

6 September 2024

Ms Susan Higginson, MLC
Chair of the Portfolio Committee No. 7 – Planning and Environment
Parliament House
Macquarie Street
SYDNEY NSW 2000

Sent via email: online submission portal

Dear Ms Higginson

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Bill 2024

Urban Taskforce recognises the extensive stakeholder engagement and review that has been conducted leading up to this exhibition of these amendments to the Biodiversity Offsets Scheme. We support addressing biodiversity issues in the production of the built environment and welcome the Minister's commitment to working with all stakeholders to achieve mutually beneficial outcomes and the need to balance ecological impact and the many practical and financial requirements of housing supply.

In approaching this balance, it is important to understand the weight of the ecological benefit of legislation against the social detriment it may cause.

Data surrounding both Ecological Assessment and 'the housing crisis', while incomplete, has advanced to a point where factors acting on this balance can be measured.

Building housing necessitates the use of land. There is social licence in both protecting the ecology and delivering housing.

Members of the Urban Taskforce have expressed concern that the exhibited Biodiversity Conservation Amendment threatens to increase the risk/cost of greenfield development. Urban taskforce is concerned that, ultimately, these amendments will result in considerably fewer homes being delivered at a moment when housing supply is vital for the State and Nation to improve the wellbeing of its citizenry.

It should be noted that the housing supply and affordability crisis disproportionately disadvantages minority and marginalised demographics.

We are faced with an ecological crisis and a housing crisis. It is critical that such a conundrum is addressed through the forging of a solution that addresses both. The solution of one problem should not be at the expense the other.

The addition of an extra cost serves to erode both the affordability and feasibility of housing construction projects.

The proposed amendments place the onus on the developer to prove why particular development should be allowed. Housing is a necessity. And housing delivery proponents hold social licence to produce housing.

It is not obvious why further imposts should be levied on the production of housing at a time with an undisputed housing crisis. This will only serve to exacerbate the housing supply and affordability crisis and result in substantial social cost.

Nuance can be lost when committees review legislation that the cost impost proposed by offsets is met fully by the final land purchaser, the consumer. Particularly in this time of high construction labour and material costs, tightening financial terrain and stricter legislation surrounding planning and construction, any cost imposed of development proponents must be transferred directly to the home buyer.

Thus, at this time when housing supply is priority public policy. the balancing of the social and ecological impacts becomes, then, a critical issue that the State Government should address.

The State Government should support both biodiversity *and* housing supply by integrating three actions. Firstly, there should be support for housing production that come under the Biodiversity Offset Scheme through consolidated funding relief for biodiversity works. Secondly, Government should subsidise property in well-located and growth locations. And lastly, other the levies that currently exist in legislation, should be lifted, when the Biodiversity Offsets Scheme is evoked in a project.

Recommendation 1: that the Bill exclude specific other fees, taxes, imposts, levies and charges on development when the Biodiversity Offsets Scheme it is to be used.

Growth Centres

The Biodiversity Offsets Scheme will, by its nature, bring further costs to the delivery of housing. One way that was successful in reducing this effect was practiced by Hon Bob Debus in his appointment as the Minister for the Environment, between 2003-2005. Debus' Department designated growth centres where housing delivery was encouraged. In these areas the emission trading scheme was switch off as an incentive.

With the amendments to the Biodiversity Offset Scheme, the Government should take greater responsibility to articulate their growth strategy and designate areas where Biodiversity requirements are lifted.

Recommendation 2: that the Bill provide for a process for the State Government to designate growth areas where biodiversity requirements are lifted.

Multiple Biodiversity Assessments

Once land has been rezoned for urban development, environmental assessment occurs at the local level, potentially also with a regional planning panel and again at a state level with Gateway. This process is informed by a list of technical studies including at the least an ecological assessment and deemed appropriate for that particular use.

Likewise, land that is assessed to hold high, ecological value is zoned for conservation and thereby avoided by development. This process should satisfy the "avoid" requirements in the Bill.

For urban-development-zoned land, requiring further "avoid" measures on a case-by-case basis at the development application stage (per Schedule 1 [55] of the Bill) causes additional friction with unnecessarily cost and delays, that will serve to constrict housing supply.

