr Saul Deane, Urban Sustainability Campaigner, Total Environment Centre.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Davies, Landowner, Landholder Biodiversity Interest Group *via videoconference*
- Mrs Louise Davies, Landowner, Landholder Biodiversity Interest Group *via videoconference*
- Mr Greg Steenbeeke, Director, Henribark Pty Ltd.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr John Brockhoff, National Policy Director, Planning Institute of Australia
- Mr Darren Holloway, NSW Division Committee Member, Planning Institute of Australia *via videoconference*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rachel Walmsley, Head of Policy & Reform, Environmental Defenders Office
- Ms Cerin Loane, Special Counsel – Nature, Environmental Defenders Office
- Ms Jacquelyn Johnson, Executive Officer, Nature Conservation Council of NSW
- Mr Jaden Harris, Advocacy Manager, Nature Conservation Council of NSW
- Dr Megan Kessler, Nature Campaigner, Humane Society International
- Ms Meg Lamb, Animal Protection Campaigner – Law & Policy, Humane Society International.



The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Stephen Hynd, Executive Director, NSW Aboriginal Land Council
- Mr Raymond Kelly, Councillor and Chairperson, NSW Aboriginal Land Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Reynolds, Chief Executive, Local Government NSW
- Ms Susy Cenedese, Strategy Manager, Environment, Local Government NSW
- Ms Carys Parkinson, Senior Policy Officer, Environment, Local Government NSW
- Cr Craig Davies, Mayor, Narromine Sire Council, Country Mayors Association of NSW *via videoconference*.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 1.00 pm. The public and the media withdrew.

## 5. Adjournment

The committee adjourned at 1.01 pm until Friday 20 September 2024, Jubilee Room, Parliament House, Sydney – second public hearing for the inquiry into Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

Alice Wood

**Committee Clerk**

## Minutes no. 36

Friday 20 September 2024

Portfolio Committee No. 7 – Planning and Environment

Macquarie Room, Parliament House, Sydney at 12.49 pm

### 1. Members present

Ms Higginson, *Chair*

Mr Buttigieg (via videoconference until 12.55 pm and then from 5.31 pm)

Mr Lawrence

Mrs Mitchell (via videoconference from 1.32 pm)

Ms Munro (from 1.31 pm until 3.30 pm)

### 2. Apologies

Mr Ruddick, Deputy Chair

Ms Suvaal

### 3. Previous minutes

Resolved, on the motion of Mr Lawrence: That draft minutes no. 36 be confirmed.

#### 4. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 13 September 2024 – Email from Ms Emma Thompson, NSW Policy Manager, Property Council of Australia, to the secretariat declining to attend 20 September 2024 hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 17 September 2024 – Email from Ms Rhiannon Heath, Policy Advisor, NSW Farmers Association, to the secretariat declining to attend 20 September 2024 hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024
- 18 September 2024 – Email from Ms Jemima Accadia, Executive Support and Engagement Officer, Housing Industry Association, to the secretariat declining to attend 20 September 2024 hearing for the inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

#### 5. Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

##### 5.1 Public submissions

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of nos. 47-49, 53-55.

##### 5.2 Partially confidential submissions

Resolved, on the motion of Mr Lawrence: That the committee authorise the publication of submission nos. 50-52 with the exception of identifying and/or sensitive information which are to remain confidential, as per the request of the author.

##### 5.3 Timeframe for answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Lawrence:

- That members provide any supplementary questions to the secretariat within 24 hours of receiving the transcript of evidence for today's hearing
- That witnesses be required to provide answers to questions on notice/supplementary questions within 3 business days.

##### 5.4 Public hearing

##### *Sequence of questions*

Resolved, on the motion of Mr Lawrence: That the allocation of questions to be asked at the hearing be left in the hands of the Chair.

Witnesses, the media and the public were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Hon. Stuart Ayres, Chief Executive Officer, Urban Development Institute of Australia
- Mrs Elizabeth York, Policy and Regional Manager, Urban Development Institute of Australia
- Ms Claire Doherty, Policy Director, NSW Minerals Council
- Mr Jason Kuchel, NSW State Director, Concrete, Cement Aggregates Australia

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Steven Ward, Associate Ecologist, EMM Consulting Pty Ltd *via videoconference*

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tom Forrest, CEO, Urban Taskforce Australia

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Andrew Lothian, President, Ecological Consultants Association *via videoconference*
- Ms Rebecca Hogan, 1<sup>st</sup> Vice President, Ecological Consultants Association *via videoconference*
- Mr James Trezise, Director, Biodiversity Council *via videoconference*
- Professor Martine Maron, Member, Wentworth Group of Concerned Scientists *via videoconference*
- Ms Debbie Medaris, Acting Director, Wentworth Group of Concerned Scientists *via videoconference*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Flint, National Coordinator, Lock the Gate Alliance *via videoconference*
- Mr Michael Cornish, Policy Lead, Australian Land Conservation Alliance *via videoconference*

