

Submission  
No 4

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

**Organisation:** Sydney Basin Koala Network

**Date Received:** 4 September 2024

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Date: 3rd September 2024

Dear Parliamentary Committee 7 and the NSW Government,

**Re: Inquiry Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024**

Thank you for considering our feedback. We appreciate the opportunity to contribute, as the current Biodiversity Offset Scheme (BOS) is facilitating biodiversity loss and is in desperate need of an overhaul. For a detailed outline of our position on the BOS, including specific examples of its failure to protect koalas and suggestions for improvement, please refer to [pages 9-13 of the SBKN Biodiversity Conservation Act Submission](#).

**SBKN firmly believes that the proposed amendments to the BOS will not achieve the intended positive outcomes for biodiversity.** Offsets do not safeguard threatened species where they currently live, and the proposed BOS amendments will continue to allow unsustainable loss of wildlife. The Biodiversity Conservation Act (BCA) must acknowledge that many environmental impacts can not be offset and must incorporate stricter regulations to prevent the misuse and overuse of offsets.

**What cannot be offset:**

- **Serious and Irreversible Impacts:** by definition, these impacts are irreversible, so cannot be undone by offsets. It is nonsensical to allow SAIL to be offset.
- **Impacts to areas of high environmental values, including threatened species habitat:** when a species or ecosystem is added to the threatened species list or uplisted, this should be the red flag to stop and reverse habitat loss.
- **Where no genuine offsets are available:** if “like-for-like offsets” are not available, this is a strong indication that the proposal’s impact is significant and potentially serious or irreversible, and therefore should not proceed.

**If impacts to threatened species and other Serious and Irreversible Impacts, cannot be avoided, they must not proceed,** otherwise we will continue on the trajectory towards species extinction.

**Offset use must be sharply curbed.** Currently 96% of developer demand for species credits is not met by current supply. Essentially we must **reduce the use of offsets by more than 20 fold.** The planning system should shift its focus from merely offsetting negative impacts to proactively creating genuinely positive environmental outcomes from the outset. If there are **rare cases where offsets are used, they must be:**

- **Like-for-like:** the same population and species being impacted must be the benefactor of the offset. Offsets must be in close proximity to the impacts. **Paying into a fund is unethical and not a viable alternative.**
- **Up front benefits with no time lag:** Wildlife cannot wait decades for new forests to grow after theirs has been lost. Populations will die out before the “offset” is viable, if it ever is. Offsets must be secured and proven effective up-front before any development is approved. A viable ecosystem can take decades, if not hundreds of years to form, yet the Koala only has 25 years before it is predicted to be driven to extinction in NSW.
- **Genuinely positive for biodiversity:** Protection of habitat is vital, but protecting existing habitat to destroy it elsewhere, is net loss.

- **Proven effective:** all to often regeneration efforts fail, but the dead saplings are counted as offsetting loss of old growth forest. This is why offsets must be proven up front.
- **Transparent to the community:** a map of land offsets that is clear and easily accessible would enable transparency of where offsets are, what they are for, and accountability that regeneration is effective and conservation is in perpetuity.
- **In perpetuity.**

**These criteria that offsets must satisfy are intentionally stringent, resulting in limited situations where offsets are deemed appropriate.** By prioritising thoughtful development plans that contribute more to the environment than they detract, the reliance on offsets would be significantly reduced.

If 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. Please find below our feedback on each of the amendments (pages 2-5) and our suggested improvements (page 6).**

Thank you for your time in considering our submission on the Amendments to the Biodiversity Offset Scheme. Please do not hesitate to contact us if you have any questions or require further information.

Kind regards,

Jade Peace and Stephanie Carrick  
Sydney Basin Koala Network



## **Feedback on amendments**

### **(i) Establishing the 'avoid, minimise and offset' hierarchy as the key principle underpinning the scheme**

- This hierarchy has always been intended to guide the offset process. Unfortunately, in practice, the principles of avoidance and minimisation are often inadequately applied, with minimal efforts before resorting to offsets. This has led to a situation where offsets are used as a primary strategy, rather than as a last resort, resulting in a net loss for biodiversity.
- To truly benefit the environment, it is crucial that stricter enforcement and transparent evaluation of the avoidance and minimisation measures be implemented. If a project's serious impacts cannot be thoroughly demonstrated to be avoided or minimised, and genuine like-for-like offsets are not available then the project should not proceed.