Later ecological assessments should focus on "Minimisation" of impact and "Offsets" as their goals and not re-hash "avoid" after rezoning.

What is needed is a fast and resource-light system that accurately outlines the extent of ecological considerations before rezoning. This shouldn't over-burden local council or development proponents. This system should address the minimisation of biodiversity impact at the Gateway stage, only once certainty of local or State Government support for the projects is established.

Without this the allocation of additional resources at the early stage can become prohibitive.

This structure should provide the certainty and scope for the avoidance of biodynamic impact at the time of rezoning but allow the depth of technical studies to inform the minimisation of biodiversity impacts.

Recommendation 3: that the “avoid” part of the hierarchy is assessed at the rezoning stage and “minimise” is addressed at the planning proposal and development application stages.

The ‘Avoid, Minimise and Offset’ Hierarchy

There is a false assumption that this hierarchy will achieve the best result for net-positive biodiversity in the production of the built environment. While the reasons for the review of biodiversity offsets is understood, the best biodiversity option may be excluded by this hierarchy.

The hierarchy essentially biases existing biodiversity over new biodiversity. Land may be blocked from use due to existing ecological aspects, however these may be able to be reproduced, with an order of magnitude, through offsets, allowing net benefit to biodiversity and well-located housing.

As an example: an existing scattered low-quality plant community type in the middle of a paddock could be easily argued as less ecologically valuable than the new provision of an offset of ten times the amount of high-quality plant community type in a more sustainable, protected environment.

As development proponents are being leveraged to reproduce the built and ecological environment, flexibility and incentives are vital to enhance the quality and quantity of biodiversity. The selection of rigid ‘avoid, minimise and offset’ hierarchical framework could sterilise significant development land and reduce capital for biodiversity enhancement, leading to worse outcomes for environmental corridors and areas.

Allowing a simply “best for ecology” approach would allow flexibility for housing proponents to greatly enhance biodiversity by providing more opportunities for suppling housing. This will allow better balance of biodiversity and housing supply.

Recommendation 4: that the bill temper the ‘Avoid, Minimise and Offset’ hierarchy with a common-sense ‘best for ecology’ approach.

Assessors Appeals

In Section 6.10A The Bill enables the Environment Agency Head to issue directions to an accredited person (such as an assessor) regarding the preparation or modification of a biodiversity assessment report if the person is not complying with the accreditation scheme's requirements. If the person does not comply with these directions, their certification or ability to submit reports may be impacted.

Additionally, Section 6.15 details how a biodiversity assessment report cannot be certified or submitted if the accredited person has been given a direction until they comply with it, indicating a process for managing or terminating the role of assessors who do not follow guidelines.

This sets a precedent where the function and carriers of assessors is at the discretion of the Head of the Environment Agency, with no appeal process visibly available to the assessor.

This would be unique to this profession as power structures like this are not the case for other disciplines in the built environment nor for lawyers or medical practitioners.

The underlying issue is that this type of fear-of-not-towing-the-line-based prerogative leads to highly conservative assessors who are scared to make decisions. Their reports end up requiring additional assessment, longer time frames and, eventually, adverse outcomes for housing supply.

This is currently being experienced with under the DBP and RAB Acts.

What is needed is a balanced approach, where assessors have the confidence to decide and act swiftly. A functioning appeals process should be separate from the Environment Agency, where assessment mistakes can be corrected and dismissal eventuates only where dishonestly or gross incompetence is found.

The documentation explained under Section 9.7 & 9.11 for the public register should allow this type of tracking and correction, however this mechanism must be combined with fair and unoppressive power hierarchies in order to enable confidence in the assessors.

Recommendation 5: that an independent appeals process is put in place for assessors that handles correction and dismissal of environmental and biodiversity assessors.

State Resources to Assist Councils

A key objective of The Bill is the identification and avoidance of risks early in the strategic planning process. This is supported by Urban Taskforce Australia.

A stable risk framework, backed by a regulatory framework will provide certainty to development proponents and their financiers. A solid foundation allows more opportunities to deliver housing as developers can innovate to find feasible projects that are sound enough to be granted financial approval.

