

Submission
No 42

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

Organisation: Better Planning Network Inc. (BPN)

Date Received: 6 September 2024



Better Planning Network Inc.

NSW Parliament – Legislative Council - Portfolio Committee No. 7 - Planning and Environment

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, Submission, September 2024

About BPN

Better Planning Network Inc. (BPN) is a state-wide volunteer based, network of groups and individuals working to achieve a robust planning system for NSW that protects our environment and heritage, community, and the public interest.

Introduction

BPN welcomes the opportunity to comment on the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024, which follows from the statutory independent review of the Biodiversity Conservation Act (known as the Henry Review) conducted in 2023 and its damning conclusion that, *“The failure of the Act to achieve its principal purpose is contributing to the continuing deterioration of the environment.”*

The Henry Review Report states, *“The Review Panel supports a nature positive framing of the Act, noting that this requires giving primacy to biodiversity considerations in a manner not previously contemplated.”* The Review Recommendation 11 is that: *‘The Scheme’s objective should be amended to deliver a net positive biodiversity outcome’.*

The amendments to achieve ‘nature positive’ outcomes

Although BPN has major reservations about the entire concept of biodiversity offsets, it supports any change in law and policy that is ‘nature positive’ (i.e. that better protects nature and reverses biodiversity loss) and we therefore give a qualified welcome to the changes proposed in the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024.

Recommendations

Schedule 1 (1) - BPN supports the insertion of a definition of an ‘avoid, minimise, and offset’ hierarchy requiring all reasonable measures to avoid impacts then minimise impacts of development before offsetting with genuine measures.

However, assessment standards against which to measure ‘genuine measures’ must be included.

Schedule 1 (52) amends section 7.16 relating to discretionary powers to refuse a development application for development likely to have serious and irreversible impacts on diversity except for development of applications that do not need to be accompanied by a

biodiversity development assessment because of exemption relating to a natural disaster or ***other exceptional circumstances*** (our emphasis)

While we welcome the discretion to refuse a DA, the amendments should provide a clear definition or criteria for the 'exceptional circumstances' that would limit that discretion.

Shortcomings of the proposed amendments

- The government has chosen not to give the BC Act primacy, allowing it to be undermined by other legislation related to native vegetation, land clearing and native forestry.
- Recommendation 25 of the Henry Review, to establish 'no-go' areas has not been adopted. Actions that will have irreversible impact to biodiversity should not be considered for offsetting. These areas should be identified and declared Areas of Outstanding Biodiversity Value to provide certainty as to areas that cannot be cleared.
- Recommendation 12, to requires the retirement of more than the number of credits reflecting the residual impact of a development, has not been adopted.
- The BC Act does not *require* decision makers to consider and apply the Precautionary Principle.
- Reforms should do more to address climate change impacts.
- The incremental and cumulative impacts of multiple offsetting should be addressed.
- It can be difficult to find certain types of offsets. The diminishing amount of available offset sites is problematic.
- Ecologically equivalent biodiversity sites may not exist.
- Spatial location of offsets can be quite different to the impacted biodiversity area.
- Use of offsets reduces connectivity and leads to isolation of nature reserves and habitat.
- It is unclear how the government will assure, in perpetuity, adequate resources for ongoing monitoring, managing, and reporting of biodiversity outcomes.

Conclusion

Despite the fundamental problems with the offset scheme which we outline above, and the failure to adopt key recommendations of the Henry Report, BPN can give qualified support to the proposed amendments in this Bill.

BPN has no objection to this submission being made publicly available, in full and unredacted

Secretary, Better Planning Network Inc.