

16 July 2026

Department of Climate Change, Energy, the Environment and Water
Locked Bag 5022
PARRAMATTA NSW 2124

Sent to: bos.reforms@dcceew.nsw.gov.au

Re: Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

To whom it may concern

Urban Taskforce Australia has reviewed the Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026. Urban Taskforce understands the purpose of developing amendments to the Biodiversity Conservation Regulation 2017 is to improve the Biodiversity Offsets Scheme, in line with commitments in the *NSW plan for nature*.

Urban Taskforce maintains that any proposed changes to the regulations accompanying the *Biodiversity Conservation Act 2016* must be measured and balanced against the key challenge facing the NSW Government, namely housing supply and affordability.

There is an urgent need for a variety of housing typologies, including detached greenfield development, delivered largely in the western suburbs of Sydney, and growing regional centres. Changes to the regulations should be assessed with reference to their impact on housing affordability and the economic growth needs of the State, especially at a time when NSW is significantly lagging its Housing Accord targets.

As with our previous submission in July 2025 on the then proposed amendments to the Biodiversity Conservation Regulation 2017, Urban Taskforce members were and are still concerned that some of the proposed amendments will increase the cost and compliance requirements for property developers, especially for larger or higher-impact projects, while reducing barriers and costs for small-scale landowners and developers.

Where these changes result in increased costs, they should be borne by the state, recognising the environmental gains benefit all of the community, the vast majority of which live in houses where no such costs were applied.

High yield, high value sites are vital if the Government is to make serious inroads into the housing supply deficit and these can't continue to be held up with environmental red/green tape.

Complex rules and the lack of clear, practical guidance has led to the inconsistent application of biodiversity requirements across regions and planning authorities, making project planning and investment risky.

Regulations need to be outcome focussed and balance rules with risk. The scheme should focus on the big picture and not get buried in the "small stuff". This is where Government acquisition and bio-certification can play an important role.

1. Reducing reliance on the Biodiversity Conservation Fund

While noting that there has been a general decline in proponents' reliance on the Biodiversity Conservation Fund (BCF), to just 10 per cent of credit obligations in 2025, Urban Taskforce is concerned that any additional measures to "force" proponents away from using the BCF will just add additional compliance requirements and costs on developers, particularly those with small credit obligations, who still wish to use the fund or don't have a viable alternative.

Acceptable Measures

Clause 6.13A of the draft regulation states that a person required to retire biodiversity credits (above a prescribed threshold) must not satisfy the requirement by paying an amount into the BCF unless they have first taken an 'acceptable measure' to attempt to comply with the requirement.

While the list of proposed 'acceptable measures' set out on page 3 of Department of Climate Change, Energy, the Environment and Water's (DCCEEW's) Consultation paper appears to be reasonable, DCCEEW should be careful to not overly restrict the ability for proponents to rely on the BCF.

Since 7 March 2025, proponents have not been able to rely on the offset variation rules when offsetting biodiversity impacts. This means that for a number of projects, the only feasible way to offset biodiversity impacts may be to pay into the BCF.

2. Credit transaction fees

Urban Taskforce supports measures by the DCCEEW that streamline transaction fees and reduce compliance costs and any inequities in the system.

Urban Taskforce notes the concerns raised in the Consultation paper that the current fee structure may be inequitable for proponents who have a small number of credit obligations.

We also note the proposed amendments to the fee structure under item 42. We support the removal of credit transfer fees and acknowledge this would reduce costs particularly to those with small credit obligations.

However, we understand that the DCCEEW is looking to "better reflect its costs of processing credit transfers and retirements". We are concerned that this effectively means someone is going to pay increased fees, and that appears to fall on those proponents with larger credit obligations. These additional costs will be passed onto

new home purchasers and thereby undermine government efforts to support housing affordability.

We nonetheless welcome the initiative of the department to invest in digital solutions that will make it easier to process credit transfer and retirements.

3. Measures for avoiding and minimising biodiversity impacts

Urban Taskforce, in its July 2025 response to proposed amendments to the Biodiversity Conservation Regulation 2017, called for amongst other things, clarity and guidance on what constitutes "all reasonable measures" to avoid impacts. Noting that uncertainty in interpretation will lead to delays and increased costs.

The proposed new clause 6.10AA sets out the circumstances in which a measure taken or proposed to be taken to avoid or minimise the impact of an activity on biodiversity values can be assessed as a 'genuine measure'. Specifically, clause 6.10AA(c) provides that a measure can only be a genuine measure if it:

can be demonstrated to reduce the predicted or actual impact of the activity on biodiversity values on the site where the activity will take place when compared to—

(i) taking no measures to avoid or minimise the impact of the activity on biodiversity values, and

(ii) taking all practicable measures to avoid or minimise the impact of the activity on biodiversity values.

The effect of sub-paragraph (ii) of this requirement is unclear. If a proposed measure can only be genuine if it further reduces predicted or actual impacts after all practicable measures to avoid or minimise the impact have been implemented, it is difficult to see how any practicable measure can satisfy clause 6.10AA(c)(ii). This clause is therefore redundant.

At the very least, the word 'other' should be inserted before 'practicable measures' in clause 6.10AA(c)(ii).

Clause 6.10AA only clarifies when a proposed avoidance or minimisation measure can be considered as a genuine measure. The draft regulation provides no guidance as to when a measure is 'reasonable' for the purposes of applying the 'avoid, minimise and offset hierarchy' in section 6.3A of the Act (which requires proponents to take all reasonable measures to avoid or minimise the impact of an action on biodiversity values before relying on biodiversity offsets).

