

Submission
No 49

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

Organisation: Cessnock City Council

Date Received: 12 September 2024



12 September 2024

Portfolio Committee 7 - Planning and
Environment
6 Macquarie Street
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Our Ref: DOC2024/150442

Submission - Inquiry into the Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Council appreciates the opportunity to provide a submission regarding the proposed amendments to the *Biodiversity Conservation Act 2016* (BC Act) introduced as part of the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024* (Bill). Council appreciates reform of the biodiversity offsetting system is required and the Bill forms part of the State Government's NSW Plan for Nature and transition to 'nature positive' to address wider biodiversity loss.

However, Council suggests that the proposed amendment provides an opportunity to resolve the issues regarding application of the biodiversity offsetting setting within the strategic planning framework under Part 3 of the *Environmental Planning and Assessment Act 1979*. These issues have been present since the introduction of the Biodiversity Conservation Act in 2017 and continue to remain unresolved. These issues include

1. The minimal integration of the biodiversity offsetting system at the regional strategic plan level and identification of conservation areas/corridors or offsetting areas that would facilitate the development outcomes identified within the plan. Council suggests that emphasis be placed on biocertification, strategic or standard, for regions that are growing rapidly including the Hunter. This would allow for more efficient outcomes from both a planning and environmental perspective.
2. Minimal or variably applied integration of the biodiversity offsetting system at rezoning or gateway determination. These issues include reliance on applicants to undertake a voluntary biocertification process after rezoning has been undertaken or the rezoning footprint being subject to multiple development applications that individualise offsetting requirements with no strategic environmental approach.
3. The fragmented requirements or environmental programs under other various legislation such as the Crown Land Management Act 2016 or National Parks and Wildlife Act 1974 that are not comprehensively contained within a plan eg. a conservation plan. This consolidated planning for conservation or environmental landuses would also assist with integration to regional strategic plans for development.

At this stage the proposed amendments will potentially continue the issues above and result in ongoing problems for development planning and balancing the objectives of the Department of Planning, Housing and Infrastructure and the Department of Climate Change, Energy, the Environment and Water.

Council has provided the following general comments regarding the proposed amendments for consideration

1. The Bill requires the Minister for the Environment to make a strategy to transition the biodiversity offsets scheme to deliver net positive biodiversity outcomes. However, the Bill provides no detail regarding when this strategy will be formalised or the impact, economic or otherwise, on the biodiversity offsetting scheme itself.
2. The Bill requires standards to be formalised to demonstrate measures to be taken to avoid and minimise the impact of proposed development. However, these standards would maintain the status quo of the current biodiversity offsetting system where no financial incentive is attached to avoid/minimise areas and these areas are rarely maintained to hold their biodiversity value. Furthermore, there is limited oversight or regulatory action regarding the maintenance of avoid/minimise areas leading to degradation of these areas.
3. The Bill requires a public register to be maintained of measures for avoiding and minimising impacts on biodiversity values, but there is minimal regulation of these measures. There is no indication regarding whether these measures would form conditions of consent under the Environmental Planning and Assessment Act 1979 or responsibility for the proposed register.

Council has also provided comments regarding individual items proposed for amendment within the Biodiversity Conservation Act 2016

Item number	Section	Comment
13	6.2	The inclusion of 'prescribed biodiversity conservation measures' as an alternative to biodiversity credits has the potential to result in reduced biodiversity outcomes due to the vagueness or variability of what may constitutes a 'prescribed biodiversity conservation measure'. While Appendix J of the Biodiversity Assessment Method provides some guidance on conservation measures there is no defined guidance around the application of conservation measures. This has led to reduced outcomes around biocertification under the current biodiversity offsetting system.
15	6.2A	While Council supports the transition to a net positive strategy the current construction of this section only requires the Minister to prepare a strategy. The section does not embed the strategy within the legislation as part of the offset scheme and provides no detail regarding timing of the strategy or its implementation. Furthermore the section allows the Minister to amend any future strategy at any time reducing any commitment of the system to long-term outcomes for reducing biodiversity loss.
23 24	6.12 6.13	Both amended sections are reliant on the Biodiversity Assessment Method (BAM) to demonstrate the 'genuine measures' to demonstrate avoidance and minimisation of biodiversity impacts. Section 7 of the BAM provides some guidance on avoiding or minimising impacts as part of biodiversity impact reporting, but has proven to be ineffective and open to interpretation. Due to the significant focus of the legislative amendments on avoid and minimise principles Council suggests that review and amendment of the BAM is required in conjunction with the legislation to enable support of the proposed changes.
25	6.13(c)	See item 13 regarding comments on 'prescribed biodiversity conservation measures'.
28	6.16	The amendment require the regulation may provide principles and assessment standards for measures to avoid and minimise. Council suggests the amendment include the wording 'shall include

		provisions' rather than 'may' to embed the avoid and minimise principles and standards into legislation rather than relying on the BAM.
32	6.29A	The amendment facilitates 'prescribed biodiversity conservation measures' as an alternative to biodiversity credits. However, Council suggests that further analysis of what is considered appropriate 'prescribed biodiversity conservation measures' is required as highlighted by the issues in the BAM (see Item 13).
41	7.7	The proposed amendment allows the Minister to exempt certain development under Part 4 of the Environmental Planning and Assessment Act 1979. The construction of the amendment provides a discretionary power that provides minimal definition and Council raises concern regarding <ul style="list-style-type: none"> • Why development applications would need to be expediated in response to natural disasters when the same events are likely to contribute to biodiversity loss or stress eg) bushfire mortality • What is considered exceptional circumstances to exempt a development application from the biodiversity offsetting requirements and the process for the making of an order.
49	7.14(3)	The inclusion of the amendment 3(A) appears to allow the avoidance of the retirement of biodiversity credits for State Significant Development or Infrastructure with concurrence from the Minister. While it is assumed the amendment is to facilitate 'prescribed conservation measures' for these developments it appears to open other biodiversity outcome options that are at the discretion of the Minister based on amendments 3C-3H. This amendment seems to provide other biodiversity mechanisms outside of the offsetting system.
61	9.7.1(h)	The amendment requires a public register to be maintained for all biodiversity conservation measures approved in planning approvals along with any measures to avoid and minimise. The amendment does not specify responsibility for the proposed register, but due to most of these measures being contained within planning approvals the burden of the register will appear to fall to consent authorities such as Councils.

If you require any further information, please do not hesitate to contact Council's Senior Environmental Planner, Mark Manning

Yours sincerely

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