

Submission  
No 1

**INQUIRY INTO BIODIVERSITY CONSERVATION  
AMENDMENT (BIODIVERSITY OFFSETS SCHEME) BILL  
2024**

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## **Submission on the Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024**

The following includes my objections to the nature of the Biodiversity Offsets Scheme as it currently stands, and I provide a few points to validate my full support for the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024. I apologise that I find it difficult to separate the inadequacies of the Biodiversity Conservation Act and the inadequacies of the Offsets Scheme. If the latter was efficient, it is remotely possible, perhaps, that some biodiversity might survive, but the current situation is grim. 'Since the BCA came into effect, the rate of land clearing has increased over 30% and the number of threatened species and ecological communities has climbed to more than 1,000' (Loane, quoted in Environmental Defender's Office, 2023). The Independent Review of the Biodiversity Conservation Act 2016, states 'the natural environment is now so damaged that we must commit to 'nature positive' if we are to have any confidence that future generations will have the opportunity to be as well off as we are' (p. 111, 2023). Clearly, the Offsets Scheme is grossly inadequate.

Since moving to Diamond Beach in 2016, large areas of local bushland have been eradicated. Developers (such as Joe Cocos, 'Development Director @ Edgewater Shores') have clear-felled large areas including vulnerable swamp sclerophyll forest which was also habitat for the endangered Wollem toadlet (plus potentially quolls and gliders). This is despite 2.3 of the Biodiversity Act stating: 'A person who damages a declared area of outstanding biodiversity value is guilty of an offence. Maximum penalty—Tier 1 monetary penalty or imprisonment for 2 years, or both' (*Part 2: Protection of animals and plants*). No such penalty occurs.

In regard to the Offsets Scheme, the notion that a destroyed habitat can simply be re-created in another location is absurd. Bush/forest environments are complex natural habitats, not simplistic guttered, pretty manicured gardens. The Offset Scheme for 'Seaview' estate, situated at Diamond Beach, NSW, between the estates of Edgewater and SeaScape, is appalling. The most recent offset addition to Seaview appears to be three rows of grasses and neat rows of compact gardens. They are far from a replacement for Australian forest. It is unforgivable, yet no penalty has been imposed on those responsible. Where housing has been designated there is nothing left. The creek has been reduced to stillwater. The riparian zone is damaged. The tributary flowings have been converted to drainage. According to Tuckerman, Manager of Natural Systems MidCoast Council, the further

downstream that waters flow greater riparian zones are acquired (based on the assumption that the waters increase downstreams) (2024) but such increases often do not occur because of developments upstream.

The coast line from Black Head to Diamond Beach is now urbanised with housing that has no scope for wildlife. All communities and fauna and flora would benefit with stricter guidelines imposed on Councils' approval of building developments. Where Councils have 'no say', State guidelines need to be changed and the Federal government needs to enforce this through legislature. Not only is all habitat removed, but the buildings are built extremely close together. Current fashion dictates that houses are large, covering much of the given block, with little remaining space for growth that might support bird and other wildlife. The implementation of a clear, tight, and scientifically sound suite of national environmental standards is vital for the conservation of our fauna and flora. The Offsets Scheme must have no loopholes, especially through legislature that conflicts with the retention and regrowth of habitat.

The MidCoast Council is about to submit an LEP that has incorporated building codes that will enable even denser housing development. At a June 2024 meeting Councillor Fowler stated in objection to environmentalists who had just left the gallery:

How great it is to see our community growing, an opportunity for younger families to come to this local area and enjoy life. I really get complexed [*sic*] about the issue with people coming to Council with regards to taking away my view. Well, I'm sorry to disappoint you but unless you own the piece of land that's right on the water you don't own anything. It's an opportunity as I said for younger families to have a go in our local area, and I still get complexed [*sic*] in regards to [*sic*] the previous one in Tallwoods. No we don't want it in our backyard, but guess what, we want services, we want service stations, we want all this, but we don't want it in our backyard. Well, it makes no sense to me. Growth brings opportunity for younger families and brings opportunity for our community (MidCoast Council ordinary meeting, 26 June 2024).

