

Submission
No 12

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

Organisation: Planning Institute of Australia

Date Received: 5 September 2024

Ms Sue Higginson MLC
Chair, Portfolio Committee No.7
Legislative Council
NSW Parliament

The Chair,

PIA Submission: Inquiry into Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

The Planning Institute of Australia NSW (PIA) supports the intent of the draft bill ([link](#)). The proposed bill responds to Henry Inquiry ([link](#)) and importantly puts the NSW biodiversity conservation framework on a trajectory towards being nature positive – rather than no net loss.

PIA continues to advocate for the closer integration of the Bill with regional land use / land release planning so that biodiversity issues are resolved before structure plans are adopted.

PIA support the aspects of the Bill which:

- Require a NSW Nature Strategy to set goals and targets for conservation (and include monitoring and public reporting)
- Emphasise an explicit hierarchy to avoid damage from development – and only offsetting (or funding offsets) as a last resort
- Close loopholes on offsetting regarding rehabilitation of mines
- Address climate and cumulative impacts
- Engage First Nations
- Strengthen landholder support and biodiversity conservation capacity

PIA offers specific feedback on aspects of the Bill in **Attachment A**.

PIA is pleased the amendment bill is progressing – but is concerned that it has taken multiple submissions and inquiries to get to the outcomes PIA and our allies have been proposing for the last eight years.

PIA has made six submissions setting out our deep concerns on the operation of the NSW Biodiversity Conservation (BC) Framework since its inception:

- PIA 2016 Submission on BC Bill ([link](#)): concern that the BC Act would not achieve its purpose because it removed a requirement

to maintain and improve biodiversity, increased discretion and opened the door for offsets to be used not strictly for 'like for like' replacement.

- PIA 2017 Submission on BC Regulations ([link](#)): concern regarding the interpretation of 'serious and irreversible impact' in the absence of species/habitat thresholds, inconsistency with accepted Council conservation schemes and a weak 'avoid and minimise' test raising doubt on the efficacy of the BAM.
- PIA 2019 Submission on BAM (Biodiversity Assessment Method) ([link](#)): noting its complexity, likely inability to meet conservation outcomes in the absence of comprehensive regional assessment/agreements, potential for non 'like-for-like' offsetting and concern regarding the instability of the offset credit market and poor price signalling.
- PIA 2020 Submission to Independent Bushfire Inquiry ([link](#)) seeking an urgent review of biodiversity conservation policies and offsetting to take account of the widespread effects of the Black Summer fires – and climate change more generally.
- PIA 2021 Submission Integrity of Biodiversity Offsets Scheme Inquiry ([link](#)): noting the offsets and credit system is a 'black box' whose rules allow too many not 'like-for-like' offsets and do not send a consistent or predictable market signal reflecting the conservation value of land.
- PIA 2023 Submission to Parliamentary Inquiry on impacts of Climate Change on the Environment and Communities ([link](#)) reiterating the need to plan on a regional scale for biodiversity conservation as we adapt to a changing climate.

Since 2016, PIA has advocated that the offsets and credits system and assessment methodology should operate as decision support tools working in the context of a regional assessment framework. PIA has consistently highlighted:

- Incomplete preparation of regional biodiversity assessments (& mapping) / agreements – leading to over reliance on individual BAM assessment
- Recognition of offset credits in circumstances that represent different habitats or remote from those being damaged – offsets and proxy payments should only be available for 'like for like' habitat – as a last resort – and using a simple transparent methodology
- The need for market certainty – and the failure to establish a stable price signal in some offsets credit markets (eg Hunter and Cumberland Plain)

- Sideline well researched council biodiversity policies / overlays
– and placing additional resourcing demand on councils

PIA congratulates the NSW Government for crafting a bill that respond to the thrust of the Henry Inquiry recommendations. It is well placed to restore the biodiversity assessment framework to its intended role in service to the improvement of biodiversity and protection of threatened species in NSW.

PIA supports the Bill being implemented with strong training and capacity building initiatives and resources – including attention to the availability of planner and ecologist expertise to administer the reforms.

Yours sincerely,

John Brockhoff
PIA National Policy Director

See Attachment A overleaf

Attachment A: PIA feedback on key elements of the Bill

- *The objects of this Bill are to— (a) amend the Biodiversity Conservation Act 2016 (the Act) to reform the biodiversity offsets scheme and, in particular, to—*
 - *establish the avoid, minimise and offset hierarchy as the key principle underpinning the framework for avoiding, minimising and offsetting the impact of proposed development, activity or clearing on biodiversity values, and*

PIA endorse the objects and recommend the Government provide transparent guidance on how this explicit hierarchy would be interpreted (and 'genuine measures' interpreted) – and avoid a protected bargaining discussion between proponents and Council officers. The circumstances where avoidance is not appropriate (even if possible) needs to have clear criteria.

- *provide that the biodiversity offsets scheme will transition to net positive biodiversity outcomes and, for the purposes of giving effect to that objective, the Minister must make a strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes, and*
- *provide for standards against which developers must demonstrate measures taken to avoid and minimise the impact of proposed development, activity or clearing or land use on biodiversity values, and*

PIA support a rapid transition towards a net positive biodiversity outcomes (going beyond 'no net loss'). PIA support clarity in how net positive will be defined and what standards would need to be met in specific circumstances as well as in regional plans. We assume there would be targets and timeframes proposed in a Strategy.

- *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*

While flexibility will be required to manage the public interest of infrastructure and other agencies – there will need to be clear boundaries.

- *improve the operation and administration of the Biodiversity Conservation Fund (the Fund), including by Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024 [NSW] Explanatory note*
- *(A) requiring that each obligation to retire biodiversity credits for which a payment is made into the Fund be acquitted within 3 years and, if appropriate offsets are not secured within the 3 years, requiring the Biodiversity Conservation Trust to reach agreement with the Minister about how the obligation will be met,*
- *(B) clarifying the operation of the Fund to ensure that money paid into the Fund can be applied to deliver strategic and timely biodiversity outcomes when securing offsets,*

PIA support the role of BOS and its contribution to the acquisition of lands in trust and the operation of stewardship arrangements.

PIA note there is a typically a limited offset market and it does not always send a clear or sufficient price signal promoting biodiversity conservation outcomes.

- *enable the regulations to limit the ability of proponents to satisfy offset obligations by paying money into the Fund in particular circumstances, and*

PIA support this initiative with clear guidance.

- *establish public registers of the following—*
 - o *(A) decisions to approve development, activity or clearing that is likely to have serious and irreversible impacts on biodiversity values,*
 - o *(B) exemptions from the scheme granted by the Minister in connection with natural disasters or other exceptional circumstances,*
 - o *(C) measures for avoiding and minimising impacts on biodiversity values set out in biodiversity development assessment reports and conditions of development consents and approvals, and*

PIA support better transparency.

- *enable the Environment Agency Head to issue directions to accredited persons relating to the preparation and modification of biodiversity assessment reports, and*

PIA support clear probity arrangement to govern the use of this power.

- *reduce administrative burden for small, low-impact developments by—*
 - o *(A) enabling the regulations to provide for revised biodiversity offsets scheme entry thresholds for local development,*
 - o *(B) enabling the regulations to provide for landholder-initiated biodiversity values map review process,*
 - o *(C) allowing the Minister to exempt local development from the scheme in circumstances of natural disasters and other exceptional circumstances, and*

PIA support this to manage the administrative burden and achieve good value outcomes on small proposals. There needs to be recognition that different sites require different levels of assessment particularly for local development.

ENDS