In particular, there is no guidance as to the extent the financial/economic impacts of a proposed measure (including on development cost and yield) can be considered when determining whether a measure is "reasonable".

We do however, support measures in the draft regulation that will allow a proponent, if they choose, to include information about measures previously taken to avoid and minimise impacts as part of a strategic planning, biodiversity

certification, or development approval process.

As we have previously noted the requirement for developers to take “*all reasonable measures to avoid the impacts of the action on biodiversity values*” before minimisation and offsetting are considered represents a significant change in regulatory expectations. It will simply add to the hurdles and delays developers face in getting development approvals.

This flies in the face of everything the Premier has stated publicly lately about turbo charging housing supply and reducing the impact of government red and green tape.

In some urban and infill contexts, complete avoidance may be impractical.

For example, all housing estates require roads, water and other infrastructure to be built – approximately 20-25 % of a development will be disturbed for these upfront services – and these areas cannot be minimised, reduced, nor avoided. This unavoidable impact should be removed from the assessment. Any threshold should start from this baseline and needs to be explicitly recognised in the Biodiversity Conservation Regulation.

The avoid principle needs to be managed carefully, particularly at “lower” levels of environmental value, where the development and environmental protection need to be balanced. This is where certification is critical – a single, up-front assessment to create clear pathways.

If this is not achieved, Government and private sector (and indeed the broader community), will continue to waste money, time, and effort arguing at the margins, interpreting values, and trying to reach this balance.

4. Exclude low-impact development from the scheme

Urban Taskforce supports the intent to remove small, low-impact local development and clearing proposals from the Biodiversity Offsets Scheme.

We note under item 45 of the draft regulation that development or clearing proposals with a small incursion of 100 square metres or less on the Biodiversity Values Map will be exempt from entering the scheme via the Biodiversity Values Map pathway. We further note that this exemption will not apply to land that has been declared an Area of Outstanding Biodiversity Value, mapped on the Biodiversity Values Map. We also note this exemption does not prevent a proposal from entering the scheme via another pathway.

While a positive step, this measure is not likely to impact many development projects.

Urban Taskforce supports the NSW Government initiative as part of a future remake of the Biodiversity Assessment Method, to enable local development projects to undertake a desktop, rather than site-based, biodiversity assessment where data quality is high, and biodiversity risks are low.

This is a sound measure that will save developers time and money.

5. Establish an accreditation scheme for conservation brokers

Urban Taskforce supports the establishment of an accreditation scheme for conservation brokers.

We agree that the integrity and competence of conservation brokers is critical to ensuring confidence in the biodiversity offset scheme.

We further agree that such a measure will make brokers more visible to prospective clients and support the growth of a professional conservation broking sector.

That said, we do have concerns that the proposed definition of 'brokering service' in section 6.29A is **far too broad** and extends to anyone providing 'advice on buying or selling biodiversity credits'. This could capture a wide range of service providers including town planners, project managers or lawyers.

6. Manage the Biodiversity Stewardship Payments Fund as a pool

Urban Taskforce members support a greater emphasis being placed on the Stewardship program and we support the concept of the Biodiversity Conservation Trust managing the biodiversity stewardship payments fund as a single pool.

We agree that such an approach will strengthen the biodiversity stewardship payments fund over the long term, and thereby hopefully ensuring it can continue to fund all biodiversity stewardship agreement holders to manage biodiversity values on their sites.

7. Information in public registers

Urban Taskforce supports measures that improve transparency and accountability in the Scheme. The investment by the department in digital solutions that minimise potential costs and administrative burden associated with maintaining the registers is supported.

8. Other proposed amendments

In relation to Item 55 – clarifying that a local council needs to obtain the Environment Agency Head's concurrence if proposing to change a biodiversity credit obligation when granting a modification application.

Urban Taskforce is strongly of the view that once a Biodiversity Assessment has been completed and approved as part of a development consent, it should remain valid and not require updating after approval.

Councils should not be allowed to introduce new conditions or requirements at later stages, such as when granting a modification, as this creates uncertainty and undermines the feasibility of already-approved developments.

Whole of Government approach

DCCEEW needs to ensure that it does not operate in a silo but works to assess any proposed changes contemplated for inclusion in the regulations for their potential impacts on housing supply. The Housing Supply crisis requires effective co-ordination of and from government.

Conclusion

Urban Taskforce believes that biodiversity protection is already significantly controlled under existing legislation.

We are pleased to see some proposed amendments within the Draft Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026 will improve transparency, accountability and streamline processes.

However, at a time when the Government's key priority has been identified as increasing housing supply, the continued focus of reform should be on simplifying processes, not adding to the regulatory burden.

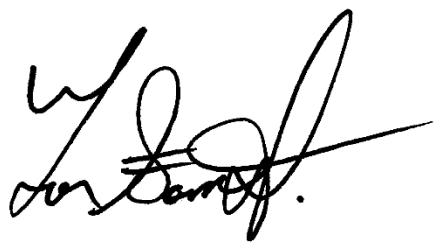
Greater clarity in the regulations will be critical to striking an appropriate balance between environmental protection and housing.

This will be supported by Government actively acquiring strategic sites, which will go a long way to removing the impost of protecting the environment currently placed on the purchasers of new dwellings.

Urban Taskforce will continue to work with the Department is ensuring the regulations help achieve these outcomes.

Should you wish to discuss any aspect of this submission further, please call our Economist and Planning Analyst, William Hughes on 0418 286 530 or via email will@urbantaskforce.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', with a stylized flourish at the end.

Tom Forrest
Chief Executive Officer