The NSW government also continues to drive housing development with the 'housing crisis' argument, even though the number of houses to be built far exceeds the number in need.

Clearly, cultural perspectives need to be changed. Councillor Fowler's language exemplifies and perpetuates the 'NIMBY' argument, as though caring for local community areas is somehow ludicrous. The notion of development as having power over habitat is embedded in language. LEPs, for example, are described as 'a framework that guides planning decisions for local government areas through zoning and development controls. Zoning determines how land can be used (for example, for housing, industry, or recreation) and development controls set guidelines such as the maximum building height allowed' (NSW Govt, Planning: Local planning and

zoning, 2024). The constant mindset is that building development is synonymous with growth, whereas it is actually what is destroying habitat and our access to, enjoyment of, and organic use of the Australian landscape.

The Australian Government can ensure that our environmental laws and standards are enforced. I offer the following few practical strategies based on common sense and my own moral standards that incorporate ethical and caring regard for life:

- Establish independent environmental regulators to monitor and enforce compliance with environmental laws i.e. an Independent Office of Environmental Compliance and Enforcement (Stasak, Australian Conservation Foundation, 2021).
- Eliminate the exemption from environment laws given to all native forest logging covered by regional forestry agreements between the federal and state governments.
- Remove ambiguities that enable ministers or industries to evade National Environmental Standards.
- Establish clear communications and mutual support between State and Local Councils and environmental groups, with particular acknowledgement and integration of representatives from the science and Aboriginal communities.
- Grant the (future) National Environmental Assurance Commissioner with full independence.
- Introduce extensive reforestation campaigns and advertise these to promote recovery strategies.

I fully support the Recommendations stated in the Final Report of the Independent Review of the Biodiversity Conservation Act 2016: Final Report, particularly:

- adopt a 'nature positive' approach to biodiversity (1)
- require an independent body to undertake regular reviews (for example, every 5 years) to assess progress in achieving nature positive outcomes (2)
- ensure primacy of biodiversity considerations, support nature positive outcomes, and identify 'no-go' areas (8)
- set an objective for the Biodiversity Offsets Scheme to deliver a net positive biodiversity outcome (11)
- require a net gain for biodiversity by setting credit obligations for all development and clearing assessed through the Biodiversity Offsets Scheme at, say, 120% of calculated biodiversity loss (12)
- provide consent authorities with a clear power to retrospectively apply the Biodiversity Offsets Scheme to a development application if there has been pre-emptive clearing under a clearing entitlement to avoid the scheme applying (17)
- require biodiversity certification when land is rezoned for development where expected impacts trigger the area clearing thresholds or the Biodiversity Values Map (20)

- provide clearer guidance on the requirements to avoid and minimise impacts to biodiversity from development (23)
- require that steps taken to avoid and minimise impacts are included in conditions of consent and published (24)
- amend the Biodiversity Conservation Regulation 2017 to provide an option to enter an agreement with the Minister for the Environment to deliver an offset obligation in a way that provides certainty for biodiversity conservation, is aligned with a regional offset investment plan, delivers on-ground actions and generates credits on a like-for-like basis through entry into Biodiversity Stewardship Agreements, acquisition of land and conservation measures (27)
- provide greater incentives, including increased credit yield, to:
  - encourage active restoration of degraded ecosystems and the reintroduction of species at biodiversity stewardship sites
  - encourage the protection of areas of strategic biodiversity values, such as those that provide habitat connectivity and landscape resilience (37)

I fully support the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

Kind regards,

Dr Suzanne Allen.

## References

Fowler, T. (26 June 2024). Midcoast Council Ordinary Meeting. Accessed August 20 2024. <https://www.midcoast.nsw.gov.au/Your-Council/Council-meetings/Agendas-and-minutes>

NSW Govt, Planning: Local planning and zoning, (2024). Accessed 28 August 2024. <https://www.planning.nsw.gov.au/plans-for-your-area/local-planning-and-zoning>

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Tuckerman, G. (2024). Hallidays Point Community Action Group (HPCAG) meeting with Councillors, 26 August, 2024.