

Submission  
No 18

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

**Organisation:** Goulburn Mulwaree Council

**Date Received:** 6 September 2024

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**Ms Sue Higginson MLC**

Committee Chair

Portfolio Committee 7

Parliament of NSW, 6 Macquarie Street

Sydney, NSW 2000

Friday, 6 September 2024

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

Dear Ms Higginson

Thank-you for providing Goulburn Mulwaree Council with the opportunity to make a submission on the inquiry by the NSW Legislative Council's Portfolio Committee 7 into the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*.

**The following comments are offered for consideration by the Committee:**

#### **GOULBURN MULWAREE COUNCIL – LOCAL CONTEXT**

Goulburn Mulwaree Council Local Government Area is located in the NSW Southern Tablelands, approximately 200 kilometres south west of Sydney and 90 kilometres north west of Canberra.

The LGA has an abundance of rural properties that feature substantial areas of native vegetation, including grasslands, grassy woodlands and dry sclerophyll forests. These include significant areas of two NSW listed Critically Endangered Ecological Communities:

**White Box – Yellow Box – Blakely's Red Gum Grassy Woodland and Derived Native Grassland in the NSW North Coast, New England Tableland, Nandewar, Brigalow Belt South, Sydney Basin, South Eastern Highlands, NSW South Western Slopes, South East Corner and Riverina Bioregions**

**Werriwa Tablelands Cool Temperate Grassy Woodland in the South Eastern Highlands and South East Corner Bioregions - South Eastern Highlands**

In addition to listed Threatened Ecological Communities, tracts of remnant native vegetation in the LGA provide habitat for a large number of threatened flora and fauna species, including Critically Endangered **Delicate Pomaderris** (*Pomaderris delicata*), Critically Endangered **Tallong Midge Orchid** (*Genoplesium plumosum*), Endangered **Hoary Sunray**

(*Leucochrysum albicans* variety *tricolor*), Endangered **Koala** (*Phascolarctos cinereus*), Endangered **Southern Greater Glider** (*Petauroides volans*), Endangered Gang Gang Cockatoo (*Callocephalon fimbriatum*) and Endangered **Key's Matchstick Grasshopper** (*Keyacris scurra*).

The Goulburn Mulwaree Council LGA has experienced an enormous influx of new residents in recent years, many of them purchasing rural properties and seeking to clear remnant native vegetation.

## **MY ROLE WITHIN GOULBURN MULWAREE COUNCIL**

My name is Brian Faullkner and I am a BAM (Biodiversity Assessment Method) accredited assessor (BAAS21005). I am employed by Goulburn Mulwaree Council in the role of Environment and Biodiversity Assessment Officer and some of the key features of this role include:

- Reviewing FFA (Flora and Fauna Assessment & Threatened Species Assessment Reports), and Biodiversity Assessment Reports (BDARs, BCARs and BSSARs) submitted to Council in support of DAs (Development Applications).
- Providing internal and external advice and consultation on threatened species (ecological communities, flora, fauna, populations and habitats), vegetation clearing approval pathways, and relevant legislation including the NSW *Environmental Planning and Assessment Act 1979*, the NSW *Biodiversity Conservation Act 2016* (& NSW *Biodiversity Regulation 2017*), the NSW *Local Land Services Act 2013*, the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* and the NSW *SEPP (Biodiversity and Conservation) 2021*.
- Assisting Council's Environment and Health Compliance Officers with investigations into unauthorized clearing of native vegetation and other activities that have negative impacts on biodiversity.

## **CURRENT ISSUES WITH IMPLEMENTATION OF THE BC ACT, REGULATION AND THE BAM**

My experience of reviewing FFAs and BDARs submitted by ecological consultants to support DAs is that there is consistently inadequate or very poor demonstration of the biodiversity hierarchy "Avoid – Minimise – Mitigate".

Typically, the project design and location has been prepared by people who are not trained ecologists, (for example developers, builders, architects, property owners) and who have little appreciation or understanding of biodiversity values.

The ecological consultant who is subsequently contracted to assess the site and potential impacts on biodiversity then attempts to justify the design in line with their client's brief. This is clearly a significant issue.

The intent of the NSW BC Act is that impacts on biodiversity should be avoided as far as is feasibly and reasonably practicable. In order to achieve this, the biodiversity assessment should be undertaken first, and then the findings of this should inform the design and location of the project.

A second major issue is that ecological consultants will typically only assess the area of direct impact and a small buffer area around it. For example, on a property comprising one hundred hectares, they may only assess and report on one hectare.

My opinion is that this is not at all satisfactory. In order to demonstrate that a genuine attempt has been made to avoid impacts on biodiversity, the entire area that feasibly could be developed should be assessed and mapped, and areas of highest biodiversity clearly defined. The project should then be designed to clearly avoid those areas and also to minimize indirect impacts on those areas. The project should be designed and located as far as reasonably practicable to be in an area of the land that has the lowest biodiversity values.

This repeats the contention raised before that the biodiversity assessment should inform the design and location of the project, and not the other way around.

And finally, because ecological consultants are paid to provide proponents with the answer they want, ie achieve Consent Authority approval of a project with minimal cost or difficulty, the consultants are under enormous pressure from their clients. My experience is that developers and builders in particular, tend not only have minimal appreciation of biodiversity values and little understanding of relevant legislation, but are also often aggressive, adversarial and argumentative in their interactions both with Council Development Assessment staff and with their own consultants.