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mick O'Flynn, Director and Acting Chief Executive Officer, Biodiversity Conservation Trust
- Dr Louisa Mamouny, Executive Director, Nature Markets and Offsets Division, Department of Climate Change, Energy, the Environment and Water
- Ms Amy Dumbrell, Director, Biodiversity Offsets, Nature Market and Offsets, Department of Climate Change, Energy, the Environment and Water
- Mr David Gainsford, Deputy Secretary, Development Assessments and Sustainability, Department of Planning, Housing and Infrastructure
- Mr Steve Hartley, Executive Director, Resilience and Sustainability, Department of Planning, Housing and Infrastructure

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.33 pm. The public and the media withdrew.

## 6. Inquiry into Budget Estimates 2024-2025

### 6.1 Correspondence regarding Climate Change, Energy, the Environment, Heritage hearing on 29 August 2024

The committee received the following correspondence:

- 18 September 2024 – Letter from Mr Jim Beyer, Managing Director and Chief Executive Officer, Regis Resources Ltd., to the Chair, raising points of concern with comments by Ms Cate Faehrmann MLC during the Budget Estimates hearing on Thursday 29 August 2024 regarding the McPhillamys Gold Project
- 20 September 2024 – Letter from Ms Cate Faehrmann MLC, to the Chair, in response to the letter from Mr Jim Beyer, Managing Director and Chief Executive Officer, Regis Resources Ltd regarding comments made by Ms Cate Faehrmann MLC during the Budget Estimates hearing on Thursday 29 August 2024 with respect to the McPhillamys Gold Project.

Resolved, on the motion of Mr Lawrence: That the committee defer further consideration of this matter until the committee's next meeting on Tuesday 8 October 2024.

## 7. Adjournment

The committee adjourned at 5.48 pm until Tuesday 8 October, Parliament House, Sydney – report deliberative for the inquiry into Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 and the inquiry into the development of the Transport Orientated Development Program.

Alice Wood

**Committee Clerk**

### Draft minutes no. 37

Tuesday 8 October 2024

Portfolio Committee No. 7 – Planning and Environment

Room 1043, Parliament House, Sydney at 10.02 am

#### 1. Members present

Ms Higginson, *Chair*  
Mr Ruddick, *Deputy Chair* (via videoconference)  
Mr Buttigieg (from 10.04 am)  
Mr Donnelly (substituting for Ms Suvaal)  
Mr Lawrence (via videoconference)  
Mrs Mitchell (via videoconference)  
Ms Munro

#### 2. Previous minutes

Resolved, on the motion of Ms Munro: That draft minutes no. 36 be confirmed.

#### 3. Inquiry into Budget Estimates 2024-2025

### 3.1 Correspondence regarding Climate Change, Energy, the Environment, Heritage hearing on 29 August 2024

The committee received the following correspondence:

- 18 September 2024 – Letter from Mr Jim Beyer, Managing Director and Chief Executive Officer, Regis Resources Ltd, to the Chair, raising points of concern with comments by Ms Cate Faehrmann MLC during the Budget Estimates hearing on Thursday 29 August 2024 regarding the McPhillamys Gold Project
- 20 September 2024 – Letter from Ms Cate Faehrmann MLC, to the Chair, in response to the letter from Mr Jim Beyer, Managing Director and Chief Executive Officer, Regis Resources Ltd regarding comments made by Ms Cate Faehrmann MLC during the Budget Estimates hearing on Thursday 29 August 2024 with respect to the McPhillamys Gold Project.

Resolved, on the motion of Ms Munro: That:

- the correspondence received 18 September 2024 from Mr Jim Beyer and the correspondence received 20 September 2024 from Ms Cate Faehrmann MLC be made public and be published on the committee's Budget Estimate's inquiry webpage
- the committee thank Mr Jim Beyer and Ms Cate Faehrmann MLC for their correspondence, note the contents of their letters and resolve to take no further action.

## 4. Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

### 4.1 Public submissions

Resolved, on the motion of Ms Munro: That the committee authorise the publication of submission nos. 56 and 57.

### 4.2 Summary report of online questionnaire

The committee noted that the summary report of the online questionnaire was published by the secretariat on 19 September 2024.

### 4.3 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Buttigieg: That the committee authorise the publication of answers to questions on notice from:

- Country Mayors Association of NSW, received on 17 September 2024
- Environmental Defenders Office, received on 19 September 2024
- Henribark Pty Ltd, received on 20 September 2024
- NSW Aboriginal Land Council, received on 23 September 2024
- Urban Development Institute of Australia NSW, received on 4 October 2024
- Department of Climate Change, Energy, the Environment and Water, received 4 October 2024.

