

Submission  
No 20

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

**Organisation:** Wollondilly Council

**Date Received:** 6 September 2024

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The Director  
Portfolio Committee 7  
c/o [PortfolioCommittee7@parliament.nsw.gov.au](mailto:PortfolioCommittee7@parliament.nsw.gov.au)

6<sup>th</sup> September 2024

Dear Sir/Madam

**BIODIVERSITY CONSERVATION AMENDMENT (BIODIVERSITY OFFSETS SCHEME) BILL  
2024 – WOLLONDILLY COUNCIL SUBMISSION**

Thank you for providing Council with the opportunity to provide a submission on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

As this submission is being made during local government caretaker period and the submission is a staff submission. However, the submission is consistent with the adopted positions of Council.

Council has previously lodged a number of submissions of relevance to the Bill including:

- the Statutory Review of the Biodiversity Conservation Act (BC Act) and Local Land Services Act (LLS Act),
- NSW Legislative Council Inquiry into the Integrity of the Biodiversity Offset Scheme (completed)
- NSW Legislative Council Inquiry into the Planning System and Impacts of Climate Change on the Environment and Communities.

All of these submissions have raised strong deficiencies in the current LLS Act and BC Act in protecting the significant biodiversity values and addressing the threats to these values from pressures such as development. Copies of these submissions can be provided to the Committee upon request.

The Bill responds to a number of issues raised in these submissions and its introduction to the NSW Parliament is therefore supported, in principle. Aspects of the Bill particularly supported include the intended introduction of a Nature Positive Object of an Amended Act via a Nature Positive Strategy.

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The following points, consistent with Council's Sustainability Policy Principles, are recommended for consideration as part of the proposed legislative reforms:

- Amendment of the Objectives of the Act to have a localised focus as well as an additional Climate Change Objective.
- Adjustments to the Avoid and Minimise hierarchy to incorporate "mitigation" as it is considered this term has a higher basis and more likelihood of achieving positive outcomes than minimise.
- That the Nature Positive Strategy also incorporates social and health outcomes on a localised scale, in addition to the proposed 'net positive' biodiversity outcomes.

While welcoming the prompt introduction of the Bill, a number of the responses by the NSW Government to the Final Report on the review of the BC Act have not been addressed by this Bill. Clarification over whether further responses will be incorporated into future Amendment Bills would be appreciated.

Please contact Council's Environment Assessment Planner, \_\_\_\_\_ for any enquiries regarding this submission on \_\_\_\_\_ or via email \_\_\_\_\_

Yours faithfully,

Corey McArdle  
**Manager Waste and Environmental Services Manager**

## ATTACHMENT 1: COMMENTS ON KEY ASPECTS OF THE BIODIVERSITY CONSERVATION BILL

### 1) Objectives of the Act

Objectives are viewed as providing an important function in a revised *Biodiversity Conservation Act 2016* in providing a direction for its implementation and achievement of its stated purpose. Council's submission on the review of the BC Act requested the current objectives of the BC Act be expanded to encompass all native biodiversity in accordance with its Title as well as adequately recognise and protect biodiversity in a localised context (within the site of a proposal and/or respective LGA). In addition, Council's submission to the Legislative Council Parliamentary Inquiry requested the inclusion of a specific objective in relation to climate change.

The relevant Action of the Final Report has been identified as "*Amending and strengthening the BC Act and revising the objects of the BC Act to support the Government's ambition to set nature on a path to recovery*". The relevant reference in the Amendment Bill responding to this Action has been identified as "*Provide that the biodiversity offsets scheme will transition to net positive biodiversity outcomes and, for the purposes of giving effect to that objective*". **The updating of the Objectives of a revised Act that incorporates these comments is requested.**

### 2) Avoid and Minimise hierarchy and Standard

The avoidance of impacts to biodiversity values has been a dominant shortcoming in the current version of the BC Act and has been a dominant issue raised in a range of Council submissions. The issue of vegetation clearance on development sites has also been a dominant issue raised in feedback from the local community it represents. **The intended introduction of an avoidance hierarchy and standard within a revised Act is consequently welcomed.**

A particular issue experienced by Staff noted as being referenced in the Final Report on the Review of the BC Act is shortcomings of the Biodiversity Offset Scheme and biocertification process in avoiding (retaining) areas of biodiversity values (including corridors) on development and planning proposal sites. **Council has previously raised the following shortcomings in the current framework that it requests be addressed in the finalised amendments to the Act:**

- Insufficient definitive requirements to assess and protect biodiversity in a localised context.