### **(ii) Providing that the scheme will transition to net positive biodiversity outcomes**

- Net positive biodiversity outcomes are necessary to halt and reverse the current trends of biodiversity loss, however it is unclear how these amendments to the BOS will achieve net positive biodiversity outcomes, when there are still no clear limits on offset use.
- The scale of offsets required for current demand are fundamentally incompatible with positive environmental outcomes. 96% of developer demand for species credits is not met by current supply. We must rethink our development strategies to ensure all development has a positive impact on biodiversity, rather than relying on offsets to counter "unavoidable" damage.
- Currently, habitat loss is undermining restoration because losses are being offset by protecting existing habitat. Clearing half a forest and protecting the other half results in a 50% net-loss, yet this is framed as "additional".
- While the protection of habitat is crucial, framing it as "additional" is problematic because there is no genuinely increase in the amount of habitat available and fails to address the urgent need for genuine habitat expansion. The amended BOS must not allow existing habitat to offset losses elsewhere.
- Positive outcomes cannot be in the future. For example, future mine rehabilitation should not be counted as an upfront offset.
- Furthermore, if at any stage the proposed offsets are likely to impact endangered species or if genuine, equivalent offsets cannot be achieved, the proposal should be rejected outright. Allowing such proposals to proceed not only risks irreversible harm to vulnerable ecosystems but also contradicts the very purpose of the offset scheme, which is to ensure no net loss of biodiversity.
- It is not clear what is considered 'net-positive' and how the destruction of the homes of an endangered species population could be considered so.

### **(iii) Creating standards against which developers must demonstrate measures taken to avoid and minimise the impact of proposed development, activity, clearing or land use on biodiversity values**



- Offsets should be a genuine last resort measure and there must be stricter gateways provided on what steps must be taken and evidenced before offsets can be used. Projects that do not demonstrably attempt to avoid or minimise environmental impacts, or where net-positive offsets cannot be met, should be rejected.
- Developers already need to show how they have avoided and minimise impacts. It is unclear how the proposed changes will make a meaningful difference.

(iv) Requiring the concurrence of the Minister if a relevant authority proposes to impose certain conditions on state significant development consents or state significant infrastructure approvals

- Ministerial call-in powers undermine the integrity of the Biodiversity Conservation Act and BOS.
- The same rules should apply to SSI and SSD as other developments. If the impacts cannot be avoided, minimised or genuinely offset, they should not go ahead.
- The text of the bill (see below) is convoluted to the point of being incomprehensible without a high degree of expertise. The lay terms explanation above does little to clarify the intentions of this amendment. It is disappointing that such an important amendment is convoluted and obscured with complex language to the point of prohibiting an engaged civic process.
  - “(iv) require the concurrence of the Minister administering the Act (the Minister) if a relevant authority proposes to impose conditions on State significant development consents and State significant infrastructure approvals other than conditions requiring the retirement of the same number and type of biodiversity credits as calculated in the relevant biodiversity development assessment report, except in particular circumstances, and”

(v) Improving the operation and administration of the Biodiversity Conservation Fund

- The amendments require payments to the fund be acquitted within 3 years and if they can't then the Trust and the Minister must make a plan. However a lag-time of 3 years (or more) between an impact occurring and an offset being implemented is devastating to wildlife on the ground. Irreversible damage could be done to a vulnerable population in the meantime. Offsets must be secured and proven effective up-front before any development is approved. Paying into a fund is not a viable alternative.

(vi) Enabling the regulations to limit the ability of proponents to satisfy offset obligations by paying money into the Fund

- Regulations must be to **prevent** the ability of proponents to satisfy offset obligations by paying money into the Fund.
- The ability to pay money to the BCT in lieu of actual like for like offsets undermines the integrity of the BOS. Payment to the fund in exchange for removal of habitat (that cannot be replaced) allows serious and irreversible impacts on endangered species.
- Paying for environmental destruction creates net loss, at least in the short term before money is spent. Conservation measures need to be in place **before**



destruction occurs, otherwise wildlife are left worse off and risk being lost in the time lag between the impact and the offset being delivered.

(vii) Establishing public registers of certain decisions and measures associated with the scheme

- (A) Keeping a public register of approved SAI - While we support improving public transparency. Approving SAI will continue driving our species into decline and toward extinction. If something has serious and irreversible impacts, by definition it cannot be offset and therefore should be rejected. **Approving SAI is inconsistent with a BOS that has net positive biodiversity outcomes.**
- Additionally, there should be registers of approvals for development, clearing and forestry, offsets and biodiversity conservation agreements, biodiversity certifications.
- **Information available on those registers must be comprehensive and readily accessible. Should be presented in plain language, and easily accessible to the public.** For example a publicly available register of offset sites as a map layer on SEED including which development the land is offsetting, would enable the public to clearly see which parcels of land have been used as offsets, and therefore must be conserved in perpetuity. This would help in holding offsets to account, avoiding double dipping and ensuring offset lands are not developed in future.

(viii) Enabling the Environment Agency Head to issue directions associated with the preparation and modification of biodiversity assessment reports, and

- There remains the conflict of interest from developers employing ecologists to write the Biodiversity Assessment Reports. For a true and fair assessment, developers should pay a standard fee and an independent ecologist should prepare and submit biodiversity assessment reports.

(ix) Reducing administrative burdens on small, low-impact developments.

- Caution must be applied here, to ensure cumulative impacts are considered and the BCA must ensure significant impacts avoided from cumulative impacts. Fragmentation of habitat is particularly vulnerable to cumulative impacts. For koalas, the NSW Government could avoid this, by ensuring all councils with Koalas map habitat corridors under a CKPoM and ensuring the CKPoM applies to all development including SSI, SSD and development less than 1ha. If koala habitat and corridors across the state were mapped in CKPoMs, connectivity would be more resilient to cumulative impacts.

The proposed Amendments to the BOS will leave our wildlife at risk. It must be significantly strengthened or offsets scrapped altogether to enable genuine positive outcomes for biodiversity. Fundamentally the BOS needs to acknowledge that not everything can or should be offset. Legislation and policy must set clear limits on the use of offsets, and anything outside this should be rejected, otherwise biodiversity will continue to decline.



## Summary of improvements to the BOS

- **The BCA must recognise that not everything can be offset.** There are currently no effective red lights, and everything is amenable to offsetting despite ecological evidence to the contrary.
  - For example, Appin (part) Precinct development of 12,000 homes in Wollondilly will destroy part of the critically endangered Cumberland Plain Woodland despite less than 10% of this ecosystem being left and it being extremely difficult to offset. Government public report states that replanting Cumberland Plain Woodland “has a low success rate and should not be relied on to deliver conservation lands.” Allowing Critically Endangered Woodland that cannot be replanted to be cleared and “offset” is not aligned with improving ecological outcomes.
  - Clearing remnant forests cannot be offset.
  - **Legislation and policy must set clear limits on the use of offsets.**
- **Serious and Irreversible Impacts cannot be offset** and therefore should not go ahead.
- Offsets must not be available for development or activities that will clear or impact on **areas of high environmental values, including threatened species habitat**
- Conservation measures need to be **in place and shown to be effective before negative impacts take place**, otherwise wildlife cannot survive while waiting for their habitat to be restored.
- Offsets must be based on **genuine “like for like”** principles.
- **No payment into a fund in lieu of genuine offsets.** If no “like-for-like” offset is available - then the project should not proceed.
- Recognise that **biodiversity stewardship agreements are offset agreements** and regulate them in accordance with best-practice offsetting principles – they should have **effect in-perpetuity**, and should not be able to be terminated.
- **Government owned land should not be used for offsets** - e.g. Noorumba, a council reserve used to offset clearing for development.
- **Discounting and exemptions should not be permitted** (even for SSD or SSI).
- Offsetting must achieve benefits **in perpetuity**.
- Offsets must be **additional**.
- Offsets must be **transparent and legally enforceable**.
- Offset frameworks must include **monitoring and reporting requirements** to track whether gains and improvements are being delivered. Additional action must be taken if offsets are proven ineffective.
- Offset Frameworks should have **built in mechanisms to respond to climate change and stochastic events**.
- The Local Government NSW has expressed concerns that because fines for illegal land clearing cost less than the cost to offset environmentally sensitive land there remains more incentive to clear land illegally and face the consequences, rather than follow the Code. Worse still, the prosecution of such illegal land clearing is abysmally low, so there is even less incentive to follow the rules. **The NSW Government cannot fix the BOS without addressing the complete disregard for clearing habitat on rural land.**