### 4.5 Consideration of Chair's draft report

The Chair submitted her final report entitled *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* which having been previously circulated, was taken as read.

Resolved, on the motion of Mrs Mitchell: That the following new paragraph be inserted after paragraph 2.68:

**'Rural and Regional perspectives**

The Country Mayors Association gave evidence about the impacts the current biodiversity offset scheme is having on building and development in rural and regional communities. Cr Craig Davies gave a number of examples of communities in Western NSW that have not been able to proceed with various projects because the costs were prohibitive for the proponents. [FOOTNOTE: Evidence, Cr Craig Davies, Mayor, Narromine Shire Council, and Committee Member, Country Mayors Association of NSW, 12 September 2024, pp 30-31.]

The Country Mayors Association recommended a number of ways to address these issues in the new legislation, including '[t]hat credit cost be made proportionate to the land value, with a credit cost cap limited to 5% of englobo value of land.' [FOOTNOTE: Submission 8, Country Mayors Association of NSW, p 13.]

NSW Farmers raised concerns in their submission about additional layers of complexity due to the proposed changes in the Bill, which they say 'may deter farmers from participating in the BOS.' [FOOTNOTE: Submission 15, NSW Farmers, p 1.]

NSW Farmers also raised concerns about the changes devaluing the biodiversity credits currently held by landholders and that the Bill must 'support both environmental and agricultural objectives.' [FOOTNOTE: Submission 15, NSW Farmers, p 2.]

Resolved on the motion of Mr Lawrence: That paragraph 2.78 be amended by:

- a) omitting 'encourages' and inserting instead 'notes the view of several stakeholder groups, including independent scientists, who urge'
- b) omitting 'We also encourage' and inserting instead 'They also encourage'.

Resolved on the motion of Mr Lawrence: That paragraph 2.79 be amended by omitting 'implement clear' and inserting instead 'ensure consistency in'.

Resolved on the motion of Mr Lawrence: That paragraph 2.80 be amended by:

- a) inserting the following new sentence at the start of the paragraph:  
"The committee notes that the Biodiversity Offsets Scheme was introduced by the former Coalition Government as part of the Land Management and Biodiversity Conservation (LMBC) reforms and has since been subject to a series of inquiries, including the 2021 parliamentary inquiry into the integrity of the NSW Biodiversity Offsets Scheme, the 2022 Auditor-General's report on the effectiveness of the Biodiversity Offsets Scheme and the 2023 statutory review of the Biodiversity Conservation Act 2016 undertaken by Dr Ken Henry AC'.
- b) inserting 'and agrees with all stakeholders that further reform is required to improve the Scheme' after 'reform program'
- c) omitting 'and we encourage the NSW Government to continue working with' and inserting instead 'We encourage the NSW Government to continue working with'
- d) inserting 'on further reform and' after the word 'stakeholders'.

Resolved on the motion of Mr Lawrence: That the following new paragraph be inserted after paragraph 2.80:

"The committee acknowledges the efforts of all stakeholders to meaningfully contribute to the inquiry within a short timeframe and appreciates that the issues canvassed in this inquiry have been raised by stakeholders in their contributions to previous inquiries and reviews."

Resolved on the motion of Mr Lawrence: That paragraph 2.81 be amended by:

- a) omitting 'while' before 'ecologists and environmental organisations'

- b) inserting 'some' before 'development and planning associations claimed'
- c) inserting '; while other development and planning associations argued the bill was a positive step forward but that further reform was required to reduce complexity and improve biodiversity assessment process; local government supported the provisions of the bill, however some regional councils argued that the Biodiversity Offsets Scheme has a higher burden on regional communities and called for further government support and the easing of regulatory burden' after 'critical infrastructure'
- d) omitting 'both viewpoints' and inserting instead 'all viewpoints'.

Resolved, on the motion of Mr Donnelly: That:

The draft report, as amended, be the report of the committee and that the committee present the report to the House;

The transcripts of evidence, submissions, correspondence, responses and summary report to the online questionnaire, and answers to questions taken on notice and supplementary questions relating to the inquiry be tabled in the House with the report;

Upon tabling, all unpublished attachments to submissions and individual responses to the online questionnaire be kept confidential by the committee;

Upon tabling, all unpublished transcripts of evidence, submissions, correspondence, responses and summary report to the online questionnaire, and answers to questions taken on notice and supplementary questions related to the inquiry be published by the committee, except for those documents kept confidential by resolution of the committee;

The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;

The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;

The secretariat is tabling the report at 11.15 am, Friday 11 October 2024;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

## 5. Adjournment

The committee adjourned at 10.18 am, until 1.00 pm, Tuesday 8 October 2024, Room 1043, Parliament House, Sydney – report deliberative for the inquiry into the development of the Transport Orientated Development Program.

Alice Wood  
Committee Clerk





