

Submission
No 37

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

Organisation: Scout Ecology Pty Ltd

Date Received: 6 September 2024



The Director

Portfolio Committee 7

Parliament House

Macquarie Street,

Sydney NSW 2000

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

Scout Ecology Pty Ltd (Scout) is a specialist ecological consultancy with three accredited Biodiversity Assessment Method (BAM) assessors under the NSW *Biodiversity Conservation Act 2016* (the Act). With over 40 years of combined experience, our team has been actively involved in biodiversity offsets in NSW since the BioBanking Assessment Methodology was introduced in 2008.

Scout's vision is to change the way the world values biodiversity and affect positive change. Our expertise includes strategic biodiversity assessments, biodiversity offset strategies for State Significant projects (SSI & SSD), and large-scale vegetation mapping for the National Parks and Wildlife Service (NPWS) and Local Councils.

Recognised as industry leaders, we are trusted by clients, peers, and regulators for our technical knowledge, understanding of legislation, project experience, and quality outcomes. Scout is frequently engaged by the NSW Department of Climate Change, Energy, Environment and Water (DCCEW) to deliver projects, provide technical advice, and contribute to the development of key biodiversity offsetting tools, such as the mandatory Biodiversity Stewardship Site Assessment Report (BSSAR) template and the Biodiversity Development Assessment Report (BDAR) template for major projects.

While Scout focuses on conserving and enhancing biodiversity values, our accredited assessors have extensive experience across various environmental approvals and assessment frameworks. This includes work under the repealed NSW *Threatened Species Conservation Act 1995* (TSC Act), the former BioBanking Assessment Method (BBAM), and the Framework for Biodiversity Assessment (FBA). We have experience across small local developments to large-scale urban rezoning, major mining and resource projects, renewable energy projects, and significant infrastructure developments in NSW.

Our comprehensive understanding of the Act, its application by proponents, regulatory assessments, and interactions with other legislation (including the *Local Land Service Act 2013*, *Environmental Planning and Assessment Act 1979*, and *Biodiversity Conservation Regulation 2017*) positions us to offer valuable insights into the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*.

While the current Act and its instruments, such as the BAM, provide a solid framework for biodiversity protection, improvements are needed to achieve NSW's goal of a 'net-positive'



approach to biodiversity to align it more closely with the Global Biodiversity Framework's definition of 'nature positive.'

The proposed reforms, however, fall short of effectively addressing biodiversity decline in NSW. For instance, the Bill fails to adequately curb the clearing of native vegetation and threatened species habitat on rural lands, which should be subject to the same stringent requirements as other development sectors. Additionally, the Bill does not address deficiencies in the data underpinning the BAM, a critical component for the effective implementation of the Biodiversity Offsets Scheme (BOS).

We welcome the introduction of standards to enhance 'avoid and minimise' measures and improve transparency in decision-making. Nevertheless, these measures are already mandated under the EP&A Act, and the issue primarily lies in their regulatory implementation and enforcement, which the proposed standards must robustly address.

Of particular concern is the provision allowing the Environment Agency Head to direct accredited assessors in the preparation and modification of biodiversity assessment reports. Such overreach could undermine the expertise and technical knowledge of accredited assessors, who are bound by codes of conduct, conflict of interest declarations, and professional development requirements. Expertise on specific issues may reside outside of Government and within the consultancy industry. To maintain robust scientific discourse and effective resolution of complex issues, any direction from the Environment Agency Head must be grounded in demonstrated expertise and experience relevant to the specific matter.

To truly improve biodiversity outcomes, the BOS's implementation, efficiency, and transparency must be enhanced. Scout is keen to engage further with the inquiry team to discuss and detail our insights, supported by real-world data and experience.

We appreciate the opportunity to contribute to this important discussion and look forward to collaborating on improvements to the Bill.

Yours sincerely,

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Submission to Portfolio Committee 7 on the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024*

Scout Ecology Pty Ltd (Scout) broadly supports the Bill and welcomes the opportunity to provide feedback. This submission focuses on key objectives of the Bill, rather than specific amendments to each Schedule within the Act:

- 1. Addressing biodiversity decline for 'net positive' outcomes (objective (a)(ii))**
- 2. Avoidance and minimisation of biodiversity impacts (objective (a)(i) and (iii))**
- 3. Authority of the Environment Agency to direct accredited assessors (objective (a)(viii))**

Scout supports the establishment of public registers (objective (a)(vii)) and reducing the administrative burden for small, low-impact developments (objectives (a)(ix) and (x)) to improve transparency and efficiency of the Scheme. We also support amendments requiring the Minister's concurrence for approval conditions that differ from a proponent's biodiversity credit liability (objective (a)(iv)).

Our experience shows these elements are critical for the effective implementation of the Scheme and for improving biodiversity values.

General Observations

The Act, an improvement over the repealed *Threatened Species Conservation Act* (TSC Act), provides a solid foundation for biodiversity protection in NSW. It has raised awareness of biodiversity issues within the broader community and encouraged industry consideration of biodiversity during early project feasibility. The Act has also secured land for conservation in perpetuity through the Biodiversity Offset Scheme (BOS).

Despite these advances, significant biodiversity impacts are still being approved, undermining the objective of achieving 'no net loss'. NSW continues to face high land clearing rates, which have tripled over the past decade. The Act and its companion, the *Local Land Services Act 2013* (LLS Act), are currently inadequate in preventing biodiversity loss. Decisions under these Acts are often influenced by the BAM, highlighting the need for more robust protection measures.