Developers tend to view the biodiversity assessment process merely as an unwelcome business cost and impediment, and will almost invariably seek to reduce the whole process to a financial transaction with the smallest possible dollar value.

There also often clearly a lack of understanding by proponents as to what comprises avoidance of impacts on biodiversity. Often, they will argue that if their land is not identified by desktop survey as an AOBV (area of outstanding biodiversity value) or marked on the BVM, there is no significant biodiversity present and that no further assessment is required.

It is therefore perhaps not surprising that ecological consultants will often only assess the smallest area possible and often do not adequately assess and report on the biodiversity values that may be impacted on by a project.

## **REVIEW COMMENTS**

Objects of the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024:

(a) amend the Biodiversity Conservation Act 2016 (the Act) to reform the biodiversity offsets scheme

**This Object and its Objectives (a) (i) to (a) (x) inclusive are broadly supported.**

(a) (i) 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

**This objective is fully supported.**

**As noted in comments previously in this submission, inadequate implementation of the Avoid - Minimise – Mitigate is currently a significant issue and this objective will undoubtedly assist in remedying this.**

**Some clarity is required on different stages of the planning process, ie development of a planning proposal strategy, preparation of DA, and implementation/construction, CDC (Complying Development Certificate) as to how the hierarchy is to be applied.**

**A detailed definition of what is meant by “Avoid” should also be included in the legislative instrument. It should be made clear that “Avoid” does not just mean avoiding impacts on areas of AOBV or areas marked on the BVM.**

(a) (ii) 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

**This objective is fully supported.**

**However, it is recommended that a clear definition of what is meant by the term “net positive biodiversity outcome” should be included in the legislative instrument. As it stands this term is somewhat vague and ambiguous and its meaning is open to interpretation.**

(a) (iii) 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.

**This objective is supported.**

**It is critical that clear, unambiguous, achievable and measurable standards are provided that developers must comply with at each stage of the development process. It is also recommended that provision be given to measures to ensure compliance with this objective. What actions and penalties apply if developers do not comply? Who will be responsible for compliance action? Will it be the Consent Authority? What powers will they have?**

(a) (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

**This objective is supported.**

(a) (v) improve the operation and administration of the Biodiversity Conservation Fund (the Fund), including by—

(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

**This objective is supported.**

(a) (vi) enable the regulations to limit the ability of proponents to satisfy offset obligations by paying money into the Fund in particular circumstances

**This objective is supported.**

**As noted previously in this submission, Developers tend to view the biodiversity assessment process merely as an unwelcome business cost and impediment, and often seek to discharge their obligation swiftly by paying into the Fund, without making any serious attempt to seek relevant offset credits representative of the biodiversity values (plant community types, flora and fauna) that they are harming.**

(a) (vii) establish public registers of the following—

(A) decisions to approve development, activity or clearing that is likely to have serious and irreversible impacts on biodiversity values,

(B) exemptions from the scheme granted by the Minister in connection with natural disasters or other exceptional circumstances,

(C) measures for avoiding and minimising impacts on biodiversity values set out in biodiversity development assessment reports and conditions of development consents and approvals

**This objective is supported.**

**Making this type of information publicly available, transparent and open to scrutiny by stakeholders will improve the quality and standard of biodiversity assessments and reports prepared by consultants, and decisions made by Consent Authorities.**

(a) (viii) enable the Environment Agency Head to issue directions to accredited persons relating to the preparation and modification of biodiversity assessment reports

**This objective is supported.**

**The Environment Agency Head should be given clear and unambiguous powers to issue relevant directions to accredited persons relating to the preparation and modification of biodiversity assessment reports, rather than having interpretation of the BC Act, BC Regulation, BAM and BOS challenged in the Land and Environment Court.**

(a) (ix) reduce administrative burden for small, low-impact developments by—

(A) enabling the regulations to provide for revised biodiversity offsets scheme entry thresholds for local development,

(B) enabling the regulations to provide for landholder-initiated biodiversity values map review process,

(C) allowing the Minister to exempt local development from the scheme in circumstances of natural disasters and other exceptional circumstances

**This objective is broadly supported.**

**(A) Under the current application of the BAM, small scale “Mum and Dad” proponents with limited financial resources are often significantly adversely impacted by the**



costs of requirements to comply with commissioning a BDAR. Reducing the administrative burden and costs for these proponents is supported.

(B) Council's understanding is that landholders are already able to request a BVM explanation and review of their property. However, this should be supported by evidence from a suitably qualified person if the land is mapped on the BVM as habitat for a threatened ecological community or species.

(C) The meaning of "natural disaster and other exceptional circumstances" should be clearly and unambiguously defined in the legislative instrument. Developers in particular will invariably lobby the Minister to declare any "event" a natural disaster or exceptional circumstance if it allows them to be exempt from the BOS.

(a) (x) make other minor administrative and consequential amendments

**This objective is broadly supported.**

(b) make related and consequential amendments to the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

**This Object is broadly supported.**

**It is recommended that clarity is provided on implementation of the Biodiversity SEPP for all phases of development from strategic planning, to preparation of DAs and finally to construction.**

Should any further information be required in relation to this submission, please do not hesitate to contact me. Phone: \_\_\_\_\_, Email: \_\_\_\_\_

Yours faithfully

Brian Faulkner

**Environment and Biodiversity Assessment Officer**