Submission No 13

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

Name: Name suppressed

Date Received: 6 September 2024

First of all, I wish to state two weeks is a grossly inadequate amount of time to provide adequate time to review the Amendment bill, let alone provide an informative and evidence based submission.

This brevity of time allowance for such external reviews and submissions is unfortunately an evidently consistent pattern with policies, documents, etc, released under the BC Act, which has contributed to the difficulties in implementing the Act and issues identified in the Review, and created uncertainty in the industry and the public.

For the ecological and planning industry, a minimum of 4 weeks is reasonable to allow for project commitments including fieldwork and deadlines, but 90 days is more appropriate for major changes such as this. There also is minimum industry awareness of consultation requests for these documents, policies and legislation changes in general. Only a week of specific notice was given to Accredited Assessors of the Amendment!

This lack of sufficient notice has even led to some approved documents conflicting with Case Law and thus contributing to present and future conflicts between Consent Authorities, the planning and ecological consulting industry, and the public, that will ultimately be a source of unnecessary legal discussion in the NSW L&EC. This can be significantly reduced if not avoided with adequate consultation and review, but this is not happening, and this Amendment is another example

The industry, local government and community is also reeling with the rapidity of these changes and complexity of the legal framework and the ripple effect of these constant changes. We are all struggling to keep up. This is adverse for the Act in terms of achieving its objectives via effective implementation, but is also creating significant political opposition to its existence.

I support the components of the bill that aim to establish the avoid, minimise and offset hierarchy as the key principle of the Act, and to increase its statutory power in achieving better conservation outcomes. This will support ecological consultants in providing firm and clear advice to clients in meeting their legal obligations. At the moment, we have only Case Law precedents to refer to and ad hoc case by case missives from the Department or directions via mediums that do not extend beyond Accredited Assessors. The Department needs to engage with the entire spectrum of the industry - not just ecological consultants but planners and the development industry and local government.

I also support the development of standards to demonstrate adequate avoid and mitigation measures, provided there is adequate consultation with the industry to ensure these are clearly defined and not open to interpretation, and these standards are living standards: able to evolve with new research and monitoring. They will also need to be explicitly clear enough to apply across the diverse range of development scenarios to enable effective and clear understanding by the planning and ecological consulting industry, and the public. If not, all it will do is create funnel more legal disputes into the L&EC. The latter has been the outcome where any guideline or manual is unclear, broad or open to interpretation. I recommend that the industry be invited to submit examples, etc,

for inclusion in these registers, and as part of the process, the industry and consent authorities be invited to submit development types that need examples/standards to be made for, to cover all scales of development and a broad variety of situations eg. coastal vs inland, urban/metro vs rural, linear infrastructure, mining/resource, and renewable energy.

I support the proposal to establish the relevant registers, subject to further consultation on what details they may contain and how they will be accessed. I recommend that the industry be invited to submit examples, etc, for inclusion in these registers.

I support proposed changes to the BOS entry threshold for local development. Currently, single lot large lot residential development can trigger off the BOS and incur massive biodiversity credit offsets which can make the intended use of the land unfeasible. However, such changes will need to be subject to adequate industry and community consultation.

I do not support proposed Schedule 1(22) that enables the Head to direct an accredited assessor to modify a biodiversity assessment report (BAR). This is far too open.

The industry and consent authorities have had issues with Department staff who have made statements and demands to change issues in a BAR, which have been confirmed to be factually and/or legally incorrect.

Advice has been given by Department staff that has contradicted Case Law or misinterpreted the legislation, or demonstrated a lack of specific knowledge about the ecology of a threatened species; the effectiveness of a mitigation measure; and inability to understand how Case Law defines Endangered Ecological Communities.

The Department's powers must remain as they are, unless to act in the instance that the Accredited Assessor has clearly not followed the BAM or the Operational Manuals, and cannot provide scientific and/or legal evidence to justify their position AND the Department can provide the greater scientific and/or legal evidence to justify their request/position. In all other respects, the issues are to be resolved in the L&EC on an evidence basis. The Department like the industry, must then follow the Case Law precdents.