

Submission  
No 9

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

**Organisation:** National Parks Association of NSW

**Date Received:** 5 September 2024

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The Hon Sue Higginson MLC  
Chair

Portfolio Committee 7- Planning and Environment  
Legislative Council

By email: <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/lodge-a-submission.aspx?pk=3072>

5 September 2024

**Inquiry into the Biodiversity Conservation Amendment (biodiversity offsets scheme) Bill 2024**

Dear Committee,

The National Parks Association of NSW (NPA) appreciates the opportunity to express our concerns about the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* (the Bill) through this submission and an upcoming appearance before the Committee.

NPA is a member-based organisation with a core focus on the establishment, management and ongoing conservation of Protected Areas, including National Parks, Nature Reserves, Flora Reserves, Marine Parks and Aquatic Reserves. The primary focus of this submission will be upon the implications of the Bill for Protected Areas, however NPA also wishes to register our deep disappointment at the NSW Government's failure to respond adequately to the independent review of the *Biodiversity Conservation Act* (BC Act).

The independent panel, chaired by Dr Ken Henry, clearly articulated the problems with the BC Act and concluded that it was simply not fit for the purpose of avoiding further species extinctions and environmental degradation. The panel proposed wholesale review of the objects, scope and protective mechanisms in the BC Act. While they framed their report as a response to the many ineffective elements of the BC Act, an alternate interpretation is that the Act fails to protect biodiversity precisely because it was designed to enable development by providing mechanisms to destroy areas of conservation significance.

The need for broader reform is highlighted by the proposed new statutory object to '*provide that the biodiversity offsets scheme will transition to net positive biodiversity outcomes*'. A noble aim, but one that is either naive, or at worst, disingenuous. 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 can do is to improve the security of retained habitats.

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. While there have been impressive strides in the science and practice of environmental restoration it is fanciful to suggest that such areas are the ecological equivalent of intact habitats. NPA's view is that it is far more environmentally beneficial and cost effective to protect existing habitat than to gamble on the uncertain and limited capacity of restoration programs to achieve a net positive biodiversity outcome.

NPA is aware that other non-government conservation organisations are producing more detailed critiques of the Bill. We commend their analyses to the Committee, especially that by the NSW Nature Alliance.

As noted above, NPA's central concern is the implications of the Bill for Protected Areas. Australia is signatory to a range of treaties and international agreements that commit our nation to managing Protected Areas for biodiversity outcomes. NSW has responded to those commitments through Protected Area legislation, notably the *National Parks and Wildlife Act* (national parks, nature reserves, state conservation areas, regional parks, Aboriginal areas, historic sites and karst conservation reserves), *Marine Estate Management Act* (marine parks and aquatic reserves) and *Forestry Act* (flora reserves).

Protected Areas are required to conserve all the species, habitats and ecosystems that occur within the gazetted area. Protected Areas are just as important for securing the future of common species as they are for threatened taxa and ecological communities. The management objectives for Protected Areas include maintaining the connectivity and integrity of habitats and ensuring the resilience of large-scale ecosystem processes.

In theory, offsetting provisions should have no relevance to Protected Areas, given that they have been set aside for the express purpose of protecting their natural and cultural values from development and inappropriate use. Unfortunately, the reality in NSW is very different. Substantial areas of the NSW Protected Area Network are impacted by development and other incompatible uses, ranging from the construction of telecommunications towers to on-park accommodation, alpine resorts, recreational facilities, to infrastructure such as roads, gas pipelines, transmission lines, power stations and dams.

NPA has not been able to obtain a comprehensive accounting of the level of development within NSW Protected Areas each year, despite repeated requests to the National Parks and Wildlife Service for relevant information. Our best estimate is that several thousand hectares are lost to development each decade. Recent years have seen two development proposals that individually exceeded this threshold, namely the Snowy 2.0 project in Kosciuszko National Park and Warragamba Dam project in the Greater Blue Mountains. The latter has thankfully been abandoned, at least by the current Government.

The Snowy 2.0 project serves to illustrate NPA's concerns about the offsetting provisions as retained in the Bill. NPA opposed the Snowy 2.0 project from the outset, citing research by the Australian National University demonstrating that there are literally hundreds of locations that are suitable for large scale pumped hydro across eastern Australia. Our view was, and remains, that there are far better alternatives for energy storage that don't involve the destruction of thousands of hectares of the State's only alpine National Park.

NPA has been actively involved in every step of the planning and assessment process, including the exploratory works, main works, transmission connection and current modification. Our arguments against locating the project in Kosciuszko National Park began with its status as a Protected Area and the consequent importance of avoiding damage to the condition, connectivity and integrity of natural habitats. What emerged through many interactions with Ministers, their staff, departments and most particularly planning officials, was that the special status of Protected Areas was of absolutely no import to the NSW or Commonwealth Governments. Instead, any reference to conservation issues was dismissed with an assurance that biodiversity values would be fully assessed in the Environmental Impacts Assessments (EIS) for each stage of the project.

Despite our advocacy the way in which biodiversity and natural heritage values were assessed in those EIS and subsequent approvals was almost entirely limited to calculating the offset liability for threatened species and threatened ecological communities. In other words, environmental impact assessment, even in a Protected Area setting, has been reduced to a commercial calculation.

The Snowy 2.0 project is occurring in the most complex and vulnerable bioregion in our nation. It is not just a Protected Area, it is a centre for biological endemism, listed on the National Heritage Register and as a Biosphere Reserve, and more exposed to climate change than perhaps anywhere in our nation. And yet, a truly massive impact on the conservation status of this landscape was reduced to an offset payment. The market mechanism has allowed the planning system to reduce even this icon of conservation into a cost of doing business- and in the context of the \$12 billion cost of Snowy 2.0, and inconsequential one at that.

Snowy 2 will not be the last time that development is proposed in a NSW Protected Area. The reality is that Governments will continue to be pressed to find 'public' locations for major infrastructure.

So what needs to change?

NPA's preference is that the BC Act and *National Parks and Wildlife Act* both be amended to include outright prohibition on all forms of infrastructure development in Protected Areas, including those classified as State Significant. In the absence of such resolve, it is imperative that the Bill be amended to send an emphatic signal that biodiversity impacts have no place in Protected Areas.

If the Government continues to rely upon offsetting mechanisms, NPA recommends that a new provision be inserted (potentially utilising the mechanism under Section 7.14 of the Bill), applying a multiplier effect to biodiversity offset liabilities for any proposal affecting a Protected Area. We recommend at a least tenfold multiplication factor apply to Protected Areas.

Further, given that a Government or Government owned corporation are the most likely proponent for future proposals affecting Protected Areas, it is important to establish a positive link between any offset payments and the Protected Area network. NPA recommends that, rather than payments being directed into the Biodiversity Conservation Trust, they should be paid into the National Parks and Wildlife fund for the sole purpose of acquiring lands for gazettal as Protected Areas.

If you have any questions about the above I can be contacted at

Yours sincerely,

Gary Dunnett  
Chief Executive Officer  
**National Parks Association of NSW**  
*protecting nature through community action*