However, the resources required to know and avoid biodiversity risk is significant. The uncertainty of this may become prohibitive for some local councils. The State may need to forge detailed frameworks and manage the mapping and identification processes.

This framework should include a guide for local government and development proponents that shines a light on the process of biodiversity assessment so that informed decisions can be made going forward and biodiversity impacts can be tracked.

In this way, early avoidance mechanisms can protect the most important ecosystems and unexpected costs and project delays for development proponents can be reduced.

Instead of two years into a planning process, proponents will know their offset liabilities and biodiversity constraints early on and will be able to make informed decisions at the first point of investment. This additional industry certainty will aid housing commitments, as well as essential infrastructure, including renewable energy infrastructure, roads and other transport, in its delivery.

Recommendation 6: the Bill should make provision for state resources to be utilised to create a framework that identifies risks and nominates their avoidance at early stages in strategic planning. This framework should guide for local government and development proponents through the process of biodiversity assessment so that informed decisions can be made early.

Future Regulation

In the Second Reading Speech (15 Augst 2024) for the Bill, Minister Sharpe raised points that caused concern. Examples include:

The extension of legislation through Government's '*NSW Plan for Nature*' is highly open ended and no able to be addressed in this Inquiry.

The new Section 7.2 that is designed to provide more reasonable and proportionate entry thresholds. will be determined later by regulation. These are said to "refine the rules for trading ecosystem credits: amend the scheme entry thresholds so that small, low-impact local development does not come into the scheme" (page 40). Of particular significance will be the definition of "Small, Low Impact local development."

After speaking about Land ownership and long-term management under the Biodiversity Offset Scheme, Honour Penny Sharpe admitted that it "is a complex scheme, and the subject of much criticism" (page 39, Second Reading Speech, Thursday 15 August 2024).

The transition to net-positive biodiversity outcomes, without clear extent or explanation.

These future initiatives and guidelines foreshadowed by the minister are critical policy positions that have the potential to deliver certainty for both conservation and development. They require maximum consultation to ensure the regulation protects development especially in regional areas.

They should be approached with a balance of ecological benefit and social cost, lest the outcomes are detrimental to regional growth and social cohesion.

While the commitment to work with stakeholders in this regard is noted, it is vital that effort is put into developing and publicising case studies and opportunities such that developers and local government can understand the complexities that will undoubtedly arise from net-positive biodiversity.

Recommendation 7: that in lock-step with the Bill, the Department of Environment and Heritage release a plan that:

- **explains the transition to net-positive biodiversity and what the outcomes from this will entail for local councils and development proponents;**
- **plans a program of significant engagement with development proponents and local council to retrieve feedback for correction; and**
- **tracks the complexity that will come from net-positive biodiversity, including metrics, case-studies and the disturbance to housing supply and its social impact.**

Conclusion

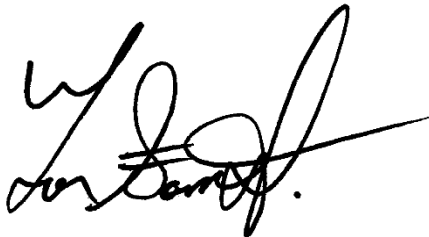
It is vital that both the preservation and revitalisation of the ecology as well as the supply of housing are taken into consideration. This requires a focus on the development of options for government that deliver on both. The establishment of new growth areas with bio-certification is one avenue which

should be actively explored. That gives certainty to the developers of new housing along with investments in local and state infrastructure, as well as delivering a pathway to biodiversity conservation (through, for example, dedication of new National park corridors).

Regional communities will be hardest hit in terms of constraints on their growth as the value of land (being lower) makes the impost of biodiversity conservation un-economic. But this fails to take into account the broader benefits arising for these communities from greater employers and economic activity, all of which is predicated on housing supply.

Should you wish to discuss this matter further, please call our Head of Policy, Planning and Research, Benjamin Gellie on 0461566807 or via email benjamin@urbantaskforce.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', with a large, sweeping flourish extending to the right.

Tom Forrest
Chief Executive Officer