1. & 2. Avoidance of Biodiversity Values and Achieving 'Net Positive'

The Act and the LLS Act have failed to curb biodiversity loss in NSW, evidenced by escalating land clearing rates. The proposed reforms offer a vital chance to enhance mechanisms that restrict land clearing and enforce the avoidance and minimisation hierarchy.

While avoidance and minimisation are central to the BOS and required by the NSW planning system, we believe the issue lies in implementation and enforcement. Scout supports the development of assessment standards to help proponents and regulators apply this hierarchy effectively.



Achieving 'nature positive' outcomes requires a genuine commitment to not clearing biodiversity in the first place. Given the extensive land already cleared in NSW, it is unnecessary to clear more land to accommodate future needs. However, clearing continues at an alarming rate, indicating the need for stricter enforcement of avoidance principles.

To enhance the Act, decision-makers must be empowered and educated to uphold avoidance and minimisation principles without resorting to legal action. Reforms should include standards that require developers to demonstrate avoidance and minimisation measures for any proposed activity impacting biodiversity.

Recommendations for Strengthening Avoidance Measures:

- **Introduce thresholds for biodiversity clearing limits**, not tied to lot size, based on the threatened status of biodiversity. Examples include:
 - Limited or no clearing on 'Serious and Irreversible Impact' (SAII) values.
 - Publicly accessible database detailing SAII values and assessment requirements.
 - Clearing of Critically Endangered Ecological Communities only if substantially degraded and not viable long-term.
- **Adjust BAM calculations to factor in weed presence and abundance**, improving planning around impacts to degraded vegetation.
- **Strengthen the role of decision-makers** by providing them with the necessary skills and experience to enforce the Act and companion legislation effectively.

Recent case law demonstrates a lack of understanding of proponents' obligations to prioritise avoidance before offsets. Strengthening regulatory mechanisms to enforce avoidance could reduce reliance on court enforcement.

Aligning rural land assessment with other development types in terms of biodiversity impact regulation is crucial. Without this, the impact of any 'standards,' clearing limits, or regulatory empowerment will be limited.

3. Authority of the Environment Agency to 'direct' Accredited Assessors

The Bill allowing the Environment Agency Head to 'direct' accredited assessors is concerning, as it risks undermining the expertise and professionalism of accredited assessors. Accredited Assessors are required to adhere to stringent codes of conduct and professional standards, and their expertise should be respected.

Directions from the Environment Agency Head should be scientifically justified, documented, and reviewed by an independent third party to maintain the integrity of the assessment process. Upskilling regulators to match the expertise of accredited assessors would also reduce the need for such directives.



Recommendations

We believe that the reforms to the BC Act can be significantly improved with the following actions:

- **Establish thresholds for biodiversity clearing limits** based on the conservation status of entities, independent of lot size.
- **Treat farming and agricultural practices as standard development types** to regulate vegetation clearing consistently across all sectors. Clearing of rural land for agricultural purposes should be assessed in accordance with the BAM including the avoid, minimise and offset principles.
- **Provide training and accreditation to regulators** on the avoidance and minimisation hierarchy, ensuring consistent enforcement of the Act.
- **Develop a publicly accessible SAII values information database** to support assessors and improve transparency in decision-making.
- **Require sound scientific justification for any direction from the Environment Agency Head to an accredited assessor**, reviewed by an independent third party (e.g. a different Accredited Assessor with relevant expertise) to maintain assessment integrity.
- **Revision of background data underpinning the BAM** to ensure biodiversity is being valued appropriately for the Act's 'net positive' objective. While revision to the BAM is likely outside the scope of the Committee, we believe it is critical to highlight the following points which demonstrate areas where significant improvement can be made. For example:
 1. Review Vegetation Classes and Plant Community Type assignments. Use of broad Vegetation Classes as a surrogate for finer-scale Plant Community Types is inappropriate in NSW, with biodiversity being incorrectly valued. The use of Vegetation Class level benchmarks for the assessment of vegetation integrity (condition) within Plant Community Types results in a loss of detail and precision, obscures significant differences in species composition and ecological function and leads to an oversimplified understanding of the landscape. Under the current system, biodiversity is not being valued appropriately, with some native plant communities consistently scoring poorly (i.e. low vegetation integrity/condition) simply due to benchmarks being at a Vegetation Class level, rather than due to actual site conditions. This can lead to perverse outcomes where they are targeted for development as they are seen as being in 'poor' condition. Ensuring all Plant Community Types are measured against the best available example is key to the functioning of the Act and meeting its principles.
 2. Revise the 'averted loss' modelling and assumptions. Averted loss should not be assumed to be occurring in all native vegetation unless there is a significant



threat present, or strongly justified expectations that a significant threat could occur in the near term (i.e. within 20 years). Under the current system, all vegetation is expected to decline over time without management, which is inaccurate. Rewarding additional gain on Biodiversity Stewardship Sites due to averted loss which is not likely to occur should be removed from the BAM.

3. Revise the modelling for gain under management and assumptions. Predicted gains are in many cases unrealistic. This is linked to both the broad nature and poor quality of the vegetation benchmarks, as well as general assumptions about how much vegetation and habitat can improve with management.

Scout is committed to contributing its expertise to improve biodiversity outcomes in NSW and welcomes the opportunity to engage further on these reforms, including appearing in person to the Committee, if deemed warranted. We believe we have significant experience and expertise in this area and could add significant value to improving how biodiversity is valued and assessed in NSW.