- Absence of statutory definitive requirements to retain areas of biodiversity on a development site and consider biodiversity corridors (including koala corridors).
- Parts of processes are overly complex and may not be delivering the intended outcomes.
- The cost of preparing a Biodiversity Development Assessment Report for small land owners (“mums and dads”) is in many cases, prohibitive (potentially up to \$40,000 additional costs for a dwelling addition). Therefore, the risk to biodiversity as a result of illegal clearing is increased.
- There is insufficient regard to Ecological Sustainable Development principles and its four pillars of environment, social, economic and governance.

The Protecting Biodiversity Principle in Council’s Sustainability Policy provided below utilises the term ‘mitigation’ which is considered to have a stronger ecological basis than ‘minimise’:

*Considering the broader planning framework, all decisions are made in accordance with the following order of priority, where achievable:*

- *Avoidance of potential impacts to biodiversity. Where avoidance cannot be achieved then;*
- *Mitigation of any unavoidable impacts of the decision on the site affected. Where mitigation cannot be achieved then;*
- *Offsetting of any residual impacts of the decision within the Wollondilly LGA.*

*Those proposals prepared under biodiversity frameworks at the state and/or Commonwealth level involving offsetting must demonstrate compliance with the above position in accordance with all relevant documents including legislation and Environmental Planning Instruments. It is Council’s view that this approach will promote positive sustainable biodiversity outcomes on the site affected consistent with the objectives of this Policy.*

The term ‘minimise’ is recognised as being referenced in a number of Legislations and related Guidelines such as the Biodiversity Assessment Method. **The incorporation of the above Principle into a revised Biodiversity Legislation that also has consistency with the use of the term ‘minimise’ in the current Act is requested.**

In relation to this matter, Council Staff are currently advocating for amendments to the Cumberland Plain Conservation Plan (CPCP) to address shortcomings of the framework in retaining and protecting areas of biodiversity value on urban certified land. In this regard legal advice has been received that Council has no prospect in retaining vegetation on such land on biodiversity grounds. **The inclusion of**

amendments to the current Act to address this shortcoming in regard to both the CPCP and overall strategic biocertification process is requested.

### 3) A Strategy for the transitioning of the biodiversity offsets scheme to deliver net positive biodiversity outcomes

The Bill is noted to state 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”*. The embedding of ‘nature positive’ into a revised Act has consistency with the Principles of Council’s Sustainability Policy presented in Attachment 2 and is supported in principle. It is however requested that the Strategy apply to proposals where the entry requirements to the Biodiversity Offset Scheme are satisfied and not satisfied.

A representative of Council’s Environment Section has participated in closed sessions held as part of the preparation of the new Commonwealth Nature Positive Act. Council’s submission as part of this consultation provided the following comments that it requests be considered during the finalisation of the Biodiversity Conservation Amendment Bill:

*The International Union for Conservation of Nature (IUCN) Document titled **Measuring Nature-Positive: Setting and Implementing Verified, Robust Targets for Species and Ecosystems** contains the following items viewed as having relevance to an appropriate scientific based definition of Nature Positive as well as Objectives and related Standards in an updated Federal Biodiversity Act:*

- *The definition of ‘Nature-Positive’ is informed by science, but delivery is a “whole of society” effort, including, (amongst others) Indigenous peoples and local communities and governments, including national and local governance structures.*
- *The IUCN approach to measuring Nature-Positive focuses specifically on species and ecosystems, as components of living nature (biodiversity). Where possible, Nature-Positive contributions should be assessed and delivered at a scale that allows precise attribution of the impacts of actions on the underlying biodiversity. In practice this means at the site scale.*
- *For the approach proposed here to deliver effectively for nature, it needs to provide integrity at both local and global scales. Local-scale integrity ensures that biodiversity gains are demonstrably delivered and maintained, are locally appropriate and socially equitable.*
- *Delivering the Nature Positive goal requires measurable net-positive biodiversity outcomes through the improvement in the abundance, diversity, integrity and resilience of species, ecosystems and natural processes.*

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The above is considered to highlight the need for an assessment at a localised scale that would form a scientific basis for demonstrated achievement of a Net Positive Outcome at a national scale within the revised Act.

In a more specific context, the Explanation Notes and Second Speech include comments over proposed scope including climate change and ecological sustainable development which is consistent with Council's Sustainability Policy and supported in principle. **It is requested that the Bill require the Strategy to specifically address the following to ensure the achievement of a nature positive outcome by proposals consistent with the IUCN approach to this term provided above and recognised definitions of ecological sustainable development:**

- Inclusion of objectives and provisions that require a detailed assessment of the social, health, and environmental implications of climate change (including urban heat) that are commensurate with the scale of the development and mitigation and minimisation measures to address these implications.
- Inclusion of objectives and provisions that would require proposals to contain a demonstrated achievement, as far as practical, set canopy targets. It is requested to note that Council staff share the noted view expressed by a range of stakeholders that the achievement of the current NSW Government 40 percent target is extremely difficult and potentially not possible within the current planning framework.
- Inclusion of measures that will require proposals to maximise synergies between stormwater management, biodiversity, and landscaping and streetscape as part of an integrated layout and provide demonstrated achievement of set water quality/quantity targets.
- Inclusion of readily measurable performance to enable ongoing monitoring over the achievement of nature positive.

## ATTACHMENT 2 PRINCIPLES OF COUNCIL'S SUSTAINABILITY POLICY

### 1.1 Caring for Country

Council acknowledges the Dharawal and Gundungurra people as the Traditional Custodians of the land and water in Wollondilly. Council appreciates their knowledge, stewardship values, stories and connections, and will collaborate with Traditional Custodians in caring for land, water, people and culture.

### 1.2 Evidence based

The precautionary principle will be applied when there is a risk of potential harm to the environment, community or local economy. Decisions must be evidence-based with a localised and regional focus, consistent, transparent and supported by the best available recognised scientific research, monitoring and reporting.

### 1.3 Inter-generational equity

Ensure the health and productivity of the environment and the quality of life for the community is maintained and enhanced by the present generation for the benefit of future generations.

### 1.4 Balanced consideration of environment, social and economic impacts

All decisions will consider environmental, social and economic factors in determining a balanced outcome. This includes:

- Protecting, conserving and enhancing the ecological health of our natural areas and waterways.
- Continuing to build healthy, resilient and liveable communities in Wollondilly Shire.
- Promoting and supporting a strong and sustainable local economy.
- Identifying and mitigating the true environmental, social and economic cost of land use planning decisions to ensure future development does not cause irreparable impacts.



## 1.5 Practical action on climate change

Council recognises that anthropogenic climate change is occurring and without substantial action poses a major threat to humanity and most living systems on Earth. The acute and chronic impacts of climate change include more frequent, widespread and devastating severe weather events. Council is committed to reducing greenhouse gas emissions, mitigating climate change impacts and building greater environmental and community resilience on a localised scale consistent with state and federal government policies and best practice.

## 1.6 Protecting biodiversity

Considering the broader planning framework, all decisions are made in accordance with the following order of priority, where achievable:

- Avoidance of potential impacts to biodiversity. Where avoidance cannot be achieved then;
- Mitigation of any unavoidable impacts of the decision on the site affected. Where mitigation cannot be achieved then;
- Offsetting of any residual impacts of the decision within the Wollondilly LGA.