

Submission
No 8

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

Organisation: Country Mayors Association of NSW

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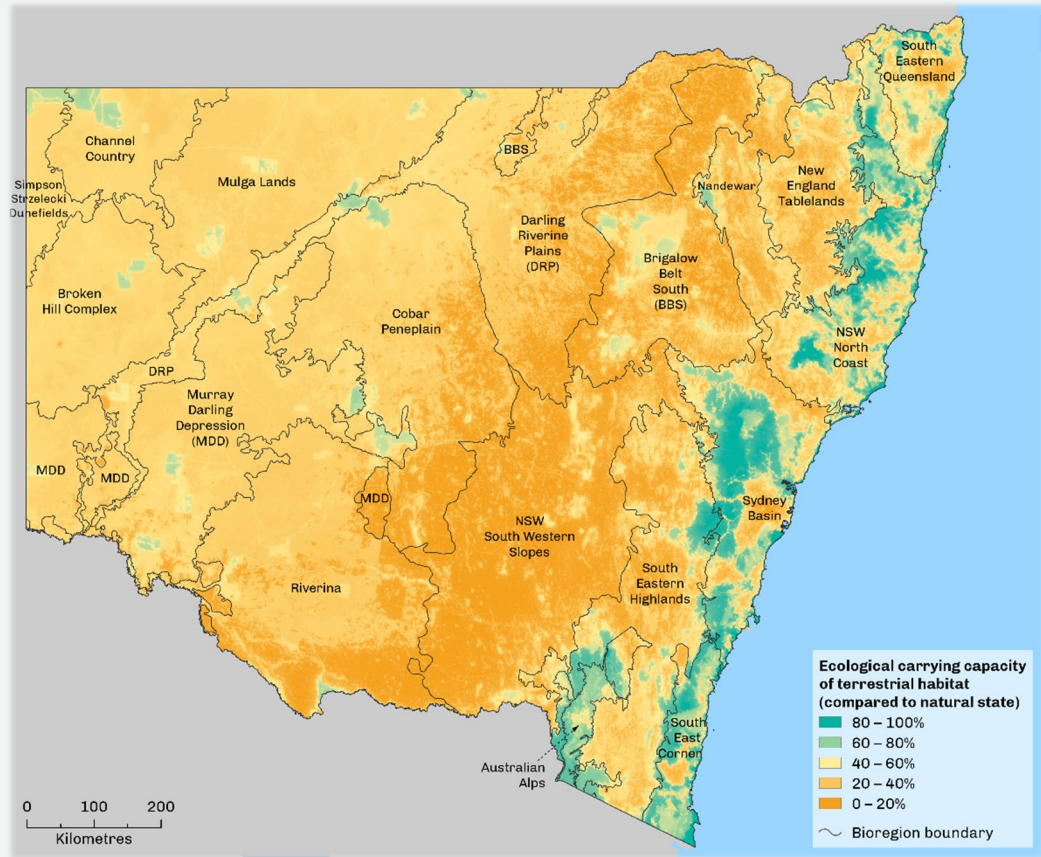


SUBMISSION

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Presented By the
Country Mayors Association of NSW

4 September 2024



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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.

The Country Mayors Association of New South Wales

The Country Mayors Association of NSW (CMA) represents 90 members throughout non-metropolitan NSW. The Association exists because of city-country inequities in Local Government. The disparities between regional and Sydney Councils includes biodiversity impact levels.

The CMA is a politically bipartisan organisation that has a long and respectful relationship with successive State leadership teams over the past 45 years in NSW; it is our strong desire to maintain that respectful relationship whilst communicating the hopes and aspirations of our regional communities to ensure the ongoing prosperity of NSW. The NSW Country Mayors Association stands firm on our pursuit of equity of service provision.

This submission is aimed at representing members, including a vast majority of the Mayors and their Councils throughout non-metropolitan NSW.



What prompted the Biodiversity Amendment Bill

The CMA notes that the Biodiversity Amendment Bill is in response to a number of reports and “a well-documented decline in NSW’ biodiversity”, as cited in the Statement of Public Interest from the NSW Biodiversity Outlook Report 2024 (8 May 2024). Given the admitted failure to meet objectives, the CMA questions the integrity of “drawing on internal Departmental expertise and consultation, reflecting extensive experience administering the Scheme” (also from the Amendment Bill Statement of Public Interest).



The consequences of the Biodiversity Conservation Act

The CMA advises that it supports the objectives of the Act and the proposed amendment. However, it is critical to recognise the negative impacts it has had to date because a balance between biodiversity conservation and the interests of regional, rural and remote landholders and developers has been lacking and is key to mutually beneficial outcomes.

CMA Members, regional developer and housing industry bodies have reported that their experiences with the Act across western NSW is that the cost of the off-setting credits has been so high that it has been commercially prohibitive for most types of development to proceed. State and national level (Government) projects have been the exception. According to our members, the Development Assessment costs associated with the Act in general have literally halted developments; from health to housing, agricultural infrastructure to industry, the cost of proceeding with projects has been considered unviable by proponents. Despite prohibiting regional development, the supporting documentation for the Amendment conceded that the Act has failed to arrest the decline of biodiversity in NSW.

Feedback previously provided regarding the Act includes as lack of affordable credits in western NSW for projects other than major infrastructure such as the Inland Rail project. It is accepted that the costs of living and revenue capacities in regional, rural and remote NSW are lower than metropolitan and coastal locations – offset credits should have a sliding scale to reflect this. Where BDAR assessments by Environmental Assessors have been demonstrably conservative, classifications have led to more offset credits being required than realistically required, substantially inflating project costs.

The lack of available affordable offset credits suitable for inland NSW has resulted in the [Biodiversity Credit Trust](#) (BCT) being the first and only option for developers to discharge their obligations. The real-world experience from members is that this inflates costs by up to ten times what would be found in free market credit trading circumstances.

The CMA has clear-cut reports that the Act and the offset credit costs have literally been the prohibitive factor that rendered proceeding with schools, hospitals or housing unviable. The CMA acknowledges that it is obviously not the intent of the Act to be the barrier to development that it has been. It is therefore recommended that the Inquiry into the Amendment consider the economic realities as witnessed by country Mayors and their Councils in regions, rural and remote Local Governments of NSW. The Act has had minimal biodiversity conservation benefit despite actually serving as a barrier to development. This indicates that the same people applying the same approaches cannot continue. Allowing the failures and negative consequences of the Act to continue would be insanity, by definition. Entirely new, collaborative approaches are required, working with Local Government (utilising the local connectedness, experience and expertise there) and operating an equitable offset credit trading (with a westwards sliding scale), and greatly improved considerations where a development proposal includes criteria satisfying improvements to existing biodiversity conservation at the location.

The NSW Government’s own website details Strategies and frameworks that inform decision making and other activities in sustainable finance. While there is a climate-first ethos, the site states that “The NSW government is committed to ensuring everyone in the state has access to the opportunities they need to build a high standard of living for themselves and their families.

This includes access to economic opportunities and high-quality government services, and additional support for vulnerable members of society.”

<https://www.nsw.gov.au/departments-and-agencies/sustainable-finance/nsw-sustainability-plans-and-progress/sustainability-strategies-and-frameworks>

It should be noted that typically, this website does not present as holistically representative of all of NSW, with this illustration....



Seeking the best way forward by learning from the past

Country Mayors and their rural, regional and remote Councils are on the front line of development issues in non-metropolitan NSW. They know that better environmental outcomes will result from working with developers, instead of against them. It is hoped that the NSW Government's Biodiversity Amendment Bill has sufficiently incorporated historical lessons of this to present a more positive and proactive way forward, with developmental and biodiversity outcomes in mind.

What is truly clear is that a more collaborative approach between the NSW Government and Country Councils in NSW would deliver better biodiversity conservation outcomes, without choking off the development that regional communities need. The Amendment Bill documentation states that biodiversity in NSW is in crisis and that requires a shift in the paradigm, a total adjustment to the approaches or methodologies of the scheme, not merely the wording and priorities that theoretically underpin it.

Many Country Councils and farm business operators have practical experience and expertise in the environmental management of their respective areas. They often work with organisations such as Landcare to optimise conservation and regeneration outcomes. For the NSW Government to redress the biodiversity decline, it must work side by side with them at all stages, policy development to implementation.

The Biodiversity Conservation Act has been a roadblock for development projects in regional NSW and has demonised farmers and developers in the eyes of environmental conservation advocates without contextual knowledge. Yet, it has failed. This is what must be considered. Measures to protect biodiversity conservation must be more effective but to be more heavy-handed would further alienate those who are best positioned to have genuine impact. Supporting regional development projects, such that they are guided to progress efficiently in a way that has a minimal or zero impact on biodiversity is what is in the public's interest.

Environmental conservation policy development must factor in the perspectives and needs of project developers, regional investors, regional communities and their Councils to be genuinely effective. An environmental obstructionist approach is not able to achieve optimal outcomes.

The CMA applauds the fourth of the key reform areas "Better balance the application of the scheme with biodiversity risks".

"By reducing the regulatory burden for small, low-impact developments, the proposed amendments will better balance the application of the scheme with the risks to biodiversity posed by development." This is a sentiment endorsed by the CMA, however the following statement in the Amendment documentation was flawed. "The Bill will enable the Minister for the Environment to exempt local development from the scheme in exceptional circumstances and following natural disasters, to help communities to rebuild." This suggests that the Minister will have discretionary veto powers over developments, which would logically be a slow process, as they would consider 'exception circumstances' on a case-by-case basis. The experience and local biodiversity knowledge that exists in rural, regional and remote Councils should be respected and

utilised. The Bill could (for example) determine a transparent framework for what constitutes exceptional circumstances in this case and entrust Councils to make a determination and refer those that satisfy criteria to the Minister (with a time-sensitive pipeline). Councils are judged on development consent approval time frames and there would be concerns about how an external Government variable could affect the appearance of a Council's performance.

The Central Darling Shire Council is larger than Tasmania. It is semi-arid and far from a vulnerable ecosystem. The CMA advises that whether it be the Central Darling LGA or Bourke Shire, the existence of a biodiversity impact risk should not need a Ministerial determination for a project to proceed (as an exceptional circumstance).

Some western NSW examples of how the Biodiversity Conservation Act and BDOS costs have made development prohibitive in clearly low biodiversity risk settings:

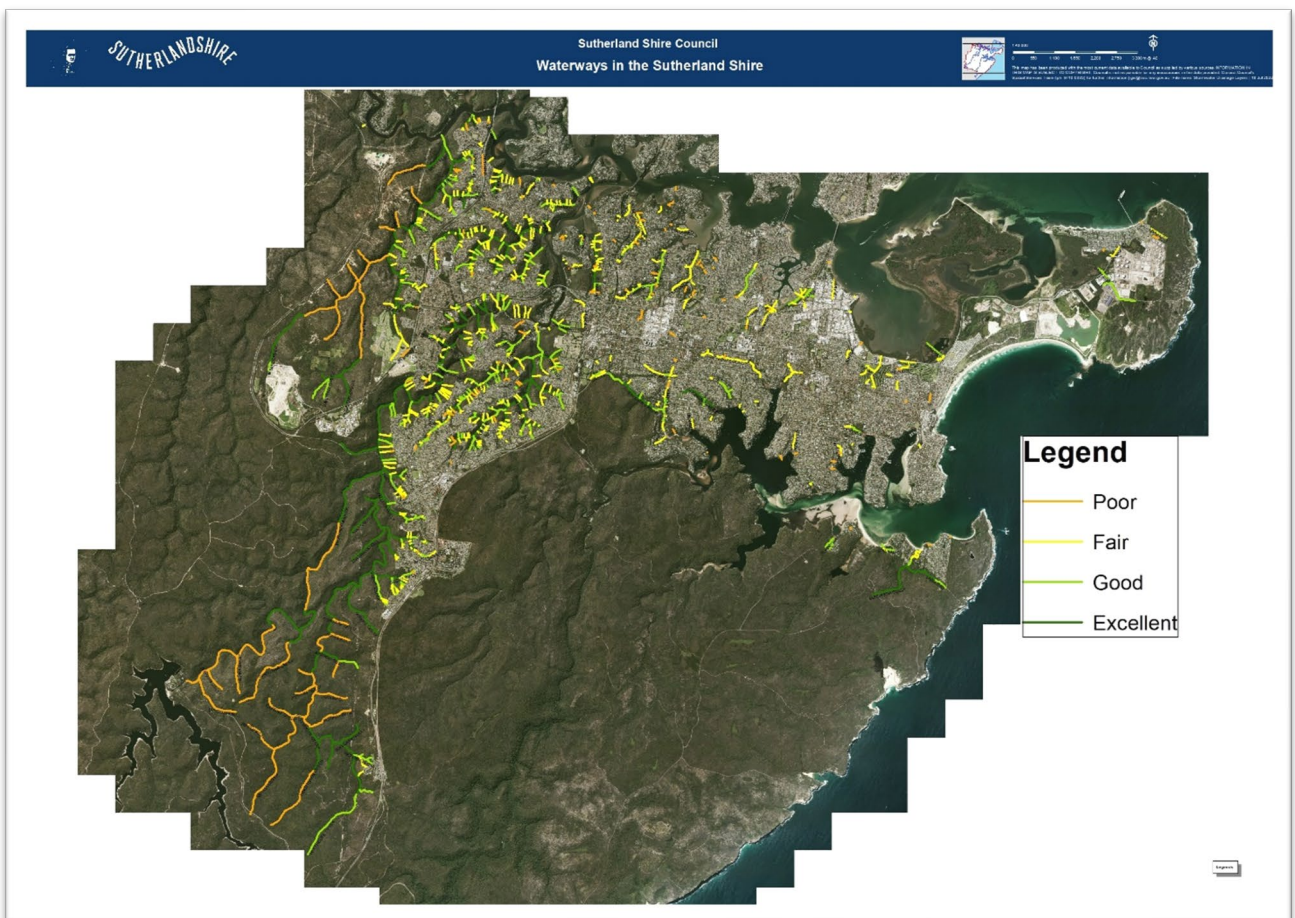
1. In the Bourke Shire. A 2018 development of a number of small commercial blocks (6 & 12 Ha.) during a period of high unemployment of 9.5 %, where the bulk of those unemployed are indigenous, here was a Council willing to develop blocks to kickstart employment and prepared to sell the blocks for the attractive price of \$48,000 only to have a further \$480,000 per block added for BDOS. The project fell over and no jobs were created.
2. Murrumbidgee Shire proposed to build homes in Coleambally. The cost associated with BDOS was so exorbitant that it was not feasible to go ahead.
3. Bogan Shire Council at Nyngan was hit with a \$339,000 BDOS cost for a small housing development they had put together. This more than doubled the cost of every block and made them impossible to sell.
4. Wentworth Shire in the far South-West had a proposal for a gypsum quarry to replace the existing one that was being rehabilitated. It was six kilometres north of town, in scrubby bush and covered 61 Ha. BDOS costs were set at \$8-9 million. The project was shelved, with 25 jobs and indigenous royalties lost. The project moved to Victoria.
5. Moree Plains Shire was advised to prepare for an explosion of jobs with the advent of Inland Rail and told they needed 600 housing blocks. The most appropriate and suitable block adjacent to town was chosen and planning started. Development ceased when BDOS costs tripled the land price and made the project unviable.

6. Narromine Shire has had two applications for gravel quarries designed to supply product to Inland Rail. Both had BDOS costs assessed at \$1.4mil. and over \$1mil. Respectively.
7. Tomingley Gold wished to relocate the Newell Highway and establish it slightly to the west of current location. 36 Ha. of land was involved and the first assessment for BDOS was \$20mil.
8. The famed dingo fence along the NSW-QLD border was due for renewal at a cost of \$29mil. BDOS costs came to a further \$51mil, making the total \$80mil. for a fence. The fence was moved 150mm north into Queensland to avoid BDOS.
9. Gilgandra Shire sought to establish a commercial area along the Newell Highway, just south of the town. The block had a history of farming and was clear open country. The BDOS assessment was in excess of \$1mill but reduced to \$850,000. The result was the project was significantly downgraded.

Treating regional, rural and remote NSW LGAs as if they are responsible for a rainforest in the middle of Sydney has had widespread negative impacts on regional development and the Department concedes little environmental benefit has been achieved. Better common sense oversight to prevent such unrealistic taxing of regional projects is sought by CMA members.



Central Darling Shire Council (above aerial view should provide a clear enough biodiversity picture), where biodiversity is not at all at risk, contrary to Sutherland Shire Council, Sydney.... (waterways health map from the Council's website below)



The credits market

The CMA has advised that a one-size-fits-all model applied across NSW is not appropriate where the Biodiversity Conservation Act/Amendment is concerned. As mentioned above, biodiversity vulnerabilities and credit market values must be weighted differently across the State of NSW.

Western NSW cannot be fairly constrained by the same rules that would protect a sand dune succession or coastal health ecosystem. The CMA recommends that at least three biodiversity risk levels should exist, with differing criteria, development parameters and Biodiversity Offset Scheme values. To have a remote semi-arid property facing the same rules as Sydney or a sensitive rainforest or even wet/dry sclerophyll forest areas is highly inappropriate and counterproductive. The CMA advises that the same uneven playing field and marketing distorting variables would complicate a credits market.

The CMA recommends that the credits market be carefully regulated to account for the differences between metropolitan, regional, rural and remote locations. I

Nationally significant projects such as the Inland Rail project and Transgrid powerlines in southern NSW will distort the credits market and such variables would further influence the market in rural, regional and remote areas of NSW (more disproportionately than metropolitan market drivers).



Recommendations

1. That New South Wales be divided into three geographical regions; Coastal belt to the Great Divide, The Divide to the Newell Highway and then the country to the west of the Newell.
2. Further, that Local Government Areas be designated to the three abovementioned zones.
3. That this Inquiry consider the findings of the 2024 NSW Government Inquiry into Historical Development Consents (AKA Zombie DAs). There must have cohesion and consistency is regards to development consent requirements and validity periods.
4. That a sliding scale or at least different criteria and offset credit requirements be applied to the three abovementioned zones.
5. That credit cost be made proportionate to the land value, with a credit cost map limited to 5% of [englobo](#) value of land. This capped amount would be paid to the BCT.
6. That Regional, Rural and Remote Local Government be empowered to support the objectives of the Act. As development consent authorities, CMA members could embed Act provisions with Local Environment Plans (LEPs), such that one efficient assessment fee includes an environmental levy relative to the where in the LEP a development is and the conservation needs identified in the LEP. Local level transparency and impact would be beneficial. The need for biodiversity conservation will be appreciated and supported when developers are not gritting their teeth to comply with odious requirements or cutting a project back due to fees for credit offsets. Increased localism in biodiversity conservation will give the Act the holistic social license it has lacked and the transparency, such that developers can know what the Act related costs are for.
7. That BCT funds support the development of bio-certification / plans for regional population centres.
8. That education, monitoring and guidelines be implemented to ensure that assessors have a 'collaborative', less conservative and more engaging approach. Project related conservation measures are an example of a factor that could discussed. Working together is how biodiversity decline can be redressed.
9. That the Department establish regional offices to actively service and assist developers to understand how an environmentally supportive project plan can be achieved and reduce their application costs, as well supporting them to source proportionately affordable offset credits.
10. That the Department of Environment and Heritage Amendment include in the Act a requirement for regular audits of Local Government to ascertain demand offset credit demand projections, while also stipulating that more frequent stocktakes of available credit options occur to monitor supply in the market. The BCT could fund the purchase of credits and transparency and promotion of the biodiversity

conservation outcomes/investments to aid in support for and compliance with the Act.

11. That the Amendment provide a review process where project proponents can appeal for compromise if they feel Act requirements/costs have threatened the feasibility of proceeding.
12. That National Parks and Landcare be among a list of (Department approved) perpetual credit sources.

Submission written by Gary Fry
Secretariat – Country Mayors Association of NSW
Acting on behalf of the CMA Chairman, Executive Board and Members

The Country Mayors Association will be happy to speak to this submission. However, please note that this inquiry is overlapping with Local Government elections.

We appreciated the invitation to contribute a submission for the Committee's consideration. However, I and my country mayoral colleagues would like to express our disappointment that there is only one hearing scheduled and that it is in Sydney. Given the impact of the Act, there should be at least three scheduled in rural / regional NSW centres, such as Tamworth, Dubbo, Wagga or Queanbeyan. I would also like to reiterate that the schedule of the inquiry extremely rushed relative to the scale of impacts outline in this submission, allowing just seven business days to compile a submission. Further, the timing is far from optimal, as it is occurring while Local Councils are in caretaker mode due to elections.

Yours sincerely,

**Cr. Rick Firman OAM
